



## Legislation Text

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An Ordinance to Amend Sections 1:312, 1:313 and 1:314 of Chapter 14, Purchasing, Contracting, and Selling Procedure, of Title I of the Code of the City of Ann Arbor (Ordinance No. ORD-09-16) Approval of this Ordinance will amend portions of Chapter 14 to reflect changes in bidding to incorporate electronic submission of bids providing the methods used retain the integrity of the competitive bid process.

The recommended amendments are based on review by the Procurement Service Unit and the City Attorney's Office of available options used by the State of Michigan and other governmental agencies to solicit bids. It is anticipated that implementation of electronic bidding procedures will improve service to vendors as well as provide the City a greener, more cost effective alternative to the traditional paper process.

Additionally the recommended amendments will authorize the Purchasing Agent to continue to adapt the City's competitive purchasing methods as new purchasing technologies become available.

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Approved by: Roger W. Fraser, City Administrator

ORDINANCE NO. ORD-09-16

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### PURCHASING, CONTRACTING AND SELLING PROCEDURE

#### AN ORDINANCE TO AMEND SECTIONS 1:312, 1:313 AND 1:314 OF CHAPTER 14, PURCHASING, CONTRACTING, AND SELLING PROCEDURE, OF TITLE I OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor Ordains:

Section 1. That Section 1:312 of Chapter 14 of Title 1 of the Code of the City of Ann Arbor 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) *Available for Public Inspection* means posting, electronically and/or on-site at designated public information boards or other locations, depositing with agencies provided unrestricted, no-charge access to public records, or otherwise providing for immediate access to and inspection of bids and proposal documents by prospective bidder, subcontractors,

suppliers and the public.

(12) *Bonds* means specific security required as part of procurement of goods and services 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.

City may require other forms of bonds, or in addition to or in lieu of bonds any other form of security deemed in the best interest of the City.

(23) *City* means the City of Ann Arbor, its service areas and their component units.

(34) *Contract* means the total legal obligation resulting from the parties' agreement as affected this chapter and other applicable law but not including collective bargaining agreements.

(45) *Contractor* means any person having a contract with the City.

(56) *Cooperative purchasing* means the combination of procurement requirements of two (2) or more government or public agencies in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.

(67) *Environmentally preferable products* means goods and materials that have a less adverse impact on human health and the environment when compared with competing goods and materials. This comparison shall consider raw materials acquisition, production, manufacturing, packaging, distribution, re-use, operation, maintenance, and waste management of the good or material.

(78) *Environmentally preferable services* means services that have a more beneficial or less adverse impact on human health and the environment when compared with competing services.

(9) *E-Publishing* means the process of publishing ITB, RFP and 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.

(810) *Invitation to bid (ITB)* means a formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work

and all contractual terms and conditions.

(911) *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 PO Box) at which business is being conducted and the vendor must also agree to comply with all other policies and requirements of the [ITBbid/RFP](#)rfp.

(102) *Non-responsive bid* means a bid/RFP response that does not conform to the mandatory or essential requirements of the ITB/RFP.

(113) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

(124) *Professional services* means services rendered by members of a recognized profession which involve extended 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.

(135) *Quality based selection* means a professional service provider selection based on demonstrated competence and qualifications followed by contract negotiation with the most qualified firm relative to fair and reasonable compensation.

(16) *Purchasing Agent* means the designated agent for the City and any employee or contractor of the City assigned by the Agent any duty or empowered to perform any act or duty.

(147) *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 specifications.

(158) *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. Used only where ordinance does not require formal "sealed" bids, such as small emergency purchases, but price competition is desired.

(169) *Request for proposal (RFP)* means a bid solicitation method used for requirements exceeding authorized limits when it is expected that negotiations with 1 or more bidders may be required with respect to any aspect of the requirements, or other factors will be considered in the selection of the contractor/consultant in addition to price.

(1720) *Responsible bidder* mean a person who has the capability in all respects to perform fully the contract requirements and who fits the criteria identified in the invitation for bids.

(1821) *Responsive bidder* means a person who has submitted a bid, which conforms in all respects to the requirements set forth in the invitation for bids.

(1922) *Services* means the furnishing of labor, time, or effort by a contractor not required to

deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services.

(203) *Sole source* means the only known vendor possessing the unique and singularly available capability based on technical qualifications, time constraints, or personnel expertise, to meet the requirements of the solicited bid/RFP.

(214) *Subcontractor* means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the City.

(225) *Supplies* means all personal property including but not limited to equipment, materials, printing, and insurance.

(236) *Tie bid* means bids that are equal in all aspects (price, quality, specifications, etc.)

(247) *Vendor* means any person or entity who offers goods for purchase or services for hire.

Section 2. That Section 1:313 of Chapter 14 of Title 1 of the Code of the City of Ann Arbor be amended to read as follows:

**1:313. Purchases or contracts of \$25,000.00 or less.**

(1) Purchases of supplies, materials or equipment, the cost of which is \$25,000.00 or less, may be made in the open market but such purchases shall, where practicable, be based on at least 3 competitive bids and shall be awarded to the lowest responsible bidder. [Competitive Bids shall be solicited through a traditional sealed bid procedure, or alternative means, including but not limited to E- Publishing and electronic submission or reverse auction methods providing the method used preserves the integrity of the competitive bid process and is](#) in accordance with adopted administrative policies and published operational procedures of the Procurement Unit. Any or all bids may be rejected. The City Administrator is authorized to purchase personal property or to contract for the purchase of personal property or services without the necessity of council approval in cases where the total amount of the purchase will not exceed \$25,000.00. When a purchase or contract [for services](#) exceeds \$25,000.00, it must be approved by the City Council. The City Administrator shall adopt rules to prevent purchases inconsistent with this chapter. [The Purchasing Agent shall publish operational procedures, after approval by the City Attorney, necessary or appropriate to implement the administrative rules.](#)

Section 3. That Section 1:314 of Chapter 14 of Title 1 of the Code of the City of Ann Arbor be amended to read as follows:

**1:314. Purchases or contracts over \$25,000.00.**

Any expenditure for supplies, materials, equipment, construction project or contract obligating the City, where the amount of the City's obligation is in excess of \$25,000.00 shall be governed by the provisions of this section.

(1) Notice inviting sealed competitive bids [through any of the means specified in 1:313 above](#) shall be made available for public inspection at the procurement unit 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 supplies, materials or equipment or construction project 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, and 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 \$25,000.00 for the construction, maintenance or repair of public works, the notice shall state that bidders must prequalify as required by 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 and notice thereof shall 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 prescribed by the Council, the Service Area Administrator shall prescribe 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 fixed by the Council, the Service Area Administrator, after consultation with the City Attorney as appropriate, shall fix 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 adopted operational procedures specified in 1:313 above, ITB which require a bid bond or other forms of bonds, may not be submitted electronically.](#)

(4) [Vendors shall submit bids documents for all projects in the format specified in the notice, which may, except as prohibited by subsection 3 above, be an electronic file format by email, compact disk, 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 all bid documents 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 \(such as assigned passwords or other restricted access processes\).](#)

(45) Bids shall be opened in public by the Purchasing Agent [and available for public inspection](#) or designee 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 \$25,000.00, the tabulation of the bids shall be reported to the council with the recommendation of the City Administrator for award.

(56) At the time bids are submitted to the Council for award, the contract to be executed shall also be submitted. If the 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. The 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.

(67) 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.

- (78) 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 file any bond required within the same time, the deposit accompanying the bid shall be forfeited to the City, and the council may, in its discretion, award the contract to the next lowest responsible bidder or said contract may be readvertised

Section 4. In the event 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 5: This Ordinance shall take effect on the tenth day following legal publication.