

## **133.02 PURCHASING PROCEDURES.**

(a) *Purpose.* It is the objective of the City to maintain a procurement and contract administration system in accordance with the "Procurement Standards" set forth in 2 C.F.R. 200.317-.326 for the administration and management of federal grants and federal funded programs. Non-federal procurement shall follow the same procurement standards along with applicable state and local statutes and regulations. The City will maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) *Guidelines.*

- (1) Procurement of all supplies, materials, equipment, and services will be made in accordance with all applicable federal, state, and local statutes and/or regulations, the terms and conditions of federal grants, and this section.
- (2) The City will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. To foster greater economy and efficiency, the City may enter into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.
- (3) The City will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are solicited when possible. For guidance, staff members may refer to minority-owned, women-owned, and socially and economically disadvantaged businesses approved by the Ohio Department of Administrative Service (DAS) by searching the Business Certification and Compliance page on the DAS website via the following link:  
<https://das.ohio.gov/Divisions/Equal- Opportunity/Business-Certification>
- (4) City personnel responsible for procurement must be free from personal conflicts of interest as well as organizational conflicts of interest as described by the City's Conflict of Interest Policy.
- (5) The Department of Finance shall adopt rules and regulations for the internal management and operation of the purchasing function. The Director or designee shall prescribe and maintain such forms as reasonably necessary to the operation of the purchase function. Any City department director or City officials (elected and appointed) requesting a purchase shall first seek Director of Finance certification that the amount required for the order or contract is lawfully appropriated and is in the treasury or in the process of collection to the credit of the appropriate fund free from any previous encumbrance.
- (6) The Department of Finance or Designee shall create procedures to monitor contracts to assure that the terms of the agreement are fulfilled and in the event of any violation thereof shall report to the City Attorney the results of these procedures for further investigative action.
- (7) All procurement transactions will be conducted in a manner that encourages full and open competition.
  - A. Some of the situations considered to be restrictive of competition include, but are not limited to:
    1. Placing unreasonable requirements on firms in order for them to qualify to do business.
    2. Requiring unnecessary experience and excessive bonding requirements.
    3. Noncompetitive contracts to consultants that are on retainer contracts.
    4. Noncompetitive pricing practices between firms or between affiliated companies.

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- 5. Organizational conflicts of interest.
- 6. Specifying only a 'brand name' product instead of allowing for an "equal" product to be offered and describing the performance or other relevant requirements of the procurement.
- 7. Any arbitrary action in the procurement process.
- B. The City will exclude any contractor that has drafted or developed specifications, requirements, statements of works, or invitations for bids or proposals on behalf of the City from competing for such procurements.
- C. The City will not use statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except where an applicable federal statute expressly mandates or encourages a geographic preference, or the purchase is being made from non-federal funds and is not a required federal grant match. When the City is contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- D. If the City uses a pre-qualified list of persons, firms, or products to acquire goods and services, such list will include enough qualified sources as to ensure maximum open and free competition.

(8) All solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which unduly restrict competition.

- A. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, will set forth those minimum essential characteristics and standards to which it will conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible.
- B. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which will be met by offers will be clearly stated; and identify all requirements which the offerors will fulfill and all other factors to be used in evaluating bids or proposals.

(c) *Procurement methods.*

- (1) *Petty cash.*
  - A. Expenditures up to \$100.00 may be reimbursed through the City's petty cash system as outlined in the City of Gahanna Policy and Procedure Manual.
- (2) *Micro-purchases.*
  - A. The aggregate dollar amount does not exceed the threshold established in 2 C.F.R. §200.67. The current threshold is \$10,000 and may be amended from time to time.
  - B. To the extent practicable, the City will distribute such purchases equitably among qualified suppliers.
  - C. Micro-purchases may be awarded without soliciting competitive bids or requesting Council authorization.
  - D. The Mayor is authorized to execute any necessary contracts for micro-purchases, as approved as to form by the City Attorney.

(3) *Small Purchases.*

- A. The aggregate dollar amount of the purchase is between the micro-purchase threshold and the simplified acquisition threshold of \$250,000, with the exception of contracts subject to ORC 735.05 which require sealed bid procedures.
- B. Small purchase procedures require that price or rate quotations will be obtained from an adequate number of qualified sources.
- C. These purchases may be awarded based on the quotes received without requesting Council authorization.
- D. The City may pre-qualify engineering and architectural firms for small purchase services under a quality-based selection process in accordance with Ohio Revised Code Sections 153.65 to 153.71.
- E. The City will maintain a listing of firms determined to be the most qualified to perform engineering and architectural services for each pre-qualified area. The listing will be ranked from the most qualified to the least qualified based on a scoring methodology for each area.
- F. As projects arise the City will negotiate with the most qualified firm. If negotiations are unsuccessful the City may terminate those negotiations and move onto the next most qualified firm.
- G. Each firm's pre-qualification shall not exceed three-years and requires annual updates on personnel, technical information, and any other information requested by the City to determine the firm remains pre-qualified for the services.
- H. The Mayor is authorized to execute any necessary contracts for small purchases, as approved as to form by the City Attorney.

(4) *Sealed bids.*

- A. Sealed bids are required to be used for firm fixed price contracts where the aggregate dollar amount of the purchase is \$75,000.00 or more for 2024; increased by three percent each year thereafter. This is the preferred method for construction projects. Bids are solicited from an adequate number of known suppliers, which cannot be less than two responsible bidders. The City will solicit bids in accordance with ORC 735.05, with the exception that public notice may be in any electronic form the City considers appropriate to sufficiently notify competing persons, including posting the notice on the City website. Purchases in excess of the above which do not require sealed bids include the following:
  1. Products and services of the severely disabled. Competitive bidding is exempt for those purchases from a qualified nonprofit agency pursuant to Ohio R.C. 4115.31 to 4115.35.
  2. Emergency purchases. Council may, by majority vote of Council, authorize the City to enter into contracts for work to be done or for the purchase of goods and services without formal bidding and advertising. This applies if an emergency is declared by the Mayor under section 131.01 or by providing adequate documentation to Council for emergency purchases.
  3. Purchases from governmental entities. The City may purchase equipment, services, materials or supplies from the State of Ohio, any department, division, agency, political subdivision of the State, or other cooperative purchasing organization of public entities without advertising and bidding. Section 9.48 Joint Purchasing Programs of the Ohio Revised Code is hereby incorporated by reference.

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- 4. Purchases of used equipment. Purchases of used equipment or supplies at an auction open to the public or at a public sale requesting the submission of written bids without competitive bidding.
- 5. Professional and/or personal services. The statutory provisions regarding competitive bidding for City contracts do not apply to contracts for professional and/or personal services. Professional services will be awarded under micro, small or competitive proposal requirements based on the size of the purchase. Professional services are a nonphysical product or service, including technology services, requiring specialized knowledge and skills of an intellectual nature.

B. For sealed bidding to be feasible, the following conditions will be present:

- 1. A complete, adequate, and realistic specification or purchase description is available.
- 2. Two or more responsible bidders are willing and able to compete effectively for the business.
- 3. The procurement lends itself to a firm fixed price contract and selection of the successful bidder can be made principally on the basis of price.

C. The following requirements will apply for sealed bids:

- 1. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised.
- 2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
- 3. All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly.
- 4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
- 5. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
- 6. Any or all bids may be rejected if there is a sound documented reason.

D. Contracts awarded under sealed bid procedures shall be based on the lowest, responsive, and responsible bidder as follows:

- 1. If more than three bids are received, the department director or City official responsible for the procurement shall select the three lowest responsive and responsible bidders and shall make a recommendation to Council in writing of the bidder to award the contract to.
- 2. If the lowest bidder is not recommended the director or City official shall provide in writing the reasons for not selecting the lowest price.
- 3. The director or City official shall also provide a proposed contract approved in form by the City Attorney and other accompanying documents needed for the final execution of the award of the contract.
- 4. Within 30 days of receipt of the recommendation and upon certification of the Finance Director that the amount required for the contract is lawfully appropriated and is in the

treasury or in the process of collection to the credit of the appropriate fund free from any previous encumbrance, Council shall place the matter on Council Agenda.

5. Upon approval of the recommendation Council shall pass an ordinance authorizing the Mayor to enter into such an agreement with the selected bidder.
6. Council may authorize the Mayor or director to further negotiate certain items of the agreement.
7. The Mayor shall be able to execute the contract as authorized. The Mayor shall report to Council any unforeseen delays in negotiation and execution of the contract.
8. Upon enactment of the ordinance the Director of Finance shall approve the encumbrance of sufficient funds to fulfill the obligation of the City. The Director of Finance shall remove any encumbrances when, in the Finance Director's judgment, the City no longer has any obligations with respect to the contract.

(5) *Competitive proposals.*

- A. Procurement by competitive proposal is conducted when sealed bids are not required and the amount is more than small purchase threshold of \$250,000. An adequate number of qualified sources submit an offer and either a fixed price or cost-reimbursement type contract is awarded.
- B. If this method is used, the following requirements apply:
  1. Requests for proposals will be publicly noticed and shall identify all evaluation factors and their relative importance. The notice may be in any electronic form the City considers appropriate to sufficiently notify competing persons, including posting the notice on the City's website. Any response to the publicized requests for proposals will be considered to the maximum extent practical.
  2. Proposals will be solicited from an adequate number of sources.
  3. The City will use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
  4. Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
  5. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services.
- C. Contracts awarded under competitive proposals will be as follows:
  1. The responsible department director or City official shall inform Council of the process and scoring used for all respondents.
  2. The responsible department director or City official will make a recommendation in writing of the respondent to award the contract to.
  3. Upon approval of the recommendation Council shall pass an ordinance authorizing the Mayor to enter into such an agreement with the selected respondent.
  4. Council may authorize the Mayor or director to further negotiate certain items of the agreement.

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- 5. The Mayor shall be able to execute the contract as authorized. The Mayor shall report to Council any unforeseen delays in negotiation and execution of the contract.
- 6. Upon enactment of the ordinance the Director of Finance shall approve the encumbrance of sufficient funds to fulfill the obligation of the City. The Director of Finance shall remove any encumbrances when, in the Finance Director's judgment, the City no longer has any obligations with respect to the contract.

(6) *Noncompetitive proposals.*

- A. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
  - 1. The item is available only from a single source.
  - 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
  - 3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City.
  - 4. After solicitation of a number of sources, competition is determined to be inadequate.
  - 5. There is an existing continuing contract in place or an existing contract has optional renewals and the Department Director and Finance Director or Designee have determined it is not feasible or cost beneficial to discontinue the current contract.
- B. Except for item (6)A.5, the Mayor or Mayor Designee shall inform Council of the circumstances that did not require competitive proposals and request an Ordinance authorizing the Mayor to enter into the agreement with the selected vendor. The Mayor shall be able to execute the contract as authorized. The Mayor shall report to Council any unforeseen delays in negotiation and execution of the contract.

(d) *Procurement compliance items.*

(1) *Suspension and debarment/prohibited bidder.*

- A. The City will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions will be made in the best interests of the City. Consideration will be given to such matters as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.
- B. The Mayor will have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. Vendors may be prohibited from bidding for a period not to exceed one year for the following:
  - 1. Has previously defaulted in its quotations to the City.
  - 2. Has failed to fulfill its obligations under a previous contract with or purchase by the City.
  - 3. Is presently disqualified from bidding or receiving any business from any other unit of local government within Franklin County or with the State of Ohio.
  - 4. Is presently debarred or suspended by the Federal Government under 2 C.F.R. §180.300.
- C. For contracts over \$25,000, the City will confirm that the vendor is not debarred or suspended under 2 C.F.R. §180.300 by either checking the federal government's System for Award

Management; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor.

(2) *Maintenance of procurement records.*

- A. The City will maintain records sufficient to detail the history of all procurements in accordance with the City's record retention schedule. These records will include, but not be limited to rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (including a cost or price analysis).

(3) *Retainage.*

- A. Notwithstanding any provision of general law, Contractors and vendors shall not be entitled to receive interest on funds temporarily retained on a contract pending final acceptance of work performed or goods supplied, nor shall the City of Gahanna be required to maintain a separate escrow account from which to pay any contractor or vendor.
- B. The City of Gahanna shall retain ten percent (10%) of the contract estimate until scope of work is fifty percent (50%) satisfactorily complete; thereafter, the City shall retain five percent (5%) of the contract estimate until scope of work is substantially complete; thereafter, the City shall retain one percent (1%) until scope of work is complete.

(4) *Proper public purpose.*

- A. Requests for the expenditure of public funds are not authorized unless they are for proper public purpose. Proper public purpose must meet two criteria:
  1. The expenditure is required for the good of all inhabitants or the objective is for the promotion of public health, safety, morals, general welfare, security, prosperity, and contentment of all inhabitants.
  2. The primary objective is to further public purpose even if an incidental private end is advanced.
- B. Council is the legislative authority for determining proper public purpose and sets annual appropriations for expending public funds for this purpose. The following types of expenditures are included as proper public purpose:
  1. Purchase of food and non-alcoholic beverages for meetings conducted for City business not to exceed the Federal Government Services Administration (GSA) meal per diem rate per person.
  2. Travel expenses for conducting City business not to exceed GSA mileage and meal per diem rates.
  3. Purchase of food, non-alcoholic beverages, and token gifts for employee relations activities. Food and non-alcoholic beverages shall not exceed the GSA meal per diem rate per person. Token gifts shall not exceed \$100 per person.

(Ord. No. 0010-2022, § 1(Exh. A), 3-17-22; Ord. No. 0085-2023, § 1(Exh. A), 12-18-23)

Ord. No. 0009-2022, § 1, adopted March 17, 2022, repealed the former § 133.02, and enacted a new § 133.02 as set out herein. The former § 133.02 pertained to vending machine income fund; creation and use and derived from Ord. 39-76, passed April 14, 1976.

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