

ORDINANCE NO. ORD-22-18

First Reading: December 19, 2022
Public Hearing: January 9, 2023

Approved: January 9, 2023
Published: January 12, 2023
Effective: January 22, 2023

CHAPTER 14
(PURCHASING, CONTRACTING AND SELLING PROCEDURE)

AN ORDINANCE TO AMEND SECTIONS 1:312, 1:313, 1:314 AND 1:324 AND TO ADD SECTION 1:325 OF CHAPTER 14 (PURCHASING, CONTRACTING AND SELLING PROCEDURE) OF TITLE I – ADMINISTRATION OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor ordains:

Section 1. That Section 1:312 be amended to read as follows:

1:312. Definitions.

The following words and phrases used in this chapter, unless a different meaning is clearly required by the context, shall have the following meanings:

- (1) ~~(1)~~ *Available for public inspection* means one or more of the following: posting, electronically and/or on-site at designated public information boards or other locations; depositing with agencies providing unrestricted, no-charge access to public records; or otherwise providing for immediate access to and inspection of bids and proposal documents by prospective bidders, subcontractors, suppliers, and the public.
- (2) *Best Value Procurement (BVP)* means a method of procurement required by the City Charter Section 14.3(d) for contracts for Public Improvements, which awards a contract to a competitive bidder based on a set of criteria the City has determined is essential for its contractors to have and is not based solely on the lowest bid price.
- (3) *Bidder* means a Vendor who has responded to a Solicitation.
- (4) *Craft Labor* means individuals in positions that include higher skilled occupations in construction (building trades craft workers and their formal apprentices). Examples of these types of positions include: boilermakers; brick and stone masons; carpenters; electricians; painters; glaziers; pipe layers, plumbers, pipefitters and steamfitters; plasterers; roofers; and elevator installers. This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform

them, based on clearly defined task specifications, such as: millwrights; etchers and engravers; tool and die makers; and pattern makers.

- (25) *Bond* means specific security required as part of procurement and includes, but is not limited to:
- (a) *Bid security bond*: a bond provided by a guarantor, satisfactory to the city and authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form acceptable to city and approved by the City Attorney to ensure that a bidder shall not withdraw its bid.
 - (b) *Payment bond*: a bond provided by a guarantor, satisfactory to the city and authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form acceptable to the city and approved by the City Attorney, which assures payments, as required by law, to all persons supplying labor or material for completion of work under the contract.
 - (c) *Performance bond*: a bond provided by a guarantor, satisfactory to the city and authorized to do business in the state, purchased by the successful bidder to protect the city from loss if the bidder is unable to complete the contract as agreed and which secures the fulfillment of all contract requirements.
- (36) *Goods* means 1 or more item of personal property, supplies, materials, equipment, or other goods.
- (47) *E-Publishing* means the process of publishing ITB, RFP, or RFI document electronically on the internet directly or through a bid notification system such as the Michigan Intergovernmental Trade Network (MITN) e-procurement initiative or similar internet site.
- (58) *Invitation to bid (ITB)* means a formal request to prospective ~~vendors~~ bidders soliciting price quotations or bids, and which contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.
- (69) *Local vendor* means a vendor that operates a business within the legal boundaries of the City of Ann Arbor. To be considered a local vendor, the vendor must have a verifiable business address (not a P.O. Box) at which business is being conducted and the vendor must also agree to comply with all other policies and requirements of the ITB/RFP.
- (710) *Non-responsive bid* means a bid/RFP response that does not conform to the mandatory or essential requirements of the ITB/RFP.
- (811) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. It also includes all functions that pertain to the obtaining of any goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

- (912) *Professional services* means a type of services rendered by members of a recognized profession or specialty which involve analysis, exercise of discretion, and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field, and for these reasons are unique and not subject to price competition in the usual sense. Examples of "professional services" typically acquired by the city include appraisal, architectural and engineering services, software development/design, legal services, and medical services.
- (139) *Purchasing Agent* means the principal public purchasing official for the city, or their designee, who is responsible for overseeing and coordinating city procurement and disposal of city assets.
- (144) *Request for information (RFI)* means a request to potential bidders for information concerning an item or service that will assist the responsible service area of the city in the development of contract specifications.
- (152) *Request for quote (RFQ)* means an informal solicitation or request for information, where oral or written quotes are obtained from vendors, without formal advertising or receipt of "sealed" bids.
- (163) *Request for proposal (RFP)* means a more detailed, formal competitive bid solicitation method used when it is expected that negotiations with 1 or more bidders may be required with respect to any aspect of the contract requirements.
- (174) *Responsive bidder* means a person or entity who has submitted a bid, which conforms in all respects to the requirements set forth in the ITB/RFP or other solicitation for bids.
- (185) *Services* means the furnishing of labor, skill, advice, or effort, as opposed to furnishing goods.
- (19) *Solicitation means a Request for proposals or an Invitation to bid.*
- (2046) *Vendor* means any person or entity who offers goods for purchase or services for hire.

(Ord. No. 07-61, § 2, 1-22-08; Ord. No. 09-16, § 1, 5-18-09; Ord. No. 20-21, § 1, 7-20-20; Ord. No. 21-41, § 1, 1-3-22)

Section 2. That Section 1:313 be amended to read as follows:

1:313. Purchases or contracts of \$75,000.00 or less.

The City Administrator may make purchases and enter contracts for services under \$75,000.00 without Council approval. When a purchase or contract for services exceeds \$75,000.00, it must be approved by the City Council. The City Administrator shall adopt policies or procedures for the procurement authorized in this section, ~~which in the City Administrator's determination provide the overall best value to the city.~~ The City

Administrator's policies and procedures shall not permit purchases inconsistent with this chapter. The Purchasing Agent may publish operational procedures, after approval by the City Attorney, to the extent necessary or appropriate to implement the City Administrator's policies and procedures.

(Ord. No. 07-61, § 2, 1-22-08; Ord. No. 09-16, § 2, 5-18-09; Ord. No. 21-41 , § 1, 1-3-22)

Section 3. That Section 1:314 be amended to read as follows:

1:314. Purchases or contracts over \$75,000.00.

Any expenditure for goods or services, or a contract obligating the city where the amount of the city's expenditure or obligation is in excess of \$75,000.00 shall be governed by the provisions of this section.

- (1) Notice requesting competitive bids, whether a traditional sealed bid procedure, E-Publishing and electronic submission, reverse auction, or other bidding method, shall be made available for public inspection at least 5 business days before the final date for submitting bids thereon and, in the case of contracts requiring bidders to prequalify, at least 5 business days before the final date for submission of sworn statements. Such notice shall give briefly the specifications of the goods, services, or other matter to be contracted for, and shall state the amount of bond or other security, if any is to be required, to be given with the contract. The notice shall state the time limit, the place of filing, the time of opening bids, and notice of any mandatory pre-bid meeting (if applicable), and shall also state that the right is reserved to reject any or all bids. Any other conditions of award of the contract shall also be stated in general terms. In the case of contracts over \$75,000.00 for the construction, maintenance, or repair of public works, the City Administrator may elect to use the prequalification procedure provided for in this chapter.
- (2) If requested by the service area administrator, the Purchasing Agent shall also solicit bids from a reasonable number of qualified prospective bidders by sending each a copy of the notice requesting bids, which notice shall also be posted in the City Hall. Solicitation under this subparagraph may be made by any and all available means, including but not limited to electronic mail groups (e.g., Listservs) and professional organizations' electronic bulletin boards.
- (3) Unless set by City Council, the service area administrator shall set the amount of any security to be deposited with any bid, which deposit shall be in the form of cash, certified or cashier's check, or bond written by a surety company authorized to do business in the State of Michigan. The amount of such security shall be expressed in terms of percentage of the bid submitted. Unless set by City Council, the service area administrator, after consultation with the City Attorney as appropriate, shall set the amount of the performance bond and, in the case of construction contracts, the amount of the labor and material bond to be required of the successful bidders. ~~Unless otherwise allowed under the City Administrator's adopted policies and procedures specified in this~~

~~chapter, ITBs which require a bid security bond or other forms of bonds, may not be submitted electronically.~~

- (4) Vendors shall submit bid documents for all projects in the format specified in the notice requesting bids, which may, except as prohibited by subsection 1:314(3), be an electronic file format by email, compact disc, or traditional sealed bid, so long as the format selected preserves the integrity of the competitive bid process. The Purchasing Agent shall include a statement in each request for bids indicating whether electronic signature is acceptable where certification of documents is required and if not, the requirements for separate submission of executed and sealed documents required by the bid documents (including but not limited to construction drawings, bonds written by a surety company, and similar documents). The Purchasing Agent shall establish a secure submission procedure when electronic transmittal is allowed for estimates, quotes, and cost proposals (such as assigned passwords or other restricted access processes).
- (5) Bids shall be opened in public by the Purchasing Agent (unless another employee is designated by the City Administrator) and available for public inspection at the time and place and manner designated in the notice requesting bids. The bids shall thereupon be carefully examined and tabulated. After tabulation, all bids may be inspected by the competing bidders. If the bid amount is in excess of \$75,000.00, the tabulation of the bids shall be reported to City Council with the recommendation of the City Administrator for award to the bidder that provides the best value to the city.
- (6) At the time bids are submitted to City Council for award, the contract to be executed shall also be submitted. If City Council approves a bid, it shall approve the contract. The contract shall be executed following the filing of required bonds and insurance evidence approved by the City Attorney. City Council shall have the right to reject any or all bids and to waive irregularities in bidding and to accept bids which do not conform in every respect to the bidding requirements. If all bids are rejected, or if no bids are received, City Council may obtain new bids or authorize the City Administrator to negotiate in the open market for a contract at a reasonable price, or to purchase in the open market, or to have the work performed by city employees.
- (7) At the time any public works construction, maintenance, or repair contract is executed by a contractor, the contractor shall file a bond executed by a surety company authorized to do business in the State of Michigan to the city, conditioned upon the performance of said contract and holding the city harmless from all expense of inspection, engineering, and otherwise caused by the delay in the completion of any improvement and further conditioned to pay all laborers, mechanics, subcontractors, and material suppliers as well as all just debts, dues, and demands incurred in the performance of such work. Such contractor shall also submit to the city proof of insurance naming the city as an insured party and holding the city harmless from all liability, losses, or damages caused by the contractor, the contractor's agents, employees, or subcontractors. Such insurance policy shall have limits as determined by the

city. Evidence of the insurance must comply with the requirements set forth in the contract documents. In the discretion of the City Administrator, the bond requirement may be waived for contracts of less than \$50,000.00.

- (8) All bids, deposits of cash, or certified or cashier's checks may be retained until the contract is awarded and signed. If any successful bidder fails or refuses to enter into the contract within 10 days after the same has been awarded or such other timeline set forth in the contract documents, or fails or refuses to file any bond required within the same time, the deposit accompanying the bid shall be forfeited to the city, and City Council may, in its discretion, award the contract to bidder that provides the next best value to the city or the contract may be put out for bid again or abandoned.

~~(9) The City Administrator shall adopt policies or procedures for determining which bidder provides the best value to the city for the purpose of providing a recommended bidder to City Council. The City Administrator shall direct the creation of scoring rubrics for evaluating construction bids in the following manner:~~

~~(a) Each responsive bidder shall have their bid evaluated qualitatively by the following criteria:~~

~~i. Price.~~

~~ii. Qualifications, experience and accountability.~~

~~1. Qualifications and experience of the bidder and of key persons, management, and supervisory personnel to be assigned by the bidder.~~

~~2. References from individuals or entities the bidder has worked for within the last 5 years including information regarding records of performance and job site cooperation.~~

~~3. Evidence of any quality assurance program used by the bidder and the results of any such program on the bidder's previous projects.~~

~~4. A statement from the bidder as to any major subcontractors it expects to engage including the name, work, and amount.~~

~~iii. Workplace safety.~~

~~1. Documentation of an on-going, Michigan OSHA approved safety training program for employees to be used on the proposed job site.~~

~~2. Evidence of the bidder's worker's compensation experience modification rating ("EMR"). Preference within this criterion will be given to an EMR of 1.0 or less based on a 3-year average.~~

~~3. Evidence that all craft labor that will be employed by the bidder for the project has, or will have prior to project commencement, completed at least the OSHA 10-hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.~~

~~4. The safety record of bidder and major subcontractors, including OSHA, MIOSHA, or other safety violations.~~

~~iv. Workforce development.~~

~~1. The ratio of masters or journeypersons to apprentices proposed to be used on the construction project job site, if apprentices are to be used on the project.~~

~~2. Documentation as to bidder's pay rates, health insurance, pension or other retirement benefits, paid leave, or other fringe benefits to its employees.~~

~~3. Documentation that the bidder participates in a registered apprenticeship program that is registered with the United States Department of Labor Office of Apprenticeship or by a State Apprenticeship Agency recognized by the USDOL Office of Apprenticeship.~~

~~v. Social equity and sustainability.~~

~~1. A statement from the bidder as to what percentage of its workforce resides in the City of Ann Arbor and in Washtenaw County, Michigan. The city will consider in evaluating which bids best serve its interests, the extent to which responsible and qualified bidders are able to achieve this goal.~~

~~2. Evidence of equal employment opportunity programs for minorities, women, veterans, returning citizens, and small businesses.~~

~~3. Evidence that the bidder is an equal opportunity employer and does not discriminate on the basis of race, sex, pregnancy, age, religion, national origin, marital status, sexual orientation, gender identity or expression, height, weight, or disability.~~

~~4. The bidder's proposed use of sustainable products, technologies, or practices for the project, which reduce the impact on human health and the environment, including raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, and waste management.~~

~~5. The bidder's environmental record, including findings of violations and penalties imposed by government agencies.~~

~~(b) The following criteria may also be included at the city's discretion:~~

~~i. Work plan.~~

~~1. The proposed work plan to complete the project including such information as the schedule, staging, materials and equipment to be used, methods and techniques for completing the work that will be employed, plans to maintain operations at city facilities or access to city infrastructure during construction if desired by the city, or other criteria as determined by the city in the bid documents.~~

~~(c) Each evaluation criteria (price, qualifications, experience and accountability, workplace safety, workforce development, social equity and sustainability, and/or work plan) shall be weighted equally in terms of numerically scoring a bid.~~

(Ord. No. 07-61, § 2, 1-22-08; Ord. No. 09-16, § 3, 5-18-09; Ord. No. 21-41 , § 1, 1-3-22)

Section 4. That Section 1:324 be amended to read as follows:

1:324. Bid protests.

All protests must be in writing and filed with the Purchasing Agent within 5 business days of any notices of intent, including, but not exclusively, deviations on pre-qualification of bidders, shortlisting of bidders, or a notice of intent to award a contract. Only bidders who responded to the solicitation may file a bid protest. Instructions as to the form and content of a bid protest shall be included in the solicitation.~~the award action.~~ The ~~biddervendor~~ must clearly state the reasons for the protest. If a ~~bidder~~~~vendor~~ contacts a city service area/unit and indicates a desire to protest an award, the service area/unit shall refer the vendor to the Purchasing Agent. The Purchasing Agent will provide the ~~bidder~~~~vendor~~ with the appropriate instructions for filing the protest. The protest shall be reviewed by the City Administrator or designee, whose decision shall be final.

(Ord. No. 07-61, § 2, 1-22-08; Ord. No. 19-23, § 5, 7-15-19; Ord. No. 21-41 , § 1, 1-3-22)

Section 5. That Section 1:325 be added to read as follows:

1:325. Best Value Procurement.

(19) For all contracts for public improvements greater than \$50,000.00 in value, the City Administrator shall adopt policies or procedures for determining which bidder provides the best value to the city, for the purpose of providing a recommended bidder to City Council. The City Administrator shall direct the creation of scoring rubrics for evaluating construction bids for public improvements in the following manner:

(a) Each responsive bidder shall have their bid evaluated qualitatively by the following criteria:

i. Price.

ii. Qualifications, experience and accountability.

1. Qualifications and experience of the bidder and of key persons, management, and supervisory personnel to be assigned by the bidder.

2. References from individuals or entities the bidder has worked for within the last 5 years including information regarding records of performance and job site cooperation.

3. Evidence of any quality ~~control~~assurance program used by the bidder and the results of any such program on the bidder's previous projects.

4. A statement from the bidder as to any major subcontractors it expects to engage including the name, work, and amount.

iii. Workplace safety.

1. Provide a copy of the bidder's safety program, and evidence of a safety-training program for employees addressing potential hazards of the proposed job site. Bidder must identify a designated qualified safety representative responsible for bidder's safety program who serves as a contact for safety related matters. Documentation of an on-going, Michigan OSHA-approved safety training program for employees to be used on the proposed job site.

2. Provide the bidder's Experience Modification Rating ("EMR") for the last three consecutive years. Preference within this criterion will be given to an EMR of 1.0 or less based on a three-year average. Evidence of the bidder's worker's compensation experience modification rating ("EMR"). Preference within this criterion will be given to an EMR of 1.0 or less based on a 3-year average.

3. Evidence that all craft labor that will be employed by the bidder for the project has, or will have prior to project commencement, completed at least an authorized 10-hour OSHA Construction Safety Course. Evidence that all craft labor that will be employed by the bidder for the project has, or will have prior to project commencement, completed at least the OSHA 10-hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

4. For the last three years provide a copy of any documented violations and the bidder's corrective actions as a result of inspections conducted by the Michigan Occupational Safety & Health Administration (MIOSHA), U.S. Department of Labor – Occupational Safety and Health Administration (OSHA), or any other applicable safety agency. The safety record of bidder and major subcontractors, including OSHA, MIOSHA, or other safety violations.

iv. Workforce development.

1. The ratio of masters or journeypersons to apprentices proposed to be used on the construction project job site, if apprentices are to be used on the project.

2. Documentation as to bidder's pay rates, health insurance, pension or other retirement benefits, paid leave, or other fringe benefits to its employees.

32. Documentation that the bidder participates in a registered apprenticeship program that is registered with the United States Department of Labor Office of Apprenticeship or by a State Apprenticeship Agency recognized by the USDOL Office of Apprenticeship. USDOL apprenticeship agreements shall be disclosed to the City in the solicitation response.
3. Bidders shall disclose the number of non-craft employees who will work on the project on a 1099 basis, and the bidders shall be awarded points based on their relative reliance on 1099 work arrangements with more points assigned to companies with fewer 1099 arrangements. Bidders will acknowledge that the City may ask them to produce payroll records at points during the project to verify compliance with this section.

v. Social equity and sustainability.

1. A statement from the bidder as to what percentage of its workforce resides in the City of Ann Arbor and in Washtenaw County, Michigan. The city will consider in evaluating which bids best serve its interests, the extent to which responsible and qualified bidders employ individuals in either the city of the county. Which jurisdiction is prioritized for scoring purposes will be indicated in the solicitation. ~~are able to achieve this goal.~~
2. Evidence of equal employment opportunity programs for minorities, women, veterans, returning citizens, and small businesses.
3. Evidence that the bidder is an equal opportunity employer and does not discriminate on the basis of race, sex, pregnancy, age, religion, national origin, marital status, sexual orientation, gender identity or expression, height, weight, or disability.
4. The bidder's proposed use of sustainable products, technologies, or practices for the project, which reduce the impact on human health and the environment, including raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, and waste management.
5. The bidder's environmental record, including findings of violations and penalties imposed by government agencies.

(b) The following criteria may also be included at the city's discretion:

i. Work plan.

1. The proposed work plan to complete the project including such information as the schedule, staging, materials and equipment to be used, methods and techniques for completing the work that will be employed, plans to maintain operations at city facilities or access to city infrastructure during construction if desired by the city, or other criteria as determined by the city in the bid documents.

(c) Each evaluation criteria (price, qualifications, experience and accountability, workplace safety, workforce development, social equity and sustainability, and/or work plan) shall be weighted equally in terms of numerically scoring a bid.

(2) The City Administrator may exempt a contract for public improvements from best value scoring and instead award the contract to the lowest responsible bidder in instances when the contract will be partially or wholly funded by third parties such as another government entity, a non-profit, an individual, a philanthropy or other similar entity, when that entity requires their funding to be awarded on a lowest responsible bidder basis, and when proceeding on a best value basis may at the sole determination of the City Administrator jeopardize the receipt of third-party funding, cause costs to the City to increase by more than 10% of the total project cost, or jeopardize the participation of a funding partner in the project.

Section 6. In the event that any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 7. This ordinance shall take effect and be in force in ten days from the date of legal publication.

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of January 9, 2023.

(Date)

Jacqueline Beaudry, Ann Arbor City Clerk

Christopher Taylor, Mayor of the City of Ann Arbor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's webpage on January 12, 2023.

Jacqueline Beaudry, Ann Arbor City Clerk