

Ordinance No. 2560 Summary

On December 1, 2022, the City of De Soto, Kansas adopted Ordinance No. 2560 amending the City Purchasing Policy to address on-call engineering services and alternative delivery methods for public projects. A complete copy of this ordinance is available at www.desotoks.us or at City Hall, 32905 West 84th Street, De Soto, Kansas. This summary is certified by Patrick G. Reavey, City Attorney.

ORDINANCE NO. 2560

AN ORDINANCE AMENDING SUBSECTION g OF SECTION 1-905 OF ARTICLE 9 OF CHAPTER I OF THE CITY CODE TO ADDRESS ON-CALL ENGINEERING SERVICES AND ALTERNATIVE DELIVERY METHODS FOR PUBLIC PROJECTS

WHEREAS, with recent increases in economic development activity within the City, the City is undertaking many more and varied public projects to support the development activity; and

WHEREAS, because of these increasing projects, the City has needed, and is expected to need in the future, increased engineering services and alternative methods for designing, constructing, and paying for public projects; and

WHEREAS, City Staff recommends that the City's Purchasing Policy be amended to specifically address on-call engineering services and alternative delivery methods for public projects.

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the City of De Soto, Kansas:

Section 1. The Governing Body hereby amends Subsection g of Section 1-905 of Article 9 of Chapter I of the City Code to read as follows:

(g) **Exceptions.** Exceptions from the purchasing policy will be made for the following items or circumstances:

- (1) For emergency maintenance of structures, city infrastructure, and equipment that cannot be postponed until action can be taken by the governing body.
- (2) Fuel, oil, chemicals, or other commodities for which budget accounts have been established.
- (3) Regular monthly utility payments.
- (4) For Professional Services selected based on qualifications rather than price-, including services provided by on-call engineering firms currently under contract with the city (or firms added in the future) [hereafter "City Consultant] for projects that are less than \$50,000 in total engineering fees, or less than \$1.5 million in expected construction costs. City staff will negotiate with the selected City Consultant for a scope, fee, and appropriate task order for the services needed for the project. Any task order involving more than \$10,000 in fees will be scheduled on a city council agenda for approval. For larger

projects or design efforts, the city will follow its normal process for selection based on qualifications.

(5) Alternative Project Delivery Methods (utilizing industry¹ and applicable Kansas state law standards) as recommended by the City Administrator and City Engineer (and ultimately approved by the city council) for specified public projects, to include the following:

(i) **Construction Manager At-Risk (CMAR)** method in which the city retains a design engineer and CMAR firm to work collaboratively under two separate contracts, one for design and one for construction. The CMAR firm is selected using qualifications as a selection criterion rather than low price or, alternatively, best value if pricing is included in the procurement evaluation. The CMAR contract will proceed in two phases:

a. Phase I preconstruction services will involve constructability reviews, value-engineering, estimating, and scheduling activities. Phase I is completed when there is agreement on the project schedule and price -- whether it be a guaranteed maximum price (GMP) or a fixed price -- usually when the design is approximately 60% to 90% complete.

b. Phase II commences when the CMAR firm assumes the general contractor role, encompasses further design review, procurement of subcontractors and vendors, self-performance of certain elements of the construction (where permitted and at the city's discretion), and full construction and commissioning.

(ii) **Progressive Design-Build (PDB)** method in which a project's design, cost-estimating, construction schedule, and final pricing are developed during Phase I of the project. If the city and design-builder agree on the schedule, contract terms, and final price (GMP or fixed price), and if Phase II of the project is governed by a new contract with specific terms and conditions, the remaining project design, procurement, construction, and commissioning are completed pursuant to the Phase II contract. PDB is similar to CMAR delivery except the PDB team is integrated with design and construction capabilities and team members and provides a single point of accountability for all project delivery, through commissioning and acceptance testing, and often includes performance guarantees. With the PDB method, the city generally will also contract with an engineering consultant to serve as the city's representative in developing procurement documents and providing review and consulting services on behalf of the city throughout the project.

(iii) **Fixed Price Design-Build (FPDB) [also referred to as Building Design-Build]** method in which a single fixed price -- encompassing the design, construction, commissioning and startup, and acceptance testing of the project -- is established when the contract is signed. FPDB will be used when the city has defined the project requirements and scope of work sufficiently for proposing firms to accurately predict the project cost early in the procurement process. For projects where it is anticipated that competing firms will be required to expend significant

¹ When employing industry standards, the city will look to standards developed by the Design Build Institute of America ("DBIA").

time and/or expenses in submitting proposals to the city, the procurement documents may provide for payment of stipends to those firms that are not selected for the project. With the FPDB method, the city generally will also contract with an engineering consultant to serve as the city's representative in developing procurement documents and providing review and consulting services on behalf of the city throughout the project.

Section 2. Repealer. Existing Subsection g of Section 1-905 of Article 9 of Chapter I of the City Code is hereby repealed.

Section 3. Effective Date. This Ordinance shall take effect upon its adoption by the City Council, approval by the Mayor and publication in the City's official newspaper.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS
AND APPROVED BY THE MAYOR ON THE 1ST DAY OF DECEMBER 2022.

(seal)

RICK WALKER, Mayor

ATTEST:

BRANDON MILLS, City Clerk

APPROVED AS TO FORM:

PATRICK G. REAVEY, City Attorney