

City of New Berlin General Financial Policy	TITLE: Contract Policy
AUTHORIZATION DATE: 11/15/2016	LAST UPDATE: 3/24/20
POLICY SOURCE: Finance Committee	SCOPE: City -wide
Reviewed by City Attorney 11/22/2019	Board/Commission Approval: Finance Committee: 11/10/2016, 1/9/2020, 3/12/20 Common Council: 11/15/2016, 1/14/2020, 3/24/2020

General

The purpose of this policy is to establish and make clear the authority for committing the City to contracts and to further clarify the required reviews and approvals for City contracts. To conduct the City's mission it is sometimes necessary to enter into legally binding agreements ("contracts") with other entities. This policy is to ensure that:

1. All necessary formalities are followed and the requirements of federal, state, and local laws, including Council policies, are met;
2. Best accounting practices are followed;
3. The contracting process of the City is open and transparent, and provides accountability;
4. The appropriate legal review, Council approval and signature requirements are obtained.

Definitions

Contract: Any agreement between two or more persons that creates a legally binding obligation to do or not to do a particular thing. A contract may or may not involve the payment of money but there must always be consideration of some sort to bind the promises being made. This policy applies to any document that obligates the City, irrespective of the terminology used to describe that document. Types of documents that constitute contracts include, but are not limited to: affiliation agreements; assignments; business agreements; engagement letters; memoranda of understanding; memoranda of agreement; non-disclosure agreements; promises to pay; promissory notes; purchase orders; riders or addenda to existing contracts; separation agreements; settlement agreements; and waivers.

Business Contract: Includes the following types of contracts: deeds; construction agreements; agreements with software consultants, for computer hardware, or for telecommunication services; contracts with vendors for purchase of materials, equipment or services; procurement agreements; financing agreements; independent contractor/consultant agreements; and agreements with temporary employment agencies.

Contract Initiator: The individual who proposes to enter into contract negotiations on behalf of the City of New Berlin.

Total Contract Cost: The total consideration paid over the term of the agreement, including any previous amendments to the contract.

Surety Bond: A contract among at least three parties: the **obligee** - the party who is the recipient of an obligation; the **principal** - the primary party who will perform the contractual obligation; the **surety** - who assures the obligee that the principal can perform the task.

Policy

This Policy describes the City's contract review and approval requirements and the protocols for the delegation of signature authority. This policy applies to all contracts or amendments thereto, which the City seeks to enter into for the acquisition of equipment, materials, supplies, labor, services or other items.

The City will only be bound by written contracts to which the City is formally party, that have been reviewed and approved in accordance with this policy, and that have been executed by City officials who have specific contract authority. Contracts signed by officers or employees without documented signature authority may be deemed void. Individuals in such circumstances may be personally liable for the obligations assumed under such contracts per the City's employee indemnification policy and are subject to disciplinary action up to and including termination of employment.

Except where a specific, written exception applies, the following requirements apply to all contracts. If, after reviewing this policy, there are questions about the review and approval process or requirements for a particular type of contract, contact the City Attorney or Finance Director.

When a contract also involves a purchase of goods or services, the Contract Initiator must follow the City's Procurement Policy and/or the Procurement Card Policy.

Preliminary Review by Contract Initiator

Contract Initiators are responsible for conducting a preliminary review of proposed contracts. Prior to submitting a contract for the required review, approval and execution, the Contract Initiator must read the entire contract to confirm that the contract:

- a) Is clear and consistent;
- b) Is complete and accurately reflects the intentions of the parties;
- c) Is consistent with the City's mission and is in the best interests of the City;
- d) Does not include a provision for assumption of sales tax by the City;
- e) Does not include a provision for automatic renewal of the contract (except in limited circumstances such as subscription services ;)
- f) Does not contain requirements with which the City cannot comply; and
- g) Is reviewed for compliance with the City's Contractual Risk Transfer Policy.
- h) The agreement does not waive the City's statutory immunities under Wisconsin law.

Approval & Execution of Contracts

1. Except as otherwise provided for hereunder, contracted items must be provided for in the budget and be authorized by action of the Common Council. The fact that the item was included in the budget does not exempt the Contract Initiator from this policy, the city's procurement policy or any other applicable policy.
2. *All* contracts with indemnification language or a risk transfer provision, regardless of dollar amount or budgetary impact, must be approved as to form by the City Attorney. If a contract has significant material risk it must be approved by the mayor.
3. A department head or their designee may enter into a contract for under \$10,000. Approval of a contract is **not** automatically authorized even though the monetary impact may have been Council approved through the budgetary process.
4. All change orders to contracts must be approved by the Common Council if the total cost of the contract will exceed the original budget amount. If change orders are greater than the contingency amount but less than the budget, the Mayor will have the delegated authority to execute. If the change order is less than the contingency amount, the department head or their designee may approve it up to \$10,000, amounts over this limit need mayor approval.
5. Per WI State Statute 62.09(10)(f) the comptroller (Finance Director) for the City shall counter-sign all construction contracts verifying that the necessary funds have been provided to pay the liability that may be incurred under the contract. No contract is valid until so countersigned.

6. Public construction contracts under Wisconsin Statute Sec 62.15 (12) must be signed by the Mayor and the City Clerk. The Statute also provides that the contract must be approved as to form by the City Attorney and the comptroller (Finance Director) must counter-sign that there are sufficient funds available to cover the expense.
7. Contract Initiator shall complete the attached "City of New Berlin Contract Routing Form" for all contracts and will submit the form along with the original executed contract, along with the appropriate signed Terms and Conditions Form, to the City Clerk for recordkeeping purposes. A terms & conditions form is required for contracts over \$5,000 or those determined to have significant material risk by a department head.
8. The City Clerk shall retain all original executed contracts and surety instruments for the period required by applicable law. The City Clerk, in order to maintain transparency in contracting, shall post contracts into an electronic database detailing contract date, name of contractor, date contract was approved by Council, the department responsible that will oversee the contract, and any contract expiration dates or other pertinent deadlines for future follow-up.
9. Payment and performance bonds must be approved by the mayor.
10. The Fourth of July commission shall refer to the "4th of July Contract Policy".
11. The Recreation Department shall reference Resolution 17-13 which was adopted to better facilitate contracts related to recreational programming.

Emergency Contracts

1. The provisions of this policy are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the board of public works or utility committee, in which the public health or welfare of the city is endangered. Whenever the city council determines by majority vote at a regular or special meeting that an emergency no longer exists, this subsection no longer applies.
2. The provisions of this policy are not mandatory for the purchase of services, materials or equipment for immediate delivery to meet emergencies arising from unforeseen causes. The following situations constitute an emergency under this provision.
 - A) Any situation in which there exists immediate & substantial danger to the health, life or property of any person or any situation in which there exists potential for increased damage to City property if the situation is not immediately remedied.
 - B) Any situation where the normal operation of any City department or Agency is seriously impaired or is in jeopardy of being seriously impaired; or

- c) When the Mayor or in his absence the Council President declares an emergency.
3. In such emergency situations the Mayor shall have the delegated authority to enter into a contract without Council approval, however the Mayor will notify City Council of his/her actions as soon as reasonably possible.

This policy was reviewed and approved by the Finance Committee and Common Council and signed by Mayor David Ament on the 25th day of March, 2020 as evidenced by his signature hereon. Three signed originals of this policy have been generated. One original is maintained in the City Clerk's office, the second original is maintained in the Finance Department, and the third original is maintained in the Mayor's Office. This policy may only be modified by the Finance Committee with Common Council approval.


David A. Ament, Mayor

City of New Berlin Contract Routing Form

Name of Contractor: _____

Contract Date: _____

Expiration Date: _____

Contract Amount: _____

Other Dates of Significance: _____

Contract Initiator/Dept: _____

Public Construction Contract? Yes No

City Attorney has reviewed & approved this contract with the following comments if any:

City Attorney

Date

Date Contract was approved by Council: _____

Routing for contract signatures:

City Attorney

Finance Director

City Clerk

Mayor

Other

Contract Information entered into database by Clerk's Office:

**Completed copy of this form should be returned to contract initiator
This Contract Routing Form will be retained by the City Clerk along with the
original executed contract.**