

**MODIFYING** the provisions of Chapter 321, “Procurement and Disposal of Supplies, Services and Construction,” of the Cincinnati Municipal Code by **AMENDING** Sections 321-1-P, “Professional Services,” 321-1-S, “Service,” 321-13, “Procurement; Supplies, Services and Construction in Excess of \$5,000.00 but not Greater Than \$50,000.00,” 321-15, “Procurement; Supplies, Services and Construction in Excess of \$50,000.00 but not Greater Than \$250,000.00,” 321-17, “Procurement; Supplies, Services and Construction in Excess of \$250,000.00,” 321-19 “Procurement; Professional Services,” 321-31, “Bid; Opening of Bids,” 321-61, “Proposal; Opening of Proposal,” and 321-97, “Contracts; Joint and Cooperative Purchasing Options.”

WHEREAS, the Administration engaged in a detailed, cross-departmental review of the existing procurement process for the purchase of services; and

WHEREAS, that review process identified opportunities for streamlining departmental procurement of personal services and for potentially providing greater access to City contracting for small, diverse vendors; and

WHEREAS, the Administration intends to make administrative changes to the existing procurement process for the purchase of certain services valued at \$50,000 or less, as a pilot program, to allow the City to gauge the impact, if any, such changes may have on the use of diverse vendors; and

WHEREAS, revisions to Chapter 321 of the Cincinnati Municipal Code will be necessary to support those administrative changes; and

WHEREAS, the review process also identified other procurement procedures for which clarification or deletion of obsolete references is necessary; now, therefore,

**BE IT ORDAINED** by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Sections 321-1-P, “Professional Services,” 321-1-S, “Service,” 321-13, “Procurement; Supplies, Services and Construction in Excess of \$5,000.00 but not Greater Than \$50,000.00,” 321-15, “Procurement; Supplies, Services and Construction in Excess of \$50,000.00 but not Greater Than \$250,000.00,” 321-17, “Procurement; Supplies, Services and Construction in Excess of \$250,000.00,” 321-19 “Procurement; Professional Services,” 321-31, “Bid; Opening

of Bids,” 321-61, “Proposal; Opening of Proposal,” and 321-97, “Contracts; Joint and Cooperative Purchasing Options” are hereby amended as follows:

**Sec. 321-1-P. – Professional Services.**

“Professional services” shall mean personal services that:

- (a) Are provided by a person with an active license, credential, or certification as an accountant, architect, attorney at law, physician, professional engineer, surveyor, or appraiser issued by the appropriate body in the respective field who is providing services in their capacity as such and which involve extended analysis, expression of opinion, exercise of discretion and independent judgment in their performance;  
~~and or~~
- (b) Are consulting services that involve an advanced, specialized knowledge, expertise, or training customarily acquired by either a prolonged course of study or equivalent experience in a field, which may require a license, official certification, or authorization by a state or national organization or body fields identified by the city manager by administrative regulation.

**Sec. 321-1-S. – Service.**

“Service” shall mean the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term shall not include employment agreements, ~~or~~ collective bargaining agreements, or professional services.

**Sec. 321-13. - Procurement; Supplies, Services and Construction in Excess of \$5,000.00 but not Greater Than \$50,000.00.**

The following shall apply to contracts for supplies, services, or construction involving an expenditure in excess of \$5,000.00 but not in excess of \$50,000.00:

- (a) The city purchasing agent may award and enter into such contracts without additional approval by the city manager or board or commission on whose behalf the procurement is made.
- (b) Such contracts shall be competitively procured by request for quotes or ITB. The city manager or the city purchasing agent may invite competitive bidding by announcement without advertisement and may waive the requirement for bid or performance surety.
- (c) Certified SBEs, SLBEs, and ELBEs registered as vendors with the city in the commodity class applicable to the procurement will receive notice of the procurement via e-mail, through the city’s online procurement system.

~~(d) — Notice must be provided to certified SBEs, SLBEs, and ELBEs in the commodity code, and at least two, but not more than, three quotes must first be obtained from certified SBEs, SLBEs, and ELBE listed in the commodity code.~~

~~(e) (1) — If there is only one certified SBE, SLBE, or ELBE in the commodity code or only one certified SBE, SLBE, or ELBE in the commodity responds to the city's request for quote, then two additional quotes must be obtained from businesses in the commodity code that are not certified SBEs, SLBEs, or ELBEs.~~

~~(2) — If the quote from the certified SBE, SLBE, or ELBE is not the lowest and best quote of the three received by the city, the certified SBE, SLBE, or ELBE will be awarded the contract if it agrees to match the lowest and best quote. If the certified SBE, SLBE, or ELBE does not agree to match the lowest and best quote within three business days after the city offers that business the opportunity to match the lowest and best quote, then the contract will be given to the non-certified SBE, SLBE or ELBE or non-SBE/SLBE/ELBE that submitted the lowest and best quote.~~

~~(d)~~ (d) For purchases of \$50,000.00 or less, the contract must be awarded to a certified SBE, SLBE, or ELBE listed in the commodity code, unless one of the following occurs:

- (1) The contract is awarded pursuant to subsection (e) ~~above~~ below;
- (2) There are no certified SBEs, SLBEs, or ELBEs in the commodity code;
- (3) No certified SBE, SLBEs, or ELBEs in the commodity code provide a quote;
- (4) The city purchasing agent determines in writing that it is impractical or not in the best interest of the city to award the contract to the certified SBE, SLBE, or ELBE based on price; or
- (5) The city purchasing agent rejects all quotes from certified SBEs, SLBEs or ELBEs.

If one of ~~these four situations~~ the circumstances listed in subsections (2) through (5) above ~~occurs~~ exists, then three quotes should be obtained from businesses in the commodity code that are not certified SBEs, SLBEs or ELBEs or are not SBEs, SLBEs, or ELBEs, and competitive bidding shall be conducted pursuant to policies promulgated by the city purchasing agent.

(e) (1) If a quote process is utilized, at least two but not more than three quotes must first be obtained from certified SBEs, SLBEs, or ELBEs listed in the commodity code.

(2) If there is only one certified SBE, SLBE, or ELBE in the commodity code or only one certified SBE, SLBE, or ELBE in the commodity responds to the city's request for quote, then two additional quotes must be obtained from businesses in the commodity code that are not certified SBEs, SLBEs, or ELBEs.

(3) If the quote from a business that is not a certified SBE, SLBE, or ELBE is the lowest and best quote of the three received by the city, the certified SBE, SLBE, or ELBE will be awarded the contract if it agrees to match the lowest and best quote. If the certified SBE, SLBE, or ELBE does not agree to match the lowest and best quote within three business days after the city purchasing agent offers that business the opportunity to match the lowest and best quote, then the contract will be given to the business that submitted the lowest and best quote, regardless of certification status.

~~(g)~~(f) The city purchasing agent may establish a contract award rotation process for SBEs, SLBEs, and ELBEs certified in specific commodity codes to make contract award opportunities equitably available to such businesses.

~~(h)~~(g) Surety.

(1) The city purchasing agent will have discretion regarding bonding requirements for both bid and performance surety, including without limitation, the amount of such bonds.

(2) The city purchasing agent shall establish a commodity and a threshold exemption for surety and bond requirements.

This section shall not apply to bids, requests for proposals, or requests for qualifications or other procurement processes identified to be a part of the city's sheltered market program as provided in CMC Section 323-19. The purchasing agent shall be responsible for awarding and executing all contracts awarded through the sheltered market program.

**Sec. 321-15. - Procurement; Supplies, Services and Construction in Excess of \$50,000.00 but not Greater Than \$250,000.00.**

The following shall apply to contracts for supplies, services, or construction involving an expenditure in excess of \$50,000.00 but not in excess of \$250,000.00:

(a) The city purchasing agent may award and enter into such contract without additional approval by the city manager or board or commission on whose behalf the procurement is made.

(b) The city manager or the city purchasing agent ~~may~~shall invite competitive bidding by advertisement.

- (c) The city manager or the city purchasing agent may waive the requirement for bid or performance surety except as otherwise provided herein. Performance surety for construction contracts in excess of \$50,000.00 shall not be waived.
- (d) Registered and certified ~~Certified~~ SBEs, SLBEs, and ELBEs in the commodity class will receive notice via e-mail, and every effort should be made to award the contract to a certified SBE, SLBE, or ELBE.

This section shall not apply to bids, requests for proposals, or requests for qualifications or other procurement processes identified to be a part of the city's sheltered market program as provided in CMC Section 323-19. The purchasing agent shall be responsible for awarding and executing all contracts awarded through the sheltered market program.

**Sec. 321-17. - Procurement; Supplies, Services and Construction in Excess of \$250,000.00.**

The following shall apply to contracts for supplies, services, or construction involving an expenditure in excess of \$250,000.00:

- (a) The city purchasing agent may make any contract to purchase supplies, services, or construction with additional approval of the city manager, or the board or commission on whose behalf the contract is made.
- (b) In the case of any contract for the procurement of supplies or services involving an expenditure in excess of \$250,000.00 within a 12-month period, the city purchasing agent shall invite competitive bidding by advertising and may waive the bid or performance surety, if deemed by the city purchasing agent to be in the best interest of the city.
- (c) In the case of any contract for construction involving an expenditure in excess of \$250,000.00 for the length of the contract, the city purchasing agent shall invite competitive bidding by advertising, may waive the posting of bid surety if deemed by the city purchasing agent to be in the best interest of the city, and shall require performance surety of 100% percent of the contract amount.
- (d) The city purchasing agent shall use the following procedure for contracts covered by this section:
  - (1) Each week a listing of such items to be procured shall be ~~inserted in the City Bulletin under the heading "Notice — Bids Wanted" or in~~ advertised on the web-based procurement system maintained by the city purchasing agent indicating the item, reference number, and ~~bid~~ solicitation closing date.
  - (2) The notice ~~shall~~ also shall indicate the following for each item:
    - (A) Time of solicitation closing, including date and time ~~That sealed bids will be received at the office of the city purchasing agent until 12:00 noon (local time) on the date specified; and~~

~~(B) That copies of the inquiry are available from the office of the city purchasing agent; and~~

~~(C)~~(B) That performance surety may be required for supplies and service contracts and shall be required for all construction contracts in excess of \$50,000.00.

- (e) For the procurement of supplies, services, and construction in excess of \$250,000.00, registered and certified SBEs, SLBEs, and ELBEs in the commodity class will receive notice via email through the online procurement system.

### **Sec. 321-19. – Procurement; Professional Services.**

Professional services contracts shall be the responsibility of the city manager or appropriate board or commission with contracting authority. Any department, board, or commission may contract for such services without competitive procedures and without requiring a performance surety, subject to any limitations that may be established by the city manager through administrative regulation. ~~The city purchasing agent shall promulgate procedures for the procurement of professional services.~~

### **Sec. 321-31. - Bids; Opening of Bids.**

- (a) Bids invited by the city purchasing agent by advertisement if the bid is expected to be in excess of \$250,000 shall be accepted via the web-based procurement system at the time and date opened at the time, date and place specified in the invitation for bid ~~and~~. Results shall be publicly posted ~~read~~ in accordance with procedures promulgated by the city purchasing agent.
- (b) Bids invited by the city purchasing agent by announcement or by advertisement if the bid is expected to be in excess of \$50,000 but not greater than \$250,000 shall be received and recorded by the city purchasing agent or a designee. No public posting opening or reading of bids is required.
- (c) All bids received by the city purchasing agent shall be subject to disclosure in response to a public records request pursuant to the requirements and limitations of Ohio Revised Code Sections 9.28, §-149.43, and any successor laws.

### **Sec. 321-61. – Proposal; Opening of Proposal Public Records.**

~~All proposals shall be opened at the time, date and place specified in the request for proposal in accordance with procedures promulgated by the city purchasing agent.~~ All proposals received by the city purchasing agent shall be subject to disclosure in response to a public records request pursuant to the requirements and limitations of Ohio Revised Code Sections 9.28, §-149.43, and any successor laws.

**Sec. 321-97. – Contracts; Joint and Cooperative Purchasing Options.**

- (a) The city purchasing agent may procure supplies, services, equipment, or materials through any of the following methods:
  - (1) By participating in contracts procured or awarded by any department, division, agency, or political subdivision of the state, including without limitation, contracts awarded by the Ohio department of administrative services.
  - (2) By participating in contracts for services, materials, equipment, or supplies in a joint purchasing program operated by or through a state or national association of political subdivisions if the city is eligible for membership, ~~including, but not limited to, the U.S. Communities Government Purchasing Alliance.~~
  - (3) By participating in contract offerings from ~~the federal~~ other government entities that are available to a political subdivision including, but not limited to, contract offerings from the general services administration.
- (b) The city hereby authorizes the city manager or the city purchasing agent in the name of the city, without advertising and bidding, to participate in such contracts described in subsection (a) above. When the city manager or city purchasing agent finds it in the best interest of the city to participate in such contracts, the following shall apply:
  - (1) The city will be bound by such terms and conditions as the contracts prescribe;
  - (2) The city will directly pay the vendor under such contracts; and
  - (3) Performance surety may be waived by the city purchasing agent.
- (c) The city purchasing agent may permit one or more other political subdivisions to participate in contracts into which the city has entered for the acquisition of equipment, materials, supplies, or services, and may charge such participating political subdivisions a reasonable fee to cover any additional costs incurred as a result of their participation.
- (d) The city purchasing agent is authorized to do all the things necessary to carry out the provisions of this section.

Section 2. That the existing Sections 321-1-P, “Professional Services,” 321-1-S, “Service,” 321-13, “Procurement; Supplies, Services and Construction in Excess of \$5,000.00 but not Greater Than \$50,000.00,” 321-15, “Procurement; Supplies, Services and Construction in

Excess of \$50,000.00 but not Greater Than \$250,000.00,” 321-17, “Procurement; Supplies, Services and Construction in Excess of \$250,000.00,” 321-19, “Procurement; Professional Services,” 321-31, “Bid; Opening of Bids,” Section 321-61, “Proposal; Opening of Proposal,” and Section 321-97, “Contracts; Joint and Cooperative Purchasing Options,” of the Cincinnati Municipal Code are hereby repealed.

Section 3. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 and 2.

Section 4. That this ordinance shall take effect and be in force from and after July 1, 2024.

Passed: \_\_\_\_\_, 2024

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Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

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Deletions are indicated by strikethrough; additions are indicated by underline.