

AGENDA  
Fiscal Committee

Tuesday, July 5, 2011

\*\*\*4:30 PM  
Carnegie

Town Hall

235 West

10th Street

\*\*\*Committee Meeting will start immediately following the adjournment of the 4:00 p.m. Informational Meeting

1. Call To Order
2. Approval of Minutes
3. Reports and Updates
- A. Discussion of the authorization of city contracts (SDCL9-1-5 and Sec. 34 1/2-1).
- B. Discussion on Sewer/Water Rate Increase Freeze for Elderly and Low Income Families
- C. Discussion on Sewer/Water Rate Increase Cycle of 3 or 5 years
4. Open Discussion
5. Adjournment

Date: 2011-07-05  
SIRE Meeting ID: 1514  
Meeting Type: Committee Meeting  
Subtype: Fiscal Committee  
YouTube:<https://youtu.be/J2fxHN30ZQQ>  
Agenda Item: Not Assigned  
Item ID: 58926

The following document(s) are public records obtained from the  
City of Sioux Falls.

**NOTE:** This is a DRAFT document until the minutes are officially approved by the committee at their next meeting.

# MINUTES

Monday, May 2, 2011

**Fiscal Committee**

\* 4:30 PM

Carnegie Town Hall  
235 West 10<sup>th</sup> Street



**Members Present:** Council Member Sue Aguilar, Council Member Vernon Brown, Council Member Greg Jamison, Council Member Rex Rolfing

**Members Absent:** None.

**Staff Present:** Debra Owen, City Clerk/Chief of Council Operations; Jamie Palmer, CMC, Assistant City Clerk

**Guests:** Don Kearney, Mike Cooper, Dave Pfeifle, Erica Beck, Mark Cotter, Kendra Siemonsma, Tracy Turbak, Scott Rust, Karen Leonard, Cheryl Rath, Rich Oksol, Dean Karsky, Jim Entenman, Michelle, Erpenbach, Shannon Verhey, Steve Randall

## 1. Call To Order

Committee Chair Brown called the meeting to order at 6:05 p.m.

## 2. Approval of Minutes

### A Monday, April 4, 2011

A motion was made by Council Member Greg Jamison and seconded by Council Member Rex Rolfing to approve minutes dated Monday, April 4, 2011.

Brown called for a voice vote on that motion and all members voted yes.

**Motion Passed.**

## 3. Reports and Updates

### A Discussion of the authorization of city contracts (SDCL9-1-5 and Sec. 34 1/2-1).

Brown asked Debra Owen, City Clerk/Chief of Council Operations, to review the proposed changes to the draft ordinance.

Owen reviewed an excerpt from City Charter Section 2.11(c) which states "...any action

calling for the expenditure of money in excess of the state bid limits for municipalities or filling of vacancies as set forth in section 2.06 shall not be valid or binding unless adopted by the affirmative vote of five (5) or more members of the council." Owen reviewed the language in the draft ordinance document.

Owen opened the discussion about bid awards and contracts in relation to the 30 day requirement. Scott Rust, Purchasing, explained that when the Mayor signs the bid award document, he also signs the contract. Brown asked for clarification on the bid award recommendation versus the contract. Rust explained that the bid award recommendation is the departmental recommendation that is made to the Mayor. It is basically an internal document and is not binding in any way. In Engineering, the bid award recommendation is often signed first and the contract follows at a later date. He said that the bid award date is the date on which the actual contract is signed.

Brown asked if Internal Audit had anything to add. Rich Oksol, Lead Internal Auditor, stated that the changes recommended by Internal Audit were incorporated into the changes previously explained by Owen.

Tracy Turbak, Finance Director, shared a short powerpoint presentation. He said that his initial involvement with this topic began in February at a meeting he attended with City Attorney Pfeifle, Assistant City Attorney Karen Leonard, Mayor Huether, Councilor Brown and Councilor Rolwing. He shared that it was a productive meeting with a consensus on two key issues which were: a desire to improve transparency of the contract process and to not hinder the progress of the contract process. He shared some key highlights from that meeting.

He said that there is extensive information available online regarding city contracts. Some ideas discussed at that meeting included a consolidated database where the information would be stored and searchable for both internal and external customers. He said that they discussed public facility management contracts and thresholds that would require contracts to come before the council for approval.

He said that the proposed ordinance as written does add significant steps to the current process which will, in fact, slow progress on projects and cost the city additional time and money.

Owen said that there were a couple of additional recommendations from Internal Audit that were not included in this ordinance draft that will be incorporated into a difference ordinance under review in the Public Services Committee. She said that Internal Audit recommended that a summary memo be included with the contract when they come before the council for approval.

Brown asked about SDCL 9-1-5 and City Charter as it relates to the city's current contract process. Turbak explained that he feels the city is in compliance because the contract authority has been delegated to the Mayor and that the council is in compliance with City Charter Section 2.11(c) because they approve the Capital Improvement Program, and approve and appropriate funds, etc.

Mark Cotter, Director of Public Works, explained how this proposed ordinance might affect his department. He explained his current process and timeframes to issue contracts and gave an example of the steps that would be added if the contracts are required to come before the council for approval. He expressed his concerns about contracts being affected because the City Council only meets three times per month and their department currently bids every Thursday.

**B Discussion on Sewer/Water Rate Increase Freeze for Elderly and Low Income Families**

Item was not discussed due to lack of time.

**C Discussion on Sewer/Water Rate Increase Cycle of 3 or 5 years**

Item was not discussed due to lack of time.

**D Discuss Tax Increment Financing and Proposed TIF 11 by Erica Beck, Community Development Manager**

Brown asked Erica Beck to briefly explain the timeliness of her report. She invited the Committee Members to attend the Planning Commission briefing meeting on Tuesday, May 3, 2011, at 12:00 p.m. if they would like more information on this topic. The intent of this presentation was for informational purposes only. The item will also be presented at the Informational Meeting on Monday, May 9, 2011.

**4. Open Discussion**

There was none.

**5. Adjournment**

A motion was made by Council Member Greg Jamison and seconded by Council Member Sue Aguilar to adjourn at 6:45 p.m.

Brown called for a voice vote on that motion and all members voted yes.

**Motion Passed.**

Jamie L. Palmer, CMC  
Assistant City Clerk

Date: 2011-07-05  
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1st Reading: \_\_\_\_\_  
2nd Reading: \_\_\_\_\_  
Date Adopted: \_\_\_\_\_  
Date Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY AMENDING THE PROCESS FOR THE APPROVAL OF CONTRACTS.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

*Section 1. That Section 34 ½-1 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 ½-1. ~~Mayor to sign~~ Authorization of contracts and agreements.**

In addition to provisions in city charter section 2.11(c) and 2.12, contracts, agreements and amendments to contracts and agreements in excess of \$20,000 per vendor, for each calendar year, shall be approved by the city council, except for contracts subject to city ordinance sections 34 ½-8 and 34 ½-11. Each contract or agreement of the city shall be executed in the name of the municipality by the mayor, or his or her interim successor, and shall be attested by the city clerk. The city clerk shall affix the corporate seal. ~~The mayor or a person designated in writing by the mayor is authorized to sign all contracts and agreements on behalf of the city.~~ Any contract or agreement for park purposes shall be reviewed by the parks and recreation board ~~and signed by the mayor prior to council consideration.~~ The signature of the mayor or his designee shall be attested by the city clerk. All contracts in excess of \$20,000 that are entered into by the mayor and are not subject to council approval shall be noticed to the city council on the consent agenda under communications. Change orders to contracts in excess of \$20,000 shall be noticed to city council on the consent agenda under communications.

*Section 2. That Section 34 ½-1.1 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 ½-1.1. Contracts involving public facilities.**

No contract pertaining to the management of the city's public facilities will be valid unless the contract has been authorized by a vote of the city council at a duly assembled meeting. Contracts for public facilities shall be listed on the regular agenda for separate consideration. Prior to contract negotiations, the city council will be given notice by the administration in writing.

Section 3. That Section 34 ½-1.2 of the Revised Ordinances of Sioux Falls, SD is hereby amended to read as follows:

**Section 34 ½-1.2 Multiple year contracts.**

In addition to provisions in city charter section 2.12, all contracts involving the payment of money from appropriations of more than one fiscal year of the city shall be approved by ordinance. No contract involving the payment of money from appropriations shall extend past a five year period but may have an option for renewal or renegotiation for up to a subsequent five year period, subject to the approval of the council in office at the time of said option or renegotiations is put into effect. No such contract, option, or renegotiation be valid unless approved by ordinance.

Section 4. That Section 34 ½-1.3 of the Revised Ordinances of Sioux Falls, SD is hereby amended to read as follows:

**Section 34 ½ -1.3. Discrimination clause.**

All contracts and agreements of the City shall contain a provision that contracts shall not, in the performance of the contract, discriminate or permit discrimination in violation of Federal or State laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations, or national origin.

*Section 5. That Section 34 ½-2 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-2. Budget administration manuals required.**

Subject to the city council approval, the mayor shall develop, promulgate, and update a manual or manuals containing procedures for administering the budget, including but not limited to the following: budgeting, purchasing, ~~and~~ accounting, ~~and records retention.~~

*Section 6. That Section 34 ½-8 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 ½-8. Emergency award of contract without advertising.**

The mayor, or his or her interim successor, may make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions in a timely manner is not an emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of particular contractors shall be included in the contract file and shall be provided to the city council within seven days of the award of the contract.



Section 7. That Section 34 1/2-9 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-9. Negotiation of contract when no bids received.**

If after advertising for bids for purchase of materials, supplies or equipment, no bids are received, the mayor, or his or her interim successor, may negotiate a contract for the purpose of the materials, supplies or equipment at the most advantageous price. However, the materials, supplies or equipment shall meet the specifications of the original advertisement bids. The mayor, or his or her interim successor, shall contact and attempt to obtain competitive quotations from at least three suppliers. The mayor shall maintain a record of the names of the suppliers, the quotations received and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by a written justification filed with the purchasing agent of the city.

Section 8. That Section 34 1/2-18 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-10. Negotiation of contract when firm competitive bids not received.**

If after advertising for bids for the purchase of materials, supplies or equipment, firm competitive bids are not received, the mayor, or his or her interim successor, may reject all bids and negotiate a contract for the purchase of the materials, supplies or equipment at the most advantageous price, provided that the materials, supplies or equipment meet the specifications of the original advertisement for bids. The mayor, or his or her interim successor, shall contract and attempt to obtain competitive quotations from at least three suppliers, the quotations received and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by written justification filed with the purchasing agent of the city.

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Date: 2011-07-05  
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**Sec. 34 1/2-1. Mayor to sign contracts and agreements.**

The mayor or a person designated in writing by the mayor is authorized to sign all contracts and agreements on behalf of the city. Any contract or agreement for park purposes shall be reviewed by the parks and recreation board and signed by the mayor. The signature of the mayor or his designee shall be attested by the city clerk.

(Ord. No. 28-95, § 1, 2-21-95)

 **Sec. 34 1/2-2. Budget administration manuals required.**

The mayor shall develop, promulgate, and update a manual or manuals containing procedures for administering the budget, including but not limited to the following: budgeting, purchasing, accounting, and records retention.

(Ord. No. 28-95, § 1, 2-21-95)

 **Sec. 34 1/2-3. Claims to be published.**

No claim against the city shall be audited or allowed unless it be fully itemized and a memorandum of the same submitted to the mayor. The memorandum shall be published by the city clerk on a monthly basis by vendor, expense class (repair, equipment, professional service or other similar class), and amount.

(Ord. No. 28-95, § 1, 2-21-95)

 **Sec. 34 1/2-4. Return of deposit to unsuccessful bidders.**

(a) In considering contracts of the city to be awarded on competitive bids, no bidder shall be required either in the advertisement for bids or otherwise to leave the certified check or other guarantee or bid bond posted for a period longer than 30 days if the bid is not accepted. The certified check or other guarantee or bid bond of the successful bidder shall be returned upon the execution of the contract.

(b) The certified checks or bid bonds of all unsuccessful bidders shall be returned by the city to the respective makers thereof and not more than 30 days shall lapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all the bids presented.

(c) However, if an ordinance requiring a supplemental appropriation or a transfer of appropriations requiring council action is required to provide necessary funding for a project, not more than 30 days shall lapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all the bids presented.

(Ord. No. 28-95, § 1, 2-21-95; Ord. No. 119-05, § 1, 11-14-05; Ord. No. 51-10, § 1, 6-7-10)

**Sec. 34 1/2-5. Remedies available to city.**

After receiving notice of a contract award, the successful bidder shall enter into a contract with the city within the time specified in the invitation for bids or request for proposals. If any bidder fails to timely enter into the contract, the contract may be awarded to the next lowest responsible bidder unless all bids or proposals are rejected. The defaulting bidder shall be responsible for the difference in price.

If any successful bidder fails to fulfill the conditions of an awarded contract, the city may proceed to recover from the defaulting party whatever damages may have been sustained as a result of the default. The city shall have all remedies provided in the contract and provided by law.

(Ord. No. 51-10, § 2, 6-7-10)

**Sec. 34 1/2-6. Contracts to be let to lowest bidder.**

All contracts of the city whether for the construction of public improvements or contracts for the purchase, lease or rental of materials, supplies or equipment, when such contracts involved an expenditure equal to or in excess of the amount provided for in the bid laws of the state shall be awarded within 30 days of the bid opening by written notice to lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The mayor may reject any and all bids and re-advertise for proposals if none of the bids are satisfactory, or if the mayor believes any agreement has been entered into by the bidders to prevent competition. If the low bidder is not responsible or the bid is not made in accordance with the requirements of the state competitive bid laws or the low bid is withdrawn as authorized by this section, the bid of the next lowest responsible and responsive bidder may be accepted.

(Ord. No. 28-95, § 1, 2-21-95; Ord. No. 51-10, § 3, 6-7-10)

**Sec. 34 1/2-7. Publication of advertisement for bids.**

If the city intends to enter into a contract for any public improvement that involves the expenditure of \$50,000.00 or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of \$25,000.00 or more, the mayor shall cause advertisement of bids or proposals therefor to be printed at least twice, with the first publication at least ten days before the opening of bids or the deadline for the submission of proposals. Both publications shall be in the official newspaper of the city. The advertisement shall state the time and place where bids will be opened or the deadline for the submission of proposals. In all notices, the mayor shall reserve the right to reject any and all bids or proposals. If the city lists a bid on the centralized bid exchange of the state, the city need not make the second publication required by this section.

(Ord. No. 28-95, § 1, 2-21-95; Ord. No. 7-99, § 1, 1-4-99; Ord. No. 118-05, § 1, 11-14-05; Ord. No. 175-07, § 1, 11-13-07; Ord. No. 51-10, § 4, 6-7-10)

**📖 Sec. 34 1/2-8. Emergency award of contract without advertising.**

The mayor may make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions in a timely manner is not an emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of particular contractors shall be included in the contract file.

(Ord. No. 28-95, § 1, 2-21-95; Ord. No. 51-10, § 5, 6-7-10)

**📖 Sec. 34 1/2-9. Negotiation of contract when no bids received.**

If after advertising for bids for purchase of materials, supplies or equipment, no bids are received, the mayor may negotiate a contract for the purpose of the materials, supplies or equipment at the most advantageous price. However, the materials, supplies or equipment shall meet the specifications of the original advertisement bids. The mayor shall contact and attempt to obtain competitive quotations from at least three suppliers. The mayor shall maintain a record of the names of the suppliers, the quotations received and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by a written justification filed with the purchasing agent of the city.

(Ord. No. 28-95, § 1, 2-21-95)

**📖 Sec. 34 1/2-10. Negotiation of contract when firm competitive bids not received.**

If after advertising for bids for the purchase of materials, supplies or equipment, firm competitive bids are not received, the mayor may reject all bids and negotiate a contract for the purchase of the materials, supplies or equipment at the most advantageous price, provided that the materials, supplies or equipment meet the specifications of the original advertisement for bids. The mayor shall contract and attempt to obtain competitive quotations from at least three suppliers, the quotations received and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by written justification filed with the purchasing agent of the city.

(Ord. No. 28-95, § 1, 2-21-95)

**📖 Sec. 34 1/2-11. Purchase from state price list.**

The city may purchase, without advertising for bids, from a willing vendor, any commodities, materials, supplies, or equipment contained in the state price list established pursuant to SDCL 5-23-8.1, or from any willing vendor at a price at or below that shown on the state price list. The finance officer shall file with the mayor a memorandum describing what commodities, materials,

supplies, or equipment were purchased from the state price list and shall further note the identity and address of the vendor and the price paid. If an item is purchased at a price lower than that found on the state price list, the finance officer shall note that fact in his memorandum and show the identity and address of the vendor and the price paid.

(Ord. No. 28-95, § 1, 2-21-95; Ord. No. 16-03, §1, 2-10-03; Ord. No. 117-05, § 1, 11-14-05)

**📖 Sec. 34 1/2-12. Items exempt from competitive bidding.**

The city may purchase or lease storm-caused debris removal services, sewer clean up services, art as defined by SDCL 1-22-9, chemical products, biological products, laboratory apparatus and appliances, library books, medical supplies, lubricating oils and grease, snow removal services, personal computers, telecommunication equipment, any equipment repair, tableware or perishable foods, surplus property from another municipality, any animals, asbestos removal and emergency response action, services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, auction services, peripheral computer hardware, printers, networking components, software, and related connectivity without advertising for competitive bids.

(Ord. No. 25-96, § 1, 2-20-96; Ord. No. 49-97, § 1, 7-7-97; Ord. No. 8-99, § 1, 1-4-99; Ord. No. 95-99, § 1, 9-20-99; Ord. No. 55-00, § 1, 6-19-00; Ord. No. 102-01, § 1, 11-13-01; Ord. No. 8-03, § 2, 1-21-03; Ord. No. 41-04, § 1, 4-19-04; Ord. No. 51-10, § 6, 6-7-10)

**📖 Sec. 34 1/2-13. Capital program.**

The capital program required by Article V of the Charter shall be a five-year plan for annual capital acquisitions to meet capital needs for the city. It shall identify and project funding to finance each project.

(1) Capital improvements consist of capital acquisitions including, but not limited to, land, buildings, equipment, and infrastructure improvements. Capital improvements shall be defined within the city's accounting manual and become capital assets on the city's balance sheets.

(2) All pooled development driven street projects shall be prioritized by the capital improvement program committee and approved by the city council.

(3) The city council may amend the current capital program by resolution.

(Ord. No. 83-96, § 1, 8-5-96; Ord. No. 25-01, § 1, 3-12-01; Ord. No. 13-04, § 1, 2-9-04; Ord. No. 82-05, § 1, 8-5-05)

**📖 Sec. 34 1/2-14. Design-build contracts.**

The performance criteria for any public improvement for which a design-build contract has been authorized by the city council may include the acquisition through deed or lease of the real property upon which the improvement is located.

(Ord. No. 102-99, § 1, 10-4-99)

 **Sec. 34 1/2-15. Construction manager-at-risk authorized.**

Notwithstanding any other provision of law, the city may construct public improvements using the construction manager-at-risk method of project delivery. The mayor shall, by executive order, establish rules for the administration of the construction manager-at-risk method of project delivery.

(Ord. No. 110-00, § 1, 12-18-00)

 **Sec. 34 1/2-16. Construction manager-at-risk defined.**

Construction manager-at-risk means a city project delivery system in which:


- (1) The city provides design services or there is a separate contract for design services, and there is a separate contract for construction services.
- (2) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (3) Design and construction of a project may be in sequential phases or concurrent phases.
- (4) Labor, materials, and other construction services, including financial services, maintenance services, operation's services, preconstruction services, and other related services may be included in contracts with construction managers-at-risk.
- (5) Construction services which are not competitively bid may be negotiated.

(Ord. No. 110-00, § 1, 12-18-00)

 **Sec. 34 1/2-17. Compatibility with other laws.**

The city shall follow the procedures of the laws governing public improvement construction contracts to the extent such laws are compatible with the use of construction manager-at-risk contracts.

(Ord. No. 110-00, § 1, 12-18-00)

 **Sec. 34 1/2-18. City council authorization.**

The city council shall, for each public improvement performed using the construction manager-at-risk method, determine by resolution that it is in the best interest of the public to enter into such a contract to complete the public improvement.

(Ord. No. 110-00, § 1, 12-18-00)





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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY AMENDING THE PROCESS FOR THE APPROVAL OF CONTRACTS.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

*Section 1. That Section 34 ½-1 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 ½-1. ~~Mayor to sign~~ Authorization of contracts and agreements.**

In addition to provisions in city charter section 2.12, 2.11(c), 34 ½ 1.1 and 34 ½ 1.2, contracts, agreements and amendments to contracts and agreements in excess of \$20,000 per vendor, for each calendar year, shall be approved by the city council, except for contracts subject to city ordinance sections 34 ½-8, 34 ½-11, and contracts for any public improvement that involves the expenditure of \$50,000 or more, and contracts for the purchase of supplies or services, other than professional services, that involves the expenditure of \$25,000 or more. Each contract or agreement of the city shall be executed in the name of the municipality by the mayor, or his or her designee, and shall be attested by the city clerk. The city clerk shall affix the corporate seal. ~~The mayor or a person designated in writing by the mayor is authorized to sign all contracts and agreements on behalf of the city.~~ Any contract or agreement for park purposes shall be reviewed by the parks and recreation board ~~and signed by the mayor prior to council consideration. The signature of the mayor or his designee shall be attested by the city clerk.~~ Contracts in excess of \$20,000 that are entered into by the mayor and are not subject to council approval shall be noticed to the city council on the consent agenda under communications. Change orders to contracts shall be noticed to city council on the consent agenda under communications.

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**Section 34 ½-1.1. Contracts involving public facilities.**

No contract pertaining to the management of the city's public facilities will be valid unless the contract has been authorized by a vote of the city council at a duly assembled meeting. Contracts for public facilities shall be listed on the regular agenda for separate consideration. Prior to contract negotiations, the city council will be given notice by the administration in writing.

Section 3. That Section 34 1/2-1.2 of the Revised Ordinances of Sioux Falls, SD is hereby amended to read as follows:

**Section 34 1/2-1.2. Approval of contracts for longer than one year.**  
In addition to provisions in city charter section 2.12, all contracts involving the payment of money from appropriations of more than one fiscal year of the city shall be approved by ordinance. No contract involving the payment of money from appropriations of more than one fiscal year of the city shall be made for a period of more than five years with an option to renew or renegotiate for subsequent up to five-year periods subject to the approval of the council in office at the time of said option or renegotiations is put into effect, nor shall such contract, option, or renegotiation be valid unless approved by ordinance.

Section 3. That Section 34 1/2-2 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-2. Budget administration manuals required.**

Subject to the city council approval, The mayor shall develop, promulgate, and update a manual or manuals containing procedures for administering the budget, including but not limited to the following: budgeting, purchasing, and accounting, ~~and records retention.~~

Section 4. That Section 34 1/2-8 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-8. Emergency award of contract without advertising.**

The mayor, or his or her designee, may make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions in a timely manner is not an emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of particular contractors shall be included in the contract file and shall be provided to the city council within seven days of the award of the contract.

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*Section 6. That Section 34 1/2-18 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-10. Negotiation of contract when firm competitive bids not received.**

If after advertising for bids for the purchase of materials, supplies or equipment, firm competitive bids are not received, the mayor, or his or her designee, may reject all bids and negotiate a contract for the purchase of the materials, supplies or equipment at the most advantageous price, provided that the materials, supplies or equipment meet the specifications of the original advertisement for bids. The mayor, or his or her designee, shall contract and attempt to obtain competitive quotations from at least three suppliers, the quotations received and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by written justification filed with the purchasing agent of the city.

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Date: 2011-07-05  
SIRE Meeting ID: 1514  
Meeting Type: Committee Meeting  
Subtype: Fiscal Committee  
YouTube:<https://youtu.be/J2fxHN30ZQQ>  
Agenda Item: Not Assigned  
Item ID: 58930

The following document(s) are public records obtained from the  
City of Sioux Falls.

1st Reading: \_\_\_\_\_  
2nd Reading: \_\_\_\_\_  
Date Adopted: \_\_\_\_\_  
Date Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE REVISED ORDINANCES OF THE CITY BY AMENDING CHAPTER 34 1/2 "PURCHASING" TO REVISE THE PROCESS FOR THE APPROVAL OF CONTRACTS.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

*Section 1. That Section 34 1/2-1 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-1. ~~Mayor to sign~~ Authorization of contracts and agreements.**

Unless otherwise provided in this Chapter, all contracts for supplies, services, or a combination of services and supplies involving an expenditure exceeding two hundred fifty thousand dollars (\$250,000) shall be subject to prior approval by the city council.

Notwithstanding the foregoing and subject to City Charter Sections 2.11(c) and 5.10, the mayor is authorized to bind the city by written contract or purchase order for any transaction that is governed by Sections 34 1/2-4 through 34 1/2-12 of the Revised Ordinances of Sioux Falls, SD or otherwise subject to the competitive bid process under state law without prior approval by the city council. Any bid request forms or invitations for bids approved by the mayor shall also be provided to the city council prior to the advertisement for bids.

Each contract or agreement of the city shall be executed in the name of the municipality by the mayor, or his or her interim successor, and shall be attested by the city clerk. The city clerk shall affix the corporate seal. ~~The mayor or a person designated in writing by the mayor is authorized to sign all contracts and agreements on behalf of the city.~~ Any contract or agreement for park purposes ~~shall~~ may be reviewed by the parks and recreation board ~~and signed by the mayor prior to council consideration.~~ The signature of the mayor or his designee shall be attested by the city clerk. Contracts in excess of \$25,000 that are entered into by the mayor and are not subject to council approval shall be noticed to the city council on the consent agenda under communications. Change orders to contracts in excess of \$25,000 shall be noticed to the city council on the consent agenda under communications.

Section 2. That Section 34 1/2-2 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-2. Budget administration manuals required. Contracts involving public facilities.**

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~~The mayor shall develop, promulgate, and update a manual or manuals containing procedures for administering the budget, including but not limited to the following: budgeting, purchasing, accounting, and records retention.~~

No contract pertaining to the management of the city's public facilities will be valid unless the contract has been authorized by a vote of the city council at a duly assembled meeting. Contracts for public facilities shall be listed on the regular agenda for separate consideration. Prior to contract negotiations, the city council will be given notice by the administration in writing.

Section 3. That Section 34 1/2-3 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-3. Claims to be published. Multiple year contracts.**

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~~No claim against the city shall be audited or allowed unless it be fully itemized and a memorandum of the same submitted to the mayor. The memorandum shall be published by the city clerk on a monthly basis by vendor, expense class (repair, equipment, professional service or other similar class), and amount.~~

In addition to the provisions in City Charter Section 2.12, all contracts involving the payment of money from appropriations of more than one fiscal year of the city shall contain a contract provision that if funds are not budgeted or appropriated for any fiscal year for the supplies or services provided by the terms of the contract, then the contract will impose no obligation on the city for payment.

Section 4. That Section 34 1/2-4 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-4. Return of deposit to unsuccessful bidders. Discrimination clause.**

~~(a) In considering contracts of the city to be awarded on competitive bids, no bidder shall be required either in the advertisement for bids or otherwise to leave the certified check or other guarantee or bid bond posted for a period longer than 30 days if the bid is not accepted. The certified check or other guarantee or bid bond of the successful bidder shall be returned upon the execution of the contract.~~

~~(b) The certified checks or bid bonds of all unsuccessful bidders shall be returned by the city to the respective makers thereof and not more than 30 days shall lapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all the bids presented.~~

(e) ~~However, if an ordinance requiring a supplemental appropriation or a transfer of appropriations requiring council action is required to provide necessary funding for a project, not more than 30 days shall lapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all the bids presented.~~

All contracts and agreements of the city shall contain a provision that contracts shall not, in the performance of the contract, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations, or national origin.

*Section 5. That Section 34 1/2-5 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-5. Remedies available to city. Budget administration manuals required.**

~~After receiving notice of a contract award, the successful bidder shall enter into a contract with the city within the time specified in the invitation for bids or request for proposals. If any bidder fails to timely enter into the contract, the contract may be awarded to the next lowest responsible bidder unless all bids or proposals are rejected. The defaulting bidder shall be responsible for the difference in price.~~

~~If any successful bidder fails to fulfill the conditions of an awarded contract, the city may proceed to recover from the defaulting party whatever damages may have been sustained as a result of the default. The city shall have all remedies provided in the contract and provided by law.~~

The mayor shall develop, promulgate, and update a manual or manuals containing procedures for administering the budget, including, but not limited to, the following: budgeting, purchasing, and accounting.

*Section 6. That Section 34 1/2-6 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-6. Contracts to be let to lowest bidder. Claims to be published.**

~~All contracts of the city whether for the construction of public improvements or contracts for the purchase, lease or rental of materials, supplies or equipment, when such contracts involved an expenditure equal to or in excess of the amount provided for in the bid laws of the state shall be awarded within 30 days of the bid opening by written notice to lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The mayor may reject any and all bids and re-advertise for proposals if none of the bids are satisfactory, or if the mayor believes any agreement has been entered into by the bidders to prevent competition. If the low bidder is not responsible or the bid is not made in accordance with the requirements of the state competitive bid laws or the low bid is withdrawn as authorized by this section, the bid of the next lowest responsible and responsive bidder may be accepted.~~



No claim against the city shall be audited or allowed unless it be fully itemized and a memorandum of the same submitted to the mayor. The memorandum shall be published by the city clerk on a monthly basis by vendor, expense class (repair, equipment, professional service, or other similar class), and amount.

*Section 7. That Section 34 1/2-7 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-7. Publication of advertisement for bids. Return of deposit to unsuccessful bidders.**

If the city intends to enter into a contract for any public improvement that involves the expenditure of \$50,000.00 or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of \$25,000.00 or more, the mayor shall cause advertisement of bids or proposals therefor to be printed at least twice, with the first publication at least ten days before the opening of bids or the deadline for the submission of proposals. Both publications shall be in the official newspaper of the city. The advertisement shall state the time and place where bids will be opened or the deadline for the submission of proposals. In all notices, the mayor shall reserve the right to reject any and all bids or proposals. If the city lists a bid on the centralized bid exchange of the state, the city need not make the second publication required by this section.

- (a) In considering contracts of the city to be awarded on competitive bids, no bidder shall be required either in the advertisement for bids or otherwise to leave the certified check or other guarantee or bid bond posted for a period longer than 30 days if the bid is not accepted. The certified check or other guarantee or bid bond of the successful bidder shall be returned upon the execution of the contract.
- (b) The certified checks or bid bonds of all unsuccessful bidders shall be returned by the city to the respective makers thereof, and not more than 30 days shall lapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all the bids presented.
- (c) However, if an ordinance requiring a supplemental appropriation or a transfer of appropriations requiring council action is required to provide necessary funding for a project, not more than 30 days shall lapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all the bids presented.

*Section 8. That Section 34 1/2-8 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-8. Emergency award of contract without advertising. Remedies available to city.**

The mayor may make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions in a timely manner is not an

~~emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of particular contractors shall be included in the contract file.~~

After receiving notice of a contract award, the successful bidder shall enter into a contract with the city within the time specified in the invitation for bids or request for proposals. If any bidder fails to timely enter into the contract, the contract may be awarded to the next lowest responsible bidder unless all bids or proposals are rejected. The defaulting bidder shall be responsible for the difference in price.

If any successful bidder fails to fulfill the conditions of an awarded contract, the city may proceed to recover from the defaulting party whatever damages may have been sustained as a result of the default. The city shall have all remedies provided in the contract and provided by law.

*Section 9. That Section 34 1/2-9 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-9. Negotiation of contract when no bids received. Contracts to be let to lowest bidder.**

~~If after advertising for bids for purchase of materials, supplies or equipment, no bids are received, the mayor may negotiate a contract for the purpose of the materials, supplies or equipment at the most advantageous price. However, the materials, supplies or equipment shall meet the specifications of the original advertisement bids. The mayor shall contact and attempt to obtain competitive quotations from at least three suppliers. The mayor shall maintain a record of the names of the suppliers, the quotations received and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by a written justification filed with the purchasing agent of the city.~~

All contracts of the city whether for the construction of public improvements or contracts for the purchase, lease or rental of materials, supplies, or equipment, when such contracts involved an expenditure equal to or in excess of the amount provided for in the bid laws of the state shall be awarded within 30 days of the bid opening by written notice to lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The mayor may reject any and all bids and readvertise for proposals if none of the bids are satisfactory, or if the mayor believes any agreement has been entered into by the bidders to prevent competition. If the low bidder is not responsible or the bid is not made in accordance with the requirements of the state competitive bid laws or the low bid is withdrawn as authorized by this section, the bid of the next lowest responsible and responsive bidder may be accepted.

Section 10. That Section 34 1/2-10 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-10. Negotiation of contract when firm competitive bids not received. Publication of advertisement for bids.**

If after advertising for bids for the purchase of materials, supplies or equipment, firm competitive bids are not received, the mayor may reject all bids and negotiate a contract for the purchase of the materials, supplies or equipment at the most advantageous price, provided that the materials, supplies or equipment meet the specifications of the original advertisement for bids. The mayor shall contract and attempt to obtain competitive quotations from at least three suppliers, the quotations received and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by written justification filed with the purchasing agent of the city.

If the city intends to enter into a contract for any public improvement that involves the expenditure of \$50,000.00 or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of \$25,000.00 or more, the mayor shall cause advertisement of bids or proposals therefor to be printed at least twice, with the first publication at least ten days before the opening of bids or the deadline for the submission of proposals. Both publications shall be in the official newspaper of the city. The advertisement shall state the time and place where bids will be opened or the deadline for the submission of proposals. In all notices, the mayor shall reserve the right to reject any and all bids or proposals. If the city lists a bid on the centralized bid exchange of the state, the city need not make the second publication required by this section.

Section 11. That Section 34 1/2-11 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-11. Purchase from state price list. Emergency award of contract without advertising.**

The city may purchase, without advertising for bids, from a willing vendor, any commodities, materials, supplies, or equipment contained in the state price list established pursuant to SDCL 5-23-8.1, or from any willing vendor at a price at or below that shown on the state price list. The finance officer shall file with the mayor a memorandum describing what commodities, materials, supplies, or equipment were purchased from the state price list and shall further note the identity and address of the vendor and the price paid. If an item is purchased at a price lower than that found on the state price list, the finance officer shall note that fact in his memorandum and show the identity and address of the vendor and the price paid.

The mayor, or his or her interim successor, may make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions in a timely manner is not an emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the

basis for the emergency and for the selection of particular contractors shall be included in the contract file and shall be provided to the city council within seven days of the award of the contract.

*Section 12. That Section 34 1/2-12 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-12. ~~Items exempt from competitive bidding.~~ Negotiation of contract when no bids received.**

~~The city may purchase or lease storm caused debris removal services, sewer clean up services, art as defined by SDCL 1-22-9, chemical products, biological products, laboratory apparatus and appliances, library books, medical supplies, lubricating oils and grease, snow removal services, personal computers, telecommunication equipment, any equipment repair, tableware or perishable foods, surplus property from another municipality, any animals, asbestos removal and emergency response action, services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, auction services, peripheral computer hardware, printers, networking components, software, and related connectivity without advertising for competitive bids.~~

If after advertising for bids for purchase of materials, supplies, or equipment, no bids are received, the mayor, or his or her interim successor, may negotiate a contract for the purpose of the materials, supplies, or equipment at the most advantageous price. However, the materials, supplies, or equipment shall meet the specifications of the original advertisement bids. The mayor, or his or her interim successor, shall contact and attempt to obtain competitive quotations from at least three suppliers. The mayor, or his or her interim successor, shall maintain a record of the names of the suppliers, the quotations received, and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by a written justification filed with the purchasing agent of the city.

*Section 13. That Section 34 1/2-13 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-13. ~~Capital program.~~ Negotiation of contract when firm competitive bids not received.**

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~~The capital program required by Article V of the Charter shall be a five-year plan for annual capital acquisitions to meet capital needs for the city. It shall identify and project funding to finance each project.~~

~~(1) Capital improvements consist of capital acquisitions including, but not limited to, land, buildings, equipment, and infrastructure improvements. Capital improvements shall be defined within the city's accounting manual and become capital assets on the city's balance sheets.~~

(2) ~~All pooled development driven street projects shall be prioritized by the capital improvement program committee and approved by the city council.~~

(3) ~~The city council may amend the current capital program by resolution.~~

If after advertising for bids for the purchase of materials, supplies, or equipment, firm competitive bids are not received, the mayor, or his or her interim successor, may reject all bids and negotiate a contract for the purchase of the materials, supplies, or equipment at the most advantageous price, provided that the materials, supplies, or equipment meet the specifications of the original advertisement for bids. The mayor, or his or her interim successor, shall contract and attempt to obtain competitive quotations from at least three suppliers, the quotations received, and the procurement procedures used in purchasing. The contract may include a procedure for adjusting prices to meet changing market conditions not within the control of the vendor. The adjustments may not result in increases in the profit of the vendor and shall be supported by written justification filed with the purchasing agent of the city.

*Section 14. That Section 34 1/2-14 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-14. ~~Design-build contracts. Purchase from state price list.~~**

~~The performance criteria for any public improvement for which a design-build contract has been authorized by the city council may include the acquisition through deed or lease of the real property upon which the improvement is located.~~

The city may purchase, without advertising for bids, from a willing vendor, any commodities, materials, supplies, or equipment contained in the state price list established pursuant to SDCL 5-23-8.1, or from any willing vendor at a price at or below that shown on the state price list. The finance officer shall file with the mayor a memorandum describing what commodities, materials, supplies, or equipment were purchased from the state price list and shall further note the identity and address of the vendor and the price paid. If an item is purchased at a price lower than that found on the state price list, the finance officer shall note that fact in his memorandum and show the identity and address of the vendor and the price paid.

*Section 15. That Section 34 1/2-15 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:*

**Section 34 1/2-15. ~~Construction manager at risk authorized. Items exempt from competitive bidding.~~**

~~Notwithstanding any other provision of law, the city may construct public improvements using the construction manager at risk method of project delivery. The mayor shall, by executive order, establish rules for the administration of the construction manager at risk method of project delivery.~~

The city may purchase or lease storm-caused debris removal services, sewer cleanup services, art as defined by SDCL 1-22-9, chemical products, biological products, laboratory apparatus and appliances, library books, medical supplies, lubricating oils and grease, snow removal services,

personal computers, telecommunication equipment, any equipment repair, tableware or perishable foods, surplus property from another municipality, any animals, asbestos removal and emergency response action, services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, auction services, peripheral computer hardware, printers, networking components, software, and related connectivity without advertising for competitive bids.

Section 16. That Section 34 1/2-16 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-16. ~~Construction manager at risk defined. Capital program.~~**

~~Construction manager at risk means a city project delivery system in which:~~

- ~~(1) The city provides design services or there is a separate contract for design services, and there is a separate contract for construction services.~~
- ~~(2) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.~~
- ~~(3) Design and construction of a project may be in sequential phases or concurrent phases.~~
- ~~(4) Labor, materials, and other construction services, including financial services, maintenance services, operation's services, preconstruction services, and other related services may be included in contracts with construction managers at risk.~~
- ~~(5) Construction services which are not competitively bid may be negotiated.~~

The capital program required by Article V of the Charter shall be a five-year plan for annual capital acquisitions to meet capital needs for the city. It shall identify and project funding to finance each project.

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(1) Capital improvements consist of capital acquisitions including, but not limited to, land, buildings, equipment, and infrastructure improvements. Capital improvements shall be defined within the city's accounting manual and become capital assets on the city's balance sheets.

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(2) All pooled development-driven street projects shall be prioritized by the capital improvement program committee and approved by the city council.

(3) The city council may amend the current capital program by resolution.

Section 17. That Section 34 1/2-17 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-17. ~~Compatibility with other laws.~~ Design-build contracts.**

The city shall follow the procedures of the laws governing public improvement construction contracts to the extent such laws are compatible with the use of construction manager-at-risk contracts.

The performance criteria for any public improvement for which a design-build contract has been authorized by the city council may include the acquisition through deed or lease of the real property upon which the improvement is located.

Section 18. That Section 34 1/2-18 of the Revised Ordinances of Sioux Falls, SD, is hereby amended to read as follows:

**Section 34 1/2-18. ~~City council authorization.~~ Construction manager-at-risk authorized.**

The city council shall, for each public improvement performed using the construction manager-at-risk method, determine by resolution that it is in the best interest of the public to enter into such a contract to complete the public improvement.

Notwithstanding any other provision of law, the city may construct public improvements using the construction manager-at-risk method of project delivery. The mayor shall, by executive order, establish rules for the administration of the construction manager-at-risk method of project delivery.

Section 19. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a section to be numbered 34 1/2-19 to read:

**Section 34 1/2-19. Construction manager-at-risk defined.**

Construction manager-at-risk means a city project delivery system in which:

- (1) The city provides design services or there is a separate contract for design services, and there is a separate contract for construction services.
- (2) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (3) Design and construction of a project may be in sequential phases or concurrent phases.
- (4) Labor, materials, and other construction services, including financial services, maintenance services, operation's services, preconstruction services, and other related services may be included in contracts with construction managers-at-risk.
- (5) Construction services which are not competitively bid may be negotiated.

Section 20. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a section to be numbered 34 1/2-20 to read:

**Section 34 1/2-20. Compatibility with other laws.**

The city shall follow the procedures of the laws governing public improvement construction contracts to the extent such laws are compatible with the use of construction manager-at-risk contracts.

Section 21. That the Revised Ordinances of Sioux Falls, SD, are hereby amended by adding a section to be numbered 34 1/2-21 to read:

**Section 34 1/2-21. City council authorization.**

The city council shall, for each public improvement performed using the construction manager-at-risk method, determine by resolution that it is in the best interest of the public to enter into such a contract to complete the public improvement.

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



Date: 2011-07-05  
SIRE Meeting ID: 1514  
Meeting Type: Committee Meeting  
Subtype: Fiscal Committee  
YouTube:<https://youtu.be/J2fxHN30ZQQ>  
Agenda Item: Not Assigned  
Item ID: 58930

The following document(s) are public records obtained from the  
City of Sioux Falls.



**Date:** July 1, 2011  
**To:** Fiscal Committee  
**From:** Debra Owen, City Clerk, Chief of Council Operations  
**Subject:** City Council approval of Contracts

Council has the authority to approve contracts per State Law. State Statute addresses the authorization of contracts by the governing body. This Statute creates a general rule that the governing body must authorize a municipal contract to be valid, but also creates an exception to the rule which allows the governing body to delegate the authorization of contracts to any employee of the city. See South Dakota Codified Law 9-1-5:

**Contracts to be authorized by governing body--Execution of contracts and other instruments--Delegation of authority.**

No contract of a municipality is valid unless the contract has been authorized by a vote of the governing body at a duly assembled meeting thereof.

Each written contract shall be executed in the name of the municipality by the mayor or president of the board of trustees, be countersigned by the auditor or clerk, and have the corporate seal attached. However, the governing body of a municipality may, by ordinance or resolution, delegate to any employee of the municipality the authority to enter into a contract on behalf of the municipality and to execute the contract and any other instrument necessary or convenient for the performance of the contract subject to the limitations delegated by the governing body. (*Emphasis added.*)

In addition, City Charter Section 2.11(c), states the city council must approve all expenditures for the city in excess of State bid law limits by a vote of five council members:

Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. . . .All actions of the council shall be by a majority of those present, except no ordinances or any action calling for the expenditure of money in excess of the state bids limits for municipalities or filling of vacancies as set forth in section

2.06 **shall be valid or binding unless adopted by the affirmative vote of five (5) or more members of the council.**  
(Emphasis added.)

As council determines the policy changes it deems are necessary to provide more oversight of the city's contracts and agreements, council may utilize the option of approving the majority of these contracts under the consent agenda.

### **How do City Council in larger cities in South Dakota approve contracts?**

Generally speaking the City Council in larger South Dakota cities authorize all contracts over \$25,000, except for Sioux Falls. The contracts ordinance in Fiscal Committee provides that all contracts in excess of \$20,000 would require council authorization with two exceptions: emergency contracts and state price list purchases.

Listed below are larger South Dakota cities and a brief explanation of how the authorization of contracts is accomplished. Because the expenditure of public funds generally is done by contract, budget and population figures are included for context purposes.

#### **Sioux Falls:**

- Currently contracts are authorized by the Mayor with few exceptions. Council delegated the authorization of contracts to the Mayor in 1995.
- Population: 153,888
- 2011 Annual Budget: \$ 308 M

#### **Rapid City:**

- Contracts are approved by the City Council except for those under \$25,000 and under which are less than one year in length. *(If a department director enters into a contract or multiple contracts with a single vendor with an aggregate cost of more than \$25,000 in a year, approval by the Council is required for all contracts in excess of \$25,000.)* In addition, contracts for more than one year are approved by Council.
- Population: 65,000
- 2011 Annual Budget: \$ 163 M

#### **Aberdeen:**

- Contracts are approved by the City Council except for those under \$25,000. Amounts under \$25,000 for equipment and supplies are authorized via policy to

be approved by individual departments. Parks and Recreation contracts are approved by the Parks and Rec Board and are the sole exception to this rule. Over-run in the Parks and Rec department must be approved by the City Council.

- Population 24,658
- 2011 Annual Budget: \$51,135,000

**Watertown:**

- All contracts are approved by the City Council. The exception is the Parks and Recreation Department, which are authorized by the Parks and Rec Board. If the contracts go over the dollar amount authorized, then the City Council must approve the additional funds.
- Population: 20,237
- 2011 Annual Budget \$ 40,792,704

**Yankton:**

- City Council approves all contracts for the City. The City Council can pre-authorize the city manager or department head to sign the contract, BUT the city council approves the contract first.
  - Exception is the city manager can authorize contracts under \$1,000.
- Population: 12,528
- 2011 Annual Budget of \$37,098,722

**How does Mayor – Council Form of Government and City Council approval of Contracts in larger cities?**

The cities listed have a Mayor – Council form of government, which is similar to Sioux Falls. In these cities the Council serves as the legislative branch and adopts policy and appropriates the budget. As evidenced below, the Council approves the majority of the contracts for their cities.

Because the expenditure of public funds generally is done by contract, budget and population figures are included for context purposes.

**Omaha, Nebraska:**

- The City Council approves contracts over \$20,000.
- Population: 408,958
- 2011 Annual Budget: \$662 Million

**St. Paul, Minnesota:**

- The City Council approves contracts over \$50,000.
- Population: 205,068
- 2011 Annual Budget: \$553 Million

**Houston, Texas:**

- The City Council approves all contracts over the state bid law limit of \$50,000. (Prior to 2008 the City Council approved all contracts for the City of Houston.)
- Population: 2,257,926 (6<sup>th</sup> largest among the U.S. Metropolitan statistical areas)
- 2011 Annual Budget: \$3.3 Billion

**Detroit, Michigan:**

- The City Council approves all contracts over \$25,000. Contracts between \$25,000 and 5,000 are monitored by council staff. Council receives notification of these contracts and council staff may flag specific contracts (for contracts in this range) for council approval. (*Example was given of having three different contracts for the same vendor that were under the \$25,000 threshold.*) Contracts for \$5,000 and under do not come before Council for approval.
- Population: Metropolitan Detroit Area Population is 4 Million. *It is the eighth largest metropolitan area.*
- 2011 Annual Budget \$3.2 Billion

Fiscal Committee: Council approval of contracts  
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