

NOTICE

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CHAPTER 152

PURCHASES AND CONTRACTS

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CROSS REFERENCES

City Manager as Contract Officer – ADM. 133.01

SECTION 152.01 LEGISLATION REQUIRED FOR \$25,000.00 OR MORE

A. The City Manager may make contracts on behalf of the City involving an expenditure of less than \$25,000.00 (for which funds have been appropriated) without a separate resolution or ordinance of approval, but for contracts over that amount such legislative approval shall be necessary, except as provided below in this Section 152.01.

B. Where the matter involved is purchasing supplies, materials, utility services, or other items of a routine repetitive nature (for which funds have been appropriated), the City Manager is authorized to enter into a contract without a separate resolution or ordinance of approval, even if the price is \$25,000.00 or more.

C. Where an emergency exists involving health, safety or other aspects of city government, the City Manager may make contracts for expenditures of \$25,000.00 or more (for which funds have been appropriated) without a separate resolution or ordinance of approval; and in such a situation, the City Manager shall make a report to Council as soon as reasonably possible regarding the circumstances.

SECTION 152.02 FORMAL SEALED BIDDING

A. The duties imposed by this section are in addition to and not in place of the requirements of Section 152.01.

B. Formal sealed bids shall be used as part of the procedure of determining

the lowest and best contract for construction of improvements, for purchases of tangible supplies and materials, and for purchases of services (other than those of the learned professions, i.e. those requiring graduate degrees) reasonably anticipated by the City to cost \$25,000.00 or more, except as otherwise provided in subsequent paragraphs of this section. The type of advertisement or other solicitation for such bids, the length of time such advertisement or solicitation shall be continued, and all other details regarding the bidding procedure and subsequent award of contracts shall be as prescribed by the City Manager in written purchasing regulations which the Manager is hereby empowered to issue and to amend from time to time.

C. If after such advertisement or other solicitation no bids are received, or if all bids are rejected, the City Manager shall have the option to seek new sealed bids or to make the purchase through the competitive bargaining procedures referred to in Section 152.03 below, without legislative authorization in addition to this chapter.

D. Where an emergency exists involving health, safety, or other aspects of city government, the City Manager may not only enter into a contract for \$25,000.00 or more without a separate resolution or ordinance (to the extent the funds have been appropriated and as authorized in 152.01 C above) but may also do so without following either the sealed bidding procedure referred to above in paragraph B or the competitive bargaining procedures described in Section 152.03 and without legislative authorization in addition to this chapter. In such a situation, the City Manager shall make a report to the Council as soon as reasonably possible regarding the circumstances.

E. If special circumstances make it advisable that the City deal with a sole source supplier, the City Manager may enter into contracts with that sole source without legislative authorization in addition to this chapter and without following either the sealed bidding procedure referred to in this section or the competitive bargaining procedures referred to in Section 152.03 below. Change orders for additional work on public improvements may be treated as sole source supplier situations up to a total amount, for all such change orders on any particular contract, not to exceed 25% of the amount of the original contract. For purchases of work or materials over that 25% amount, the requirements of this chapter as to sealed bids or competitive bargaining shall apply (unless dispensed with by some other paragraph of this Section 152.02).

F. Where proximity of the supplier is a determinative factor, the City Manager shall have the option to make the purchase without legislative authorization in addition to this chapter and without following either the sealed bidding procedure referred to in this section or the competitive bargaining procedures referred to in Section 152.03 below.

G. As another exception to sealed bids and to competitive bargaining requirements, the City Manager is authorized to make purchases through the cooperative

purchasing programs described in Section 152.04 below.

H. Since in many instances the City can obtain lower prices and/or better goods and more favorable conditions through competitive bargaining than through sealed bids, the Council may by resolution substitute competitive bargaining for sealed bids whenever it sees fit to do so.

I. At any time and for whatever other reason it deems appropriate, the Council may by resolution dispense with sealed bids (and with the competitive bargaining procedures described in Section 152.03) as to any particular contract or purchase.

J. Where the matter involved is purchasing supplies, materials, utility services or other items of a routine and repetitive nature, the City customarily can obtain lower prices and/or better goods and more favorable conditions through competitive bargaining than through sealed bids. Accordingly, such purchases may be made through the competitive bargaining procedure described in Section 152.04 instead of the sealed bid method of purchasing.

SECTION 152.03 COMPETITIVE BARGAINING

Competitive bargaining shall be used as part of the procedure of determining the lowest and best contract for construction of improvements estimated to cost less than \$25,000 and for purchases of supplies, materials and services for less than \$25,000, subject to the exceptions for emergency, sole source, proximity and cooperative purchasing described in Section 152.02 above. The type of solicitation for informal competitive quotes and other details of such competitive bargaining procedures shall be as prescribed in written purchasing regulations issued and amended by the City Manager from time to time.

SECTION 152.04 COOPERATIVE PURCHASING PROGRAMS

A. As a competitive approach to purchasing which is an alternative to both the sealed bid and competitive bargaining procedures described above in this chapter, the City Manager shall also have authority to purchase tangible supplies and materials through cooperative purchasing programs without legislative authorization in addition to this chapter.

B. Such cooperative purchasing programs include but are not limited to the Local Government Purchasing Program sometimes referred to as SWOP4G, a separate program through the Office of State Purchasing (part of the Ohio Department of

Administrative Services) pursuant to Revised Code 125.04, and a program arranged by the Ohio Department of Transportation.

C. As part of any such cooperative purchasing program, the City Manager may agree that the City shall be bound by all contract terms and conditions prescribed by that program, including but not limited to, payment of a reasonable fee by the City to cover the administrative costs incurred by the program officials as a result of purchases by the City of Kettering. The City Manager may agree under this procedure that the City will pay the vendor directly for items received by the City.

SECTION 152.05 CONSTRUCTION CONTRACTS

As a charter city, the City of Kettering shall not be obligated to follow the statutory procedures regarding construction contracts, public improvements or professional design contracts including but not limited to Ohio Revised Code Sections 9.312, 9.313, 9.32, 9.33 through 9.332, 153.12-14, 153.50-52, 153.54, 153.56, 153.57, 153.571) and other applicable sections within R.C. 153. Instead, in addition to fulfilling the requirements of this Chapter 152 as to contracts and purchases, the City Manager is authorized to use such further procedures for construction contracts, public improvements and design contracts as he deems to be in the best interests of this City. (Cross Reference: see 152.02 E regarding change orders on construction contracts.)

SECTION 152.06 BLANKET PURCHASE ORDERS

A. A blanket purchase order is not based upon, and does not constitute, a contract obligating the City to purchase certain materials or services. Instead, such a blanket order merely allows or permits a series of routine and repetitive purchases of supplies, materials, utility service or other items from a named supplier up to the dollar figure stated in that order, but does not obligate the City to make any amount of purchases whatsoever. Such a purchase order, when issued and approved as required by this section, constitutes authority for City departments to make occasional purchases from that supplier without need for additional authorization from the City Council, City Manager or the Department of Finance.

B. Before any blanket purchase order is issued, it must be requested on a written document signed by the appropriate department director.

C. A blanket purchase order may be approved under this section for purchases totaling less than \$25,000.00, as long as the funds have been lawfully appropriated for that purpose and are in the treasury or in the process of collection to the credit of the appropriate fund, free from previous and then outstanding obligations or

certifications. The Finance Director shall sign a certification to that effect upon each blanket purchase order, and each such purchase order also shall be signed by the Purchasing Manager.

D. A blanket purchase order may be issued for purchases totaling \$25,000.00 or more but only on the basis of a separate resolution or ordinance of approval passed by the City Council, to the extent such approval is otherwise required by Chapter 152 dealing with purchases and contracts. For such blanket order so authorized by the City Council, the funds must also have been lawfully appropriated for that purpose and are in the treasury or in the process of collection to the credit of the appropriate fund, free from previous and then outstanding obligations or certifications. The Finance Director shall sign a certification to that effect upon each blanket purchase order, and each such purchase order also shall be signed by the Purchasing Manager.

E. Because blanket purchase orders are not used to set prices but instead merely establish the terms of purchase applicable as small amounts of the supplies, materials, services, etc. are purchased from time to time during the year at then-existing prices, the use of competitive bargaining procedures is not a prerequisite to issuance of such blanket orders.

F. The amount of time for which a blanket purchase order is to remain in effect shall be stated in that order and may not exceed twelve months nor the end of the fiscal year, whichever occurs sooner.

G. While the blanket purchase order is in effect, every separate purchase under it must be authorized in writing by the appropriate department head. Through this section of the codified ordinances, each such department head shall be deemed to hold delegated authority from the City Manager to bind the City to implementations of blanket purchase orders.

SECTION 152.07 KETTERING LOCAL PREFERENCE

A. When using Formal Sealed Bidding or Competitive Bargaining to procure commodities and equipment costing \$200,000 or less, the City may exercise a preference for local business as provided herein.

B. For the purposes of this Section 152.07, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to

"Sections" are, unless otherwise specified, references to Sections in this Chapter 152. Defined terms remain defined terms whether or not capitalized.

1. "Local business" means an individual or business entity that has continuously maintained a permanent office or other permanent facility (e.g., a manufacturing facility, warehouse, retail store, or other business purpose site) within the corporate limits of the City for the past two successive years preceding the making of a bid and has filed a return and paid a payroll or earnings tax to the City in the most recent quarter.

2. "Qualified local business" means a local business that has submitted a bid conforming to the specifications and who is not otherwise disqualified. Any of these factors will disqualify a local business from eligibility for the local preference: i. being on the debarred contractor list; ii. nonpayment of any tax, fee, lien, service charge, or other assessment; iii. failure to comply with the City's income tax code; iv. failure to faithfully perform or satisfactorily complete any previous contract with the City;

3. "Local preference" means that in determining the low bid for commodities and equipment costing \$200,000 or less, the City may allow a qualified local business to match the lowest and best bid received from a non-local business, if the qualified local business' bid was within five percent (5%) of the lowest and best bid received from a non-local business.

4. "Bid" means the price and other required information, if any, quoted to the City by a local or non-local business in response to an invitation to bid, a request for proposal, a request for qualifications, or other means of solicitation used by the City to purchase commodities and equipment.

5. "Non-local business" means an individual or business entity that does not meet the definition of local business.

C. In all invitations to bid, requests for proposal, requests for quotation, and other solicitations for purchase of commodities and equipment, the City shall indicate if local preference, as outlined in this section, is applicable in the evaluation and award of bids received.

D. In bids where the local preference is applicable, forms shall be included in the bid documents for local businesses to certify their qualifications as a local business, and shall authorize the City's Tax Division to release necessary information to verify their qualifications.

E. When purchasing commodities and equipment costing \$200,000 or less, the City may provide a qualified local business with the opportunity to match the lowest and best bid received from a non-local or non-qualifying business. If the lowest and best bid received is from a non-local or non-qualifying business, the qualifying local business that has submitted a bid to the City that conforms to the bid specifications and is within five percent (5%) of the lowest bid submitted by the non-local or non-qualifying business will be given the opportunity to match the lowest and best bid. If that qualifying local business declines to match the lowest and best bid, then the award will be made to the bidder submitting the lowest and best bid.

F. Ties between a qualifying local business and one or more non-local or non-qualifying businesses shall be broken in favor of the qualifying local business. Ties between two or more qualifying local businesses shall be broken by selecting the first bid received. If two or more Bids were received at the same time, then the tie will be broken through a coin toss method administered by the City Manager or the City Manager's designee until the winner remains.

G. The provisions of this section shall not be construed to create any private rights, claims, or causes of action on behalf of any person or entity, including, but not limited to, bidders, proposers, and suppliers. Bids from local businesses must comply in all respects with the applicable specifications. Nothing in this section shall waive or nullify evaluation of delivery, quality, or any other requirements and specifications.

H. The provisions of this section shall not apply to any City contract which is funded in whole or in part with contributions, grants, or loans from any agency of the State of Ohio, the Counties of Montgomery or Greene, or the United States Government, nor shall a local preference apply where it would be otherwise unlawful to utilize a local preference. Further, the provisions of this section shall not apply to emergency procurements, sole source procurements, procurements made through cooperative purchasing programs, or procurements where proximity of the supplier is a determinative factor.

I. The City Manager or City Manager's designee may promulgate rules and regulations for the purpose of administering this section.

J. No person shall provide false information regarding local business or qualified local business status. Doing so shall result in the bidder being prohibited from bidding on another City contract for two years from the date of submission of the bid containing false information.

SECTION 152.08 CONTRACT PROVISIONS

(A) Except as otherwise required by applicable state or federal law, a contract entered into by the City for the procurement of goods or services shall not include any of the following:

- (1) A provision that requires the City to indemnify or hold harmless another person.
- (2) Except in collective bargaining agreements, a provision requiring the City to submit to binding arbitration or any other binding extra-judicial dispute resolution process.
- (3) A provision that names a venue for any action or dispute against the City other than a court of proper jurisdiction in Ohio.
- (4) A provision that requires the City to agree to limit the liability for any direct loss to the City for bodily injury, death, or damage to property of the City caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents, or a provision that would otherwise impose an indemnification obligation on the City.
- (5) A provision that requires the City to be bound by a term or condition that is unknown to the City at the time of signing a contract, that negates the City's purchase order or one or more provisions thereof, that is not specifically negotiated with the City, that may be unilaterally changed by the other party, or that is electronically accepted by an unauthorized City employee.
- (6) A provision that is inconsistent with the City's obligations under section 149.43 of the Ohio Revised Code.
- (7) A provision that limits the City's ability to recover the cost of cover for a replacement contractor.
- (8) A provision for automatic renewal that would cause a violation of applicable law.
- (9) A provision that requires or results in the use or application of any state's law other than Ohio law in governing and interpreting the contract.

(B) If a contract contains a provision described in division (A) of this section, the provision is void ab initio, and the contract containing that provision otherwise shall be enforceable as if it did not contain such provision.

Legislative History: Ordinance 3544-92; passed 4/14/92. Ordinance 3555-92; passed 6/16/92. Ordinance 3629-94; passed 1/25/94. Ordinance 3699-96; passed 2/13/96. Ordinance 4302-18; passed 2/27/18; Ordinance 4415-24 passed 12/3/24.