

Ordinances

DIVISION 4. PURCHASING*

*Editor's note: Ord. No. 80-482, § 1, adopted May 23, 1995, amended former Div. 4, relative to purchasing, in its entirety to read as herein set out. The provisions of former Div. 4 derived from Code 1967, §§ 2-501--2-510 and Ord. No. 80-455, § 1, adopted May 10, 1994.

Sec. 2-331. Authority.

There is hereby established, as prescribed in the Charter, a division of purchasing under the direction and control of the controller, whose duties shall be set forth in this division. Rules and regulations are hereby promulgated by the council pursuant to Section 14.1, 14.2 and 14.3 of the City Charter.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-332. Definitions.

The following words and phrases, when used in this division, shall have the meanings respectively ascribed to them:

Contractual services shall mean any and all telephone, gas, water, electric light, and power service, towel and cleaning service; insurance, leases for all grounds and buildings, office or other space required by the using agencies; the rental, repair or maintenance of equipment, machinery and other city-owned personal property; professional and technical services and services provided to residents and property owners in the city through written agreement with the city.

Controller shall mean the controller, the deputy controller, any designated agent of the controller, or the purchasing agent.

Supplies, materials, and equipment shall mean any and all articles or things which shall be furnished to or used by any agency, including any and all printing, binding, stationery, forms, journals, publication advertising reports. These supplies, materials and equipment shall be defined the same as goods are defined pursuant to MCLA § 440.1101 et seq. as amended (PA 1962, No. 174 as amended), commonly referred to as the Uniform Commercial Code. Supplies, materials and equipment not defined as goods by the Uniform Commercial Code shall be defined as contractual services.

When a vendor provides supplies, materials, equipment, goods and services to the City of Warren, the solicitation and procurement of said contract shall be determined by the contract as a whole and by the dominant intent of the contract.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-333. Centralized purchasing.

Departments, divisions, offices and agencies of the city shall procure all equipment, material, supplies and services through the purchasing division of the department of accounting.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-334. Contracting authority and accounting control.

All purchases and contracts for acquisition of equipment, material, supplies, and goods and

services shall be initiated by the purchasing agent pursuant to a written requisition, or request for specifications for the office, department or agency whose appropriation will be charged. The mayor and city clerk are authorized to sign formal contracts on behalf of the city pursuant to the Warren City Charter and this division. A contract shall include a purchase order, specifications, general conditions, special conditions, plans, instructions and other items which are part of the bid package and proposal or combination thereof, as authorized by law. No purchase order or contract shall be issued to a vendor unless and until the proper funding is available in such office, department or agency by the department of accounting under procedures established by the controller.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-334.1. Labor harmony through prevailing wage and benefits for city projects.

(a) Definitions:

Construction mechanic means a skilled or unskilled mechanic, laborer, worker, helper, assistant, apprentice, journeyman or other professional designation working on a city project, but shall not include executive, administrative, professional, office or custodial employees.

City project means new construction, alteration, repair, installation, painting, decorating, completing, demolition, conditioning, reconditioning, or improvement of public roads, land either owned by the city or under the direction and control of the city, public buildings or public facilities authorized by a contracting agent, the cost of which is clearly anticipated to be in excess of fifty thousand dollars (\$50,000.00). "City project" shall not include work done pursuant to any collective bargaining agreement between the city and its employees.

Contracting agent means any officer, board, commission or authority of the city authorized to enter into a contract for a city project, or to perform a city project by the direct employment of labor.

(b) Requirements:

(1) Every contract for a city project which is executed between a contracting agent and a successful bidder or an approved responder to a request for proposal for a city project, entered into pursuant to a request for proposal advertisement and/or an invitation to bid for that city project, which requires or involves the employment of construction mechanics, and which is owned, controlled or financed, in whole or in part, by the city, shall contain an express term that the rates of wages and benefits to be paid to each class of mechanics by the bidder and all of his or her subcontractors shall be not less than the wage and benefits rate prevailing on similar projects in the city. The city's department of public service shall determine the prevailing wage at the rate established by the most recent survey of the Michigan Department of Consumer and Industry Services for prevailing wage determination under Act 166 of the Public Acts of 1965, as amended.

(2) A schedule of the prevailing wage and benefits for the classes of construction mechanics called for in a contract shall be made a part of the specifications for the work to be performed on a city project and shall be printed in the contract forms where work is to be done by contract.

(3) Every contractor and subcontractor on a city project shall keep posted in a conspicuous place on the construction site a copy of all prevailing wage and fringe benefit rates prescribed by the contract and shall keep accurate records showing the name, occupation, and actual wages and benefits paid to each construction mechanic employed by him or her in connection with said contract. This record shall be made available on demand for inspection by the contracting agent or the city.

(4) Contract specifications may include, when appropriate, a requirement that the successful bidder shall enter into a project labor agreement with the Greater Detroit Building and Construction Trades Council, AFL-CIO, and its affiliated unions for the development and construction of the project.

(5) The contracting agent, by written notice to the contractor and the sureties of the contractor known to the contracting agent, shall terminate the contractor's right to proceed with that part of the contract and city project for which less than the prevailing rates of wages and benefits have been paid or will be paid, and may proceed to complete the contract by separate agreement with another contractor. The contracting agent shall withhold payment for work done until liabilities for unpaid wages and excess costs to the city for reletting the work have been met.

(6) In addition to any penalty provisions provided for in this section, any contractor found to be in violation of this section by any contracting agent shall be prohibited for two (2) years from bidding on any city project, regardless of the anticipated cost of the contract to be bid.

(c) Retroactivity. The provisions of this section shall not apply to contracts entered into or the bids made before the effective date of this section [Sept. 23, 1997].
(Ord. No. 80-519, § 1, 9-23-97)

Editor's note: Ord. No. 80-519, § 1, adopted Sept. 23, 1997 amended ch. 2 by the addition of a new section 2-334.2, which provisions have been redesignated at the editor's discretion as section 2-334.1.

Sec. 2-334.2. Living wage requirements for service contracts.

(a) Purpose; application; exclusions. The intent of the following provisions is to ensure that the city requires for any contract for services in excess of fifty thousand dollars (\$50,000.00) the contractor who is employed to perform work for the City of Warren shall pay a living wage to all employees who are assigned to perform work on the City of Warren premises. Contracts for the purchase of goods and contracts to lease or purchase property are excluded from the application of this section.

(b) Definitions. For purposes of this section the following terms and phrases shall be defined as follows:

Contract for services shall mean the act of entering into a contract to perform services, including the subcontracting of services, however, contracts for the purchase of goods and contracts to lease or purchase property are excluded.

Contractor shall mean a person that contracts with the city to perform certain services.

Employer shall mean the person who engages employees to provide labor in exchange for payment of wages or salary.

Employee shall mean an individual who is employed by another to provide labor in exchange for payment of wages or salary.

Federal poverty line shall mean the official poverty line defined by the office of management and budget based on bureau of census data for a family of four (4), as adjusted to reflect the percentage change in the consumer price index for all urban consumers.

Health care benefits shall mean the right granted to an employee under a contract, certificate or policy of insurance to have payment made by a health care insurer or health care corporation for specified medical or health care services for the employee and dependents.

Living wage shall mean an hourly wage rate which is equal to or greater than the federal poverty line established for a family of four (4) for a forty-hour work week, fifty (50) weeks per year.

Person shall include firms, joint ventures, partnerships, corporations, clubs, and all associations or organizations of natural persons, either incorporated or unincorporated, however operating or named, and whether acting by themselves or by a servant, agent or fiduciary, and includes all legal representatives, heirs, successors and assigns thereof.

Plant Rehabilitation and Industrial Development District Act shall mean Public Act 198 of 1974, MCL 207.551 et seq.

(c) Limitations on contracts for services. The city shall not enter into any contract for services with any contractor who does not demonstrate that it pays its work force a living wage which is equal to one hundred twenty-five (125) percent of the federal poverty line, unless health care benefits are provided to its employees equal to the level of benefits customarily provided in the industry, then the contractor shall demonstrate that it pays its work force a living wage which is equal to one hundred (100) percent of the federal poverty line. The contractor shall be required to maintain this rate of pay for the duration of the contract period.

(d) Compliance with adjustments in the federal poverty line. The purchasing director, his or her designee or other employee designated by city council, shall serve as the contract compliance auditor. The contract compliance auditor shall monitor the federal poverty line and shall notify anyone with a service contract with the city of any adjustment in the federal poverty line. The contract compliance auditor shall require all contractors with service contracts with the city to annually demonstrate compliance with the requirements contained in subsection (c) of this section. In addition, any contractor who is required to pay its work force a living wage under subsection (c) of this section shall post a notice of such requirement in the work place during the contract period. The notice shall also state that if the contractor has failed to comply with the requirement of subsection (c) of this section that the employee may file a notice of noncompliance upon the City of Warren contract compliance auditor and serve a copy on the contractor.

(e) Notice of non-compliance. Any employee of a contractor who believes the contractor has failed to comply with subsection (c) of this section, shall file a notice with the contract compliance auditor and serve it on the contractor alleging noncompliance. Upon receiving the notice alleging non-compliance, the auditor shall forward a copy to the living wage appeal committee for review. The auditor shall determine the accuracy of the allegation and shall notify the contractor to submit proof of compliance within thirty (30) days or it shall be grounds for

termination of the contract.

(f) Non-compliance. In the event, the auditor determines that a contractor has failed to comply with the provisions of this section, the failure to rectify the non-compliance within thirty (30) days shall be grounds for the termination of a contract for services.

(g) Limitation on bid acceptance. The city shall not accept any bids for a period of five (5) years from any contractor who, while contracting with the city, had failed on two (2) separate occasions to comply with subsection (c) of this section during the previous five-year period.

(h) Exemptions from application of this section. The following exemptions from compliance with this section shall apply:

(1) Any public corporation shall be exempt from the provisions of this section;

(2) Any private corporation that has received 501 (c)(3) qualification, which has ten (10) employees or less, shall be exempt from compliance with this section;

(3) The provisions of this section shall not apply where there is an applicable collective bargaining agreement;

(4) The provisions of this section shall not apply where federal, state, or local law requires payment of a prevailing wage;

(5) The provision contained in subsection (c) of this section requiring payment of a living wage as defined in this section does not apply to any employee enrolled in a job training program, summer youth employment program or work study program not to exceed ninety (90) days;

(6) The living wage appeal committee may recommend individual or group exemptions from the application of this section in cases in which compliance with this section would cause an economic hardship. All exemptions under this subsection shall be subject to city council and mayoral approval.

(i) Appeal from application of this section. Any person desiring to contract with the city shall have the opportunity to appeal the application of this section to the living wage appeal committee. The appeal must be filed with the purchasing division at least fifteen (15) days prior to the deadline for the submission of bids. The living wage appeal committee shall consider the request at a public meeting convened in accordance with the open meetings act. The committee may exempt a contractor from the application of this section upon demonstration of the following:

(1) The proposed contract is implemented through the tri-county cooperative and payment of the living wage as defined in this section is not required thereunder; or

(2) The benefit of applying this section is clearly outweighed by the harm resulting from the application of this section.

(j) Membership of the living wage appeal committee. The living wage appeal committee shall consist of five (5) members: the mayor or designee; the city controller or designee; the purchasing director or designee; a member of the Warren-Centerline Chamber of Commerce as designated by the mayor and confirmed by city council; and a Warren resident designated by the Michigan State AFL-CIO appointed by the mayor and confirmed by the city council. Each member of the committee shall serve for a three-year term. The committee shall meet as necessary to review any appeal filed for exemption from the application of this section.

(k) Effective date. The provisions of this section shall not apply to any contract executed prior to the effective date of this section.

(Ord. No. 80-550, § 1, 1-11-00; Ord. No. 80-596, § 1, 4-8-03)

Sec. 2-334.3. Application of living wage requirement to industrial facilities exemption certificates.

The plant rehabilitation and industrial development district act provides for the establishment of plant rehabilitation districts and industrial development districts in local governmental units and authorizes the exemption of industrial property from certain taxes pursuant to an industrial facilities exemption certificate. In applying the provisions of this act, the city shall also require compliance with the following ordinance provisions:

(1) The city shall not grant any industrial facilities exemption certificate unless it is demonstrated that the petitioner pays its work force a living wage as defined in section 2-334.2 which is equal to one hundred and twenty-five (125) percent of the federal poverty line, unless health care benefits are provided to its employees equal to the level of benefits customarily provided in the industry, then the petitioner shall demonstrate that it pays its work force a living wage as defined in section 2-334.2 which is equal to one hundred (100) percent of the federal poverty line. The petitioner shall be required to maintain this rate of pay for the duration of the exemption period.

(2) The petitioner shall be required to comply with adjustments in the federal poverty line during the exemption period and shall be required to annually demonstrate compliance with this requirement.

(3) In the event the city determines that a petitioner has failed to comply with the requirements of this section, the failure to rectify the non-compliance within thirty (30) days shall be grounds for the revocation of the industrial facilities exemption certificate.

(4) The provisions of this section shall not apply to a plan rehabilitation or industrial development district established prior to the effective date of this section; nor to an industrial facilities exemption certificate approved prior to the effective date of this section.

(5) The provision contained in subsection (1) requiring payment of a living wage does not apply to any employee enrolled in a job training program, summer youth employment program or work study program to exceed ninety (90) days.

(6) Any person desiring to appeal the application of this requirement, may file a petition for appeal with the living wage appeal committee as provided in subsection 2-334.2(i).
(Ord. No. 80-550, § 1, 1-11-00)

Sec. 2-335. Using agencies; requirements, filing.

All using agencies of the city shall file with the city controller a letter of use and function with their estimate of requirements in supplies, materials, equipment, and contractual services, at such times and for such future periods as the controller shall prescribe and further, that in order to encourage bulk or fleet purchases, the controller shall have authority to standardize specifications as may be necessary throughout the city.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-336. Purchases, requisition required; issuance, conditions.

The city controller shall not issue any purchase order, except in cases of emergency, until a requisition has been submitted, signed by the head of the using department or agency, and approved by the controller, showing that there is sufficient funding for that purpose to defray the amount of such order.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-337. Procurement methods.

Procurement transactions shall be conducted through fair and open competition to satisfy the public need for equipment, material, supplies and services at economical prices. The following source selection techniques shall be employed to provide effective competition in the procurement process:

- (a) Small purchase quotations.
- (b) Sealed bidding.
- (c) Merchandise for resale-market quotations.
- (d) Proposals for professional or technical services or services provided to residents and property owners in the city through written agreement with the city.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-338. Small purchase transactions.

(a) Quotations shall be obtained for procurement of equipment, material, supplies, goods and services (other than professional or technical or services provided to residents and property owners in the city through written agreement with the city) costing between one thousand dollars (\$1,000.00) and ten thousand dollars (\$10,000.00), and below one thousand dollars (\$1,000.00) at the discretion of the purchasing agent.

Professional and technical services or services provided to residents and property owners in the city through written agreement with the city costing up to ten thousand dollars (\$10,000.00) shall be obtained through selection by the specifications committee. The purchasing agent shall act upon the recommendation of the majority vote of the specification committee in procuring the

above described services. The city council representative placed on the specification committee shall possess the express authority of the city council to exercise his/her authority on the specification committee.

Quotation procedures shall be established by the department of accounting, subject to review by the city council to insure that related purchase orders shall be awarded on the basis of low responsible quotation and cost-effective purchase.

In case of actual emergency and with the consent of the city controller, any using agency may purchase directly any supplies, materials, equipment or goods whose immediate procurement is essential to prevent delays in the work of the using agency which may vitally affect the life, health or convenience of citizens.

(b) Petty cash purchases for items constituting supplies, materials and equipment may be authorized by the department of accounting under rules and regulations established by the city controller.

(c) Procurement requirements shall not be artificially provided so as to constitute a small purchase under this section.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-339. Spot market purchases.

(a) Spot market purchases are defined as the procurement of a commodity (not a contractual service) in the open market through the quotation process to obtain the lowest price available at the time the item is needed; notwithstanding the annual cumulative purchasing total of such commodity can be projected to exceed ten thousand dollars (\$10,000.00).

(b) Upon the recommendation of the department of accounting, the city council may authorize the purchasing agent to make spot market purchases of a specific item for a specified period of time, when in the judgment of the city council such authorization would be in the best interest of the city.

(c) After each spot market purchase the purchasing agent shall report to the mayor and the city council the circumstances involved, including the name and bid of firms submitting quotations, the quotation selected, and the amount of the order placed.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-340. Sealed bidding.

(a) Sealed bidding shall be used for procurement of equipment, material, supplies, goods and services costing ten thousand dollars (\$10,000.00) or more, except:

(1) Those of an emergency nature as outlined in section 2-338(a).

(2) Merchandise purchased for resale.

(3) Services of a professional or technical nature and services provided to residents and

property owners in the city through written agreement with the city.

(4) In other limited situations identified in the quotation procedures established by the department of accounting and reported to the city council in the bid report recommending award of a contract where the sealed-bidding process may discourage competitive bidding and/or not be cost-effective.

City council award of all contracts above the dollar limitation established by section 2-338(a) shall be required except in the case of merchandise purchased for resale.

(b) Plans and specifications for items to be procured under sealed bid shall be prepared and filed for public inspection in the office of the purchasing agent.

(c) The purchasing agent may require bid deposits, performance bonds and liability insurance as part of the procurement process. The purchasing agent may require adequate security to be provided by the bidder or contractor when, in his discretion, he deems it to be necessary for the protection of the public interest. When such security is necessary, a certified cashier's check will be held as a guaranty that such a bidder will enter into the contract in accordance with the terms of such advertisement and bid. Provided further that a bid bond may be used for such guaranty at the discretion of the purchasing agent.

(d) A specifications committee consisting of the purchasing agent, a member of city council and the head of the department, office or agency for whom the procurement is being made, shall approve specifications and shall recommend the low responsible and cost-effective bid for award at a regular or special meeting of the city council. When judged necessary by the committee, the city engineer or other technically qualified person, may be designated to serve as an additional member of the specifications committee. No contract shall become operative until approved as to legality and form by the department of law.

(e) The mayor and clerk are authorized to sign contracts awarded under this section in excess of ten thousand dollars (\$10,000.00). No contract shall become operative until approved as to legality and form by the department of law.

(f) If the amount of any expenditure or sale of any item is estimated to exceed one hundred thousand dollars (\$100,000.00) in any one (1) year, no such expenditure or sale shall be approved by council until thirty (30) days after it has been presented to council and, in the case of a purchase of services, after a report is made in writing to council by the controller specifying the experience, financial reliability and references of the contractor to whom award of the contract is proposed, the requirements of this section 2-340(f) may be waived where immediate procurement is essential to protect the life, health, or convenience of citizens, upon a majority vote of council.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-341. Merchandise for resale.

Because of the commercial nature and product characteristics of the type of procurement, the purchasing agent is authorized to purchase merchandise for resale through competitive quotation in the open market.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-342. Professional or technical services.

Engagements involving professional or technical services or services provided to residents and property owners in the city through written agreement with the city costing from in excess of ten thousand dollars (\$10,000.00) shall be recommended for award to the city council by the review panel after requests for proposals have been issued and reviewed as follows:

(a) A review panel shall be assembled, consisting of the head of the department, office or agency requesting the service, a member of city council, the controller, and such other persons who may be appointed by the mayor. The city council representative placed on the review panel shall possess the express authority of the city council to exercise his/her authority on the review panel.

(b) The review panel shall identify a list of qualified professional or technical firms or persons to which a "Request for Proposal" shall be issued.

(c) The review panel shall study the proposals submitted, and by majority opinion shall recommend to the mayor and city council that firm or person deemed to possess the best combination of professional or technical skills, related experience, demonstrated responsibility, and a reasonable cost.

(d) The mayor and city clerk are authorized to sign contracts awarded under this section after approval by city council. No contract shall become operative until approved as to legality and form by the department of law.

(e) To provide for continuity of effort, or uniformity of results, the council may extend an existing contract within the parameters of the Warren City Charter for professional, technical or contractual services as defined herein.

(f) When requests for proposals are issued:

(1) A copy shall be sent to the council office and include specifications.

(2) When responses are returned, a list of all interested parties shall be sent to the council office.

(3) When a proposal is accepted and sent to council for approval, it should also include the information why it was chosen and others were rejected, and also a financial history and references from other jobs that it has done.

(g) If the amount of any expenditure or sale of any item is estimated to exceed one hundred thousand dollars (\$100,000.00) in any one (1) year, no such expenditure or sale shall be approved by council until thirty (30) days after it has been presented to council and, in the case of a purchase of services, after a report is made in writing to council by the controller specifying the experience, financial reliability and references of the contractor to whom award of the

contract is proposed, the requirements of this section 2-342(g) may be waived where immediate procurement is essential to protect the life, health, or convenience of citizens, upon a majority vote of council.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-343. Sole procurement.

The city council may authorize a contract or the purchasing agent may authorize small purchase transactions (for supplies, material, equipment and goods) from a sole source when it can be demonstrated there is but a single supplier available.

Such sole sources include but are not necessarily limited to: (1) proprietary replacement parts available only from authorized distributors; (2) professional or trade memberships, subscriptions, and publications; (3) public utilities and telephone service; and (4) federal, state and local government or agency contracts.

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-344. Cooperative purchasing.

The city may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, equipment, goods or services with one (1) or more public procurement units. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state or federal public procurement unit contracts which are made available to the city. Each cooperative purchasing agreement is subject to approval of the council, if the procurement of goods or services exceed ten thousand dollars (\$10,000.00).

(Ord. No. 80-482, § 1, 5-23-95)

Sec. 2-345. Disposition of city equipment, material or supplies.

The purchasing agent is authorized to dispose of equipment, material and supplies which have become obsolete, or for which the city has no further need under the following procedures:

- (a) The purchasing agent may effect disposition through trade-in against the purchase price of new or replacement items, as part of the procurement process outlined in this division.
- (b) The purchasing agent may sell such items at a public auction, or through a sealed bid process, to the highest responsible bidder. Such auction or sealed bid process shall be advertised at least once in the official newspaper of the city at least ten (10) days prior to such public auction or public opening of sealed bids.
- (c) Specialized items relatively unique to a municipal operation (such as fire apparatus, sewer cleaning equipment, street sweepers, etc.) may be sold by the purchasing agent (after advertisement in the official newspaper of the city, and in selected trade journals through open bids, or through a negotiated price with available sources including other units of government).
- (d) Upon recommendation of the purchasing agent, the council may, by resolution, authorize alternative methods of disposition intended to result in a greater benefit to the city.
- (e) Items which cannot be sold through public auction, or through the sealed or open bid

process, may be sold as salvage, or scrapped by the purchasing agent if the item has no market value. A disposition record of all such items shall be maintained by the purchasing agent for three (3) years.

(Ord. No. 80-482, § 1, 5-23-95)