



Memo

To: Honorable Mayor Armitage; City Council
From: City Manager LaPere, MPAP
Date: November 4, 2022
Re: Proposed Amendments to Purchasing Ordinance

City Council has asked Administration to review the city's purchasing ordinance and manual for discussion on potential amendments. On September 8th, City Council held a workshop discussion on this matter. There were a number of items discussed, including the threshold for bids, threshold for approval of purchase, and other purchasing policies. On October 3, 2022 and October 17, 2022 Council held discussion and first reading on proposed amendments to the city's purchasing ordinance. A public hearing and second reading on proposed amendments is scheduled for the Council meeting of November 10th. Please find a clean copy of the ordinance and red-lined detail of the proposed amendments attached for your review.

City Attorney Hitch has reviewed the proposed amendments. He noted that the suggestion to add the language in Section 2-181 (c), which prohibits City Council and all other officers and employees of the city from doing business with the city, is in conflict with the City Charter, Section 15.4. He further noted that the state law referenced does permit such business dealings when properly disclosed, as is also required under City Charter. Therefore, he is recommending striking that addition from the proposed amendments.

With regard to proposed removal of Section 2-178, (E), (2), I will reiterate Administration's recommendation that language related to professional services remain as-is. The purpose of competitive bidding is to seek out the best price for a specific product, goods, or similar that is specific, when the deliverable product from vendor to vendor is readily comparable and equivalent. Price-based comparisons of professional services is difficult at best, as the services provided are not fungible. Further, these are typically agreements for an ongoing professional relationship wherein the assignment is both complex and varied. The base pricing for a professional service, such as an hourly attorney fee, does not provide a complete assessment of the value of the services provided. For example, it does not quantify the institutional knowledge being brought by an established relationship or the savings realized from the individual's expertise in both our community and in their field. The relationships the professionals have with others in their field brings value, along with the depth and breadth of expertise available within their firm. As stated previously, the current language says "may" not be required which still offers Council and Administration the discretion to seek out multiple vendors for those professional services when determined to be in the best interests of the City. When we've done so in the past, we

will typically post a request for qualifications (RFQ) when seeking professional services versus competitive bidding based primarily on pricing.

That being said, the draft presented tonight reflects the discussion at the October 17th meeting in which that provision was removed. The proposed amendments to the City's purchasing manual are on the agenda separately.

Motions for Consideration

City Council moves to remove Section 2-181 (c) Prohibitions, of Ordinance 2022-07.

and

City Council moves to adopt Ordinance 2022-07, as amended.

eel

attachments

DIVISION 3. PURCHASING, CONTRACTING AND SELLING PROCEDURES

§ 2-176 DEFINITIONS.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

AGENT. The Clerk, Deputy Clerk or any other officer or employee designated by the ~~Council~~ City Manager to act as purchasing agent.

CONTRACT. Includes contracts for services, subject to the exclusion mentioned in this division, and shall include any type of service, leases for grounds, buildings, offices or maintenance of equipment, machinery and other city-owned personal property. ~~The term contract shall not include professional and other contract services which may be unique and not subject to competition.~~

LOWEST COMPETENT BIDDER. In determining the lowest competent bidder, and in addition to price, the purchasing agent shall consider the following, as applicable:

- The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- The ability to perform the contract or provide the service promptly, within the time specified;
- The character, integrity, reputation, judgement, experience, and efficiency of the bidder;
- The quality of performance of previous contracts or services;
- The compliance by the bidder with laws and ordinances related to the contract or service;
- Demonstration of financial resources sufficient to perform the contract or service;
- Quality and availability of the supplies or services;
- Ability of the bidder to provide future maintenance and service; and/or
- The number and scope of conditions of the bid.

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§ 2-177 PURCHASING AGENT.

The purchasing agent shall prepare rules concerning purchasing, the necessary forms therefor and a purchasing manual. Copies of the manual shall be issued to all departments of the city, to the members of the Council and to the Manager. The rules, forms and manual shall be in effect, except as and when amended by the majority vote of the Council.

§ 2-178 GENERAL PURCHASING POLICY.

(A) Competitive prices for all purchases and public improvements shall be obtained and the purchase made from or the contract awarded to the lowest competent bidder.

(B) Formal sealed bids shall be obtained in all transactions involving the expenditure of \$510,000 or more or such other amount which may be established by the Council by resolution.

(C) When other considerations are equal, contracts shall be awarded to local vendors.

(D) If the lowest competent bids are for the same amount, the purchasing agent shall negotiate with the low bidders for a reduced bid and shall make or recommend purchase which shall appear to be to the advantage of the city.

(E) Competitive bidding may not be required in the following cases:

(1) Where the subject of the contract is other than a public work or improvement, ~~and the product, or material, or services~~ contracted for is not competitive in nature or no advantage to the city would result from requiring competitive bidding, and the Council, by resolution, authorizes execution of a contract without competitive bidding;

~~—(2) In the employment of professional services;~~

(3) Where the city elects to do, with city forces, work suitable for contracting, provided such work is authorized by the Council;

(4) In purchasing any type of insurance coverage.

§ 2-179 PURCHASES OR CONTRACTS UNDER \$510,000.

(A) Purchases of supplies, materials or equipment, the cost of which is less than \$510,000 or such other amount which may be established by the Council by resolution, may be made in the open market by the purchasing agent, but such purchase shall be based on competitive prices and shall be awarded to the lowest competent bidder, except as otherwise provided in this section.

(B) The agent ~~may shall~~ solicit prices ~~verbally, by telephone or by written communication, provided that where bids are solicited by written communication in accordance with the City's Purchasing Manual, a copy of such request for bids shall be posted in the City Hall.~~

(C) ~~In determining the competency of a bidder, the agent shall be guided by his judgment of the ability of the bidder to provide the required material or services in compliance with the specifications set forth.~~ If the purchase is not made from the lowest bidder, a statement of the reasons for placing the order with a higher bidder shall be prepared by the agent, provided that when the amount of the transaction shall be \$~~5002,500~~ or more or such other amount which may be established by the Council by resolution, the agent shall report such purchase to the Council with a copy of the required statement.

§ 2-180 PURCHASES OR CONTRACTS OVER \$~~510,000~~.

(A) Any expenditure for supplies, materials, ~~services~~, equipment, construction projects or contracts obligating the city, where the amount of the city obligation is in excess of \$~~510,000~~ or such other amount which may be established by the Council by resolution, must be approved by the Council.

(B) Sealed bids shall be requested by the purchasing agent by ~~electronically noticing the request~~, mailing a copy of the specifications or requirements to such qualified vendors as may be known to him, and by posting a copy of the request in the City Hall.

(C) Unless fixed by the Council, the agent with the concurrence of the Manager shall prescribe the amount of any security to be deposited with any bid and, in the case of construction contracts, the amount of labor and material or performance bonds to be required of the successful bidder. Such security shall be in the form of certified or cashier's check or bond written by a surety company authorized to do business in the state.

(D) Bids shall be opened in public at the time and place designated in the notice requesting bids. Bids shall be opened in the presence of the agent and at least 1 other city employee. Immediately following the opening, the bids shall be examined, tabulated and made available for inspection.

(E) The full tabulation of all bids shall be submitted to the meeting of the Council next following the opening of bids, together with the recommendation of the agent, department head or City Manager. The Council in its discretion may accept the low bid, reject all bids, or determine the low bid to be unsatisfactory and make the award to the lowest competent bidder.

(F) After the opening of the submitted bids, such bids may not be withdrawn without forfeiture of the bid deposit. Deposits of security accompanying the 3 low bids shall be retained until the contract is awarded and signed, other deposits shall be returned to the unsuccessful bidders immediately after the bids have been tabulated. If any successful bidder fails or refuses to enter into the contract awarded to him within 10 days after being notified of such an award or file any bond required within the same time, the deposit accompanying his bid shall be forfeited to the city, and the Council may, in its discretion, award the contract to the next lowest bidder or readvertise the project.

(G) At the time the contract of a construction project is executed by the contractor, he shall file a bond executed by a surety company authorized to do business in the state,

assuring payment of all just debts incurred in the performance of the contract, including wages and material bills, and shall file a performance bond when one is required in the bid specification. The contractor shall also file evidence of public liability insurance and workers' compensation insurance in an amount satisfactory to the Manager and shall also protect the city from loss or damage caused to any person or property by reason of negligence of the contractor or his employees.

(H) The Council shall reserve the right to accept or reject any or all bids as submitted if in the Council's discretion such action would be in the best interests of the city.

§ 2-181 PROHIBITIONS.

(A) No contract or purchase shall be subdivided to avoid the requirements of this division.

(B) The purchasing agent and every officer and employee of the city are expressly prohibited from accepting, directly or indirectly, from any person doing business or contemplating doing business with the city, any rebate, gift, money or anything of value.

(C) No member of the Council, the Manager, or any other officer or employee of the City, shall be personally interested in any contract with or for the City nor in the expenditures of any money on the part of the City.

§ 2-182. EMERGENCY PURCHASES.

In an emergency or an apparent emergency endangering the public peace, health or safety of the city, the purchasing agent, the Manager or any department head may purchase directly any supplies, materials or equipment which he deems immediately necessary upon approval by the City Manager. The ~~agent~~ Manager shall advise the Council of the purchase no later than the next regular meeting of the Council.

§ 2-183 INSPECTION OF MATERIALS.

The responsibility for the inspection and acceptance of all materials, supplies and equipment purchased under this division shall rest with the department head.

§ 2-184 SALE OF PERSONAL PROPERTY.

(A) Whenever any city personal property is no longer needed for corporate or public purposes, the property may be offered for sale in accordance with the restrictions established in Charter, § 15.2 and the adopted Purchasing Manual.

(B) The purchasing agent, City Manager, or designee shall have the authority to initiate the disposal of obsolete or excess materials or equipment.

(C) Sealed bids shall be taken if the estimated value of the materials or equipment is \$2,500 or more.

(D) Verbal bids may be taken if the estimated value of the materials or equipment is less than \$2,500.

(E) City Council approval is required prior to disposal if the estimated value of the materials or equipment is greater than \$10,000.

§ 2-185 SALE OF REAL PROPERTY.

Whenever any city real property or utility plant is no longer needed for corporate or public purposes, the property may be offered for sale in accordance with the restrictions established in Charter, § 8.24, 14.12, and 15.3 (B).

§ 2-186 COOPERATIVE PURCHASES.

The Council or purchasing agent shall have the power to enter into purchase contracts with and from other governmental agencies, should there be an opportunity for a saving to the city or where the Council determines that it would be in the best interests of the city. However, the Council shall give its prior approval to such purchases, and all such purchases shall be in compliance with the provisions of this division and the Charter.

§§ 2-187 -- 2-195 RESERVED.

Introduced: October 3, 2022
Adopted:
Effective:

CITY OF CHARLOTTE

ORDINANCE NO. 2022-

AN ORDINANCE TO AMEND CHAPTER 2 -
ADMINISTRATION - OF THE CODE OF THE CITY OF
CHARLOTTE BY AMENDING ARTICLE V – FINANCE,
DIVISION 3 PURCHASING, CONTRACTING AND SELLING
PROCEDURES.

Councilmember _____ moved that the following ordinance be adopted:

THE CITY OF CHARLOTTE ORDAINS:

SECTION 1. PURPOSE. The purpose of this ordinance is to update the provisions of the City Ordinance related to procurement.

SECTION 2. DIVISION 3. PURCHASING, CONTRACTING AND SELLING PROCEDURES of Article V of Chapter 2 shall be amended as follows:

§ 2-176 DEFINITIONS.

AGENT. The Clerk, Deputy Clerk or any other officer or employee designated by the City Manager to act as purchasing agent.

CONTRACT. Includes contracts for services, subject to the exclusion mentioned in this division, and shall include any type of service, leases for grounds, buildings, offices or maintenance of equipment, machinery and other city-owned personal property.

LOWEST COMPETENT BIDDER. In determining the lowest competent bidder, and in addition to price, the purchasing agent shall consider the following, as applicable:

- The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- The ability to perform the contract or provide the service promptly, within the time specified;
- The character, integrity, reputation, judgement, experience, and efficiency of the bidder;
- The quality of performance of previous contracts or services;
- The compliance by the bidder with laws and ordinances related to the contract or service;

- Demonstration of financial resources sufficient to perform the contract or service;
- Quality and availability of the supplies or services;
- Ability of the bidder to provide future maintenance and service; and/or
- The number and scope of conditions of the bid.

§ 2-178 GENERAL PURCHASING POLICY.

(B) Formal sealed bids shall be obtained in all transactions involving the expenditure of \$10,000 or more or such other amount which may be established by the Council by resolution.

(E) Competitive bidding may not be required in the following cases:

(1) Where the subject of the contract is other than a public work or improvement; the product, material, or services contracted for is not competitive in nature or no advantage to the city would result from requiring competitive bidding; and the Council authorizes execution of a contract without competitive bidding;

(2) Where the city elects to do, with city forces, work suitable for contracting, provided such work is authorized by the Council;

(3) In purchasing any type of insurance coverage.

§ 2-179 PURCHASES OR CONTRACTS UNDER \$10,000.

(A) Purchases of supplies, materials, services, or equipment, the cost of which is less than \$10,000 or such other amount which may be established by the Council by resolution, may be made in the open market by the purchasing agent, but such purchase shall be based on competitive prices and shall be awarded to the lowest competent bidder, except as otherwise provided in this section.

(B) The agent shall solicit prices in accordance with the City's Purchasing Manual.

(C) If the purchase is not made from the lowest bidder, a statement of the reasons for placing the order with a higher bidder shall be prepared by the agent, provided that when the amount of the transaction shall be \$2,500 or more or such other amount which may be established by the Council by resolution, the agent shall report such purchase to the Council with a copy of the required statement.

§ 2-180 PURCHASES OR CONTRACTS OVER \$10,000.

(A) Any expenditure for supplies, materials, services, equipment, construction projects or contracts obligating the city, where the amount of the city obligation is in

excess of \$10,000 or such other amount which may be established by the Council by resolution, must be approved by the Council.

(B) Sealed bids shall be requested by the purchasing agent by electronically noticing the request, mailing a copy of the specifications or requirements to such qualified vendors as may be known, and by posting a copy of the request in the City Hall.

§ 2-181 PROHIBITIONS.

(C) No member of the Council, the Manager, or any other officer or employee of the City, shall be personally interested in any contract with or for the City nor in the expenditures of any money on the part of the City.

§ 2-182. EMERGENCY PURCHASES.

In an emergency or an apparent emergency endangering the public peace, health or safety of the city, the purchasing agent, the Manager or any department head may purchase directly any supplies, materials or equipment which he deems immediately necessary upon approval by the City Manager. The Manager shall advise the Council of the purchase no later than the next regular meeting of the Council.

§ 2-184 SALE OF PERSONAL PROPERTY.

(A) Whenever any city personal property is no longer needed for corporate or public purposes, the property may be offered for sale in accordance with the restrictions established in Charter, § 15.2 and in accordance with the adopted Purchasing Manual.

(B) The purchasing agent, City Manager, or designee shall have the authority to initiate the disposal of obsolete or excess materials or equipment.

(E) City Council approval is required prior to disposal if the estimated value of the materials or equipment is greater than \$10,000.

§ 2-185 SALE OF REAL PROPERTY.

Whenever any city real property or utility plant is no longer needed for corporate or public purposes, the property may be offered for sale in accordance with the restrictions established in Charter, § 8.24, 14.12, and 15.3 (B)

SECTION 3. SEVERABILITY. If any section, clause or provision of this Ordinance shall be declared to be inconsistent with the Constitution and laws of the State of Michigan and voided by any court of competent jurisdiction, said section, clause or provision declared to be unconstitutional and void shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force.

SECTION 4. SAVING CLAUSE. All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law when they were commenced.

SECTION 5. REPEALER. Any Ordinance conflicting with this Ordinance be and the same is hereby repealed.

SECTION 6. EFFECTIVE DATE. This ordinance shall become effective 20 days after publication.

Second, _____ . () Yeas. () Nays. () Absent.