

**Cincinnati Municipal Code**  
**CHAPTER 317 LIVING WAGE**

**Sec. 317. Legislative Intent and Purpose.**

It is the purpose of this chapter:

- (1) To increase the quality and reliability of services procured for the city or provided to city inhabitants by contractors or vendors, by promoting higher productivity and retention of employees working on city contracts;
- (2) To use city spending to encourage the development of jobs paying wages above the poverty level;
- (3) To use city spending and procurement of services to require covered employers that provide services to the city to pay their employees a "living wage" - a wage sufficient to meet their employees basic subsistence needs;
- (4) To raise the income of low-income working people and their families employed by covered employers on city contracts;
- (5) To permit exemptions from the provisions of this chapter in certain limited circumstances; and
- (6) To provide incentives for covered employers to provide health insurance to their employees.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1. Definitions.**

For the purpose of this chapter, the words and phrases defined in the sections hereunder shall have the meanings respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1-C. Contractor.**

"Contractor" means any person that enters into a service contract with the city in an amount equal to or greater than \$20,000.00.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1-C2. Covered Employee.**

"Covered employee" means a full-time city employee or any person who is employed as a service employee of a contractor or subcontractor under the authority of one or more service contracts with the city and who expends any of his or her time thereon, including but not limited to: restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; gardeners; waste management employees; and clerical employees, provided however, that persons who are employed pursuant to federal or state laws relating to prevailing wages shall be exempt from this chapter. Specifically, a "covered employee" is the persons or persons employed by a "covered employer" to perform the specific services which are covered or funded by the contract with the city.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1-C3. Covered Employer.**

"Covered employer" means a contractor or subcontractor that has not been granted an exemption from this chapter.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1-H. Health Benefits or Employee Health Benefits.**

"Health benefits" means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees, provided that the employer cost or

contribution for a "family" plan equals no less than \$1.50 an hour for the average work week of such employee.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002; a. Ord. No. 74-2003, eff. April 25, 2003)

**Sec. 317-1-L. Living Wage.**

"Living wage" means a wage equal to the level established in Section 317-3 of this chapter.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1-P. Person.**

"Person" means any individual, partnership, corporation, association or other entity which may contract with the city for the provision of services.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1-S. Service Contract.**

"Service contract" means a contract let to a contractor by the city for the furnishing of services to or for the city that involves an expenditure equal to or greater than \$20,000.00 (except contracts where services are incidental to the delivery of products, equipment or commodities)

Grants or other types of financial assistance provided to persons contractually or through various city development programs which do not involve the furnishing of services to or for the city are not considered "service contracts" for the purpose of this chapter.

Similarly, grants or other types of financial assistance provided to charitable or social service agencies contractually or through various city programs are not considered "service contracts" for the purpose of this chapter.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-1-S1. Subcontractor.**

"Subcontractor" means any person who enters into a contract with a contractor to assist the contractor in performing a service contract.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-3. Living Wages Required.**

(a) The city and every covered employer shall pay its covered employees a living wage as determined in this section:

For a covered employer that provides employee health care to its employees, the living wage shall be \$8.70 per hour, or the adjusted amount hereafter established in subsection (c) hereof;

For a covered employer that does not provide health care to its employees, the living wage shall be \$10.20 per hour, or the adjusted amount hereafter established in subsection (c) hereof;

(b) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection (a) hereof, a covered employer shall furnish proof of said health care coverage and payment therefor to the city manager or the manager's designee.

(c) The amount of the living wage established in this section shall be adjusted upward no later than April 30, 2003, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2002 and 2003. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar's year's poverty guidelines to the

present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under this section by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing wage levels established herein. Prior to April 1 of each calendar year, the city will notify any covered employer of this adjustment by posting an announcement in the City Bulletin and/or by writ ten letter in the case of a covered employer that has provided an address of record to the city.  
(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-5. Duration of Requirements.**

A covered employer shall be required to comply with this chapter for the term on their contract with the city.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-7. Waivers.**

Council reserves the right to waive the requirements of this chapter upon a finding and determination that waiver is in the best interests of the city. When an emergency has been declared by the mayor, council or the city manager, (for example, when there is an emergency due to natural disasters and there is a need for immediate services), waivers shall be granted without the need for consideration by council when services to be contracted are necessary because of the emergency.

Waivers from the chapter are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002; a. Ord. No. 74-2003, eff. April 25, 2003)

**Sec. 317-9. Exemptions.**

(a) An employee who is a trainee in a job training program which meets city job training standards as outlined in regulations promulgated by the city manager pursuant to this chapter, shall be exempt for the period of training.

(b) An employee who is under 21 years of age, or employed by a nonprofit corporation for after school or summer employment or as a trainee for a period not longer than 90 days, shall be exempt.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-11. Contract or Agreement Language.**

All "Requests for Proposals" and city contracts subject to this chapter shall contain the following two paragraphs or substantially equivalent language:

(a) This contract is subject to the Living Wage provisions of the Cincinnati Municipal Code. The provisions require that, unless specific exemptions apply or a waiver is granted, all employers (as defined) under service contracts shall provide payment of a minimum wage to employees (as defined) of \$8.70 per hour with health benefits (as defined) or otherwise \$10.20 per hour. Such rate shall be adjusted annually pursuant to the terms of the Municipal Code.

(b) Under the Living Wage provisions, the City shall have the authority, under appropriate circumstances, to terminate this contract and to seek other remedies.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-13. Obligations of Contractors.**

(a) All proposed contractors subject to the provisions of this chapter shall submit a completed declaration of compliance form, signed by an authorized representative,

along with each proposal. The completed declaration of compliance form shall be made a part of the executed contract.

(b) Contractors shall require their subcontractors to comply with the provisions of this chapter. Language indicating the subcontractor's agreement to comply shall be included in the contract between the contractor and subcontractor. A copy of such subcontracts or other such agreements shall be submitted to the city.

(c) Contractors and subcontractors shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of this chapter. A copy of such notification shall be retained by contractors and subcontractors which may be subject to audits and/or other forms of monitoring. The notification must include the following:

(1) *Minimum Compensation.* The initial rates of \$8.70 with health benefits or \$10.20 without health benefits will be adjusted annually. The living wage shall be upwardly adjusted each year no later than April 30th in proportion to the increase at the immediately preceding December 31st over the year earlier level of the Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.

(2) *Health Benefits.* Proof of the provision of such benefits shall be noted on the declaration of compliance form and submitted to the city along with the contractor's bid proposal. Health benefits shall be provided to part-time employees as well as full-time employees.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002; a. Ord. No. 74-2003, eff. April 25, 2003)

#### **Sec. 317-15. Retaliation or Discrimination.**

Covered employers shall not discharge, reduce the compensation of or otherwise discriminate against any employee for making a complaint to the city, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this chapter.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

#### **Sec. 317-17. Monitoring, Investigation and Compliance.**

The provisions of this chapter will augment the city's normal and customary procedure for administering its contracts. The city shall administer the requirements of this chapter as follows:

(a) The city manager shall develop rules and regulations to review contract documents to insure that relevant language and information are included in city RFP's, agreements and other relevant documents.

(b) The city manager shall develop rules and regulations for the monitoring of the operations of the covered employers to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a contractor or subcontractor relative to this chapter. In such cases, the city will attempt to resolve the problem within 30 days.

(c) Where a violation of any provision of this chapter has been determined, the contractor or subcontractor will be given a written notice by the city per the rules and regulations promulgated by the city manager. Should the violation continue and/or no resolution is imminent, the city shall pursue all available legal remedies, including but not limited to any or all of the following penalties and relief:

1. Suspension and/or termination of the contract or subcontract for cause;
2. Payback of any or all of the contract awarded by the city;

3. Deem the contractor or subcontractor ineligible for future city contracts and/or financial assistance until all penalties and restitution have been paid in full. (Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002; a. Ord. No. 74-2003, eff. April 25, 2003)

**Sec. 317-19. Employee Complaint Process.**

An employee who alleges a violation of any provision of this chapter may report such acts to the city and, at the employee's discretion, exhaust available employer internal remedies. The complaint to the city shall be handled as follows:

(a) The employee shall submit to the city a completed complaint form and copies of all documents supporting the allegation.

(b) The city shall notify the agency and the employer of the complaint and seek resolution within five days from receipt of the complaint form. If resolution is not accomplished, the city shall initiate an investigation and seek legal remedies, if appropriate.

(c) An employee claiming retaliation (such as termination, reduction in wages or benefits or adverse changes in working conditions) for alleging noncompliance with this chapter may report the alleged retaliation in the same manner as the initial complaint.

(d) The complainant's or witness' identity will not be divulged to the employer without the individual employee's written consent.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-21. Contract Review Process and City Reporting and Record Keeping.**

The city manager shall develop an administrative procedure and appeal process for determining compliance with this chapter.

(a) Regarding the appeal process, it shall be available to every bidder/proposer who has been deemed noncompliant with this chapter, or who disputes the determination of applicability of this chapter to its business operation which will be involved in the proposed contract. A contract shall not be executed until there is resolution of the relevant appeal.

(b) Appeals shall be filed with the city manager within seven calendar days of the date of the notice of the city's written determination of noncompliance and reasons therefor, or written determination of the applicability of this chapter.

(c) The city manager shall maintain records pertaining to all complaints, hearings, determinations and findings, and shall submit a regular report on compliance with this chapter no less than annually to the city council. Special reports and recommendations on significant issues of interest to the council will be submitted as deemed appropriate.

(d) Covered employers who fail to submit documents, declarations or information required to demonstrate compliance with this chapter shall be deemed non-responsive and subject to disqualification.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-23. Collective Bargaining Agreement.**

All of the provisions of this chapter, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

**Sec. 317-25. Application to New Contracts.**

The provisions of this chapter shall apply to:

(a) Bids, requests for proposals, and the contracts subsequently entered into after the

effective date of the ordinance codified in this chapter;

(b) Renewals and/or amendments to contracts entered into after the effective date of the ordinance codified in this chapter which by themselves meet the financial threshold requirement of this chapter.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002; a. Ord. No. 74-2003, eff. April 25, 2003)

**Sec. 317-27. Effective Date.**

This chapter shall become effective on February 1, 2003, and shall apply to contracts dated on or after such date.

(Ordained by Ord. No. 362-2002, eff. Dec. 26, 2002)

## **Cincinnati Municipal Code**

### **CHAPTER 319 – PROMPT PAYMENT SYSTEM**

#### **Sec. 319. Legislative Intent and Policy.**

It is the policy of the city to make timely payment to contractors, as defined herein, of amounts which are due and owing under contracts, purchase orders, and leases entered into by the city, and to authorize and mandate the payment of interest on such amounts due and owing to contractors when such payments are unduly delayed by the city through no fault of the contractor, except where unforeseen circumstances or legal impediments beyond the control of either the city or the contractor prevent such timely payment. This chapter shall apply to all contracts as defined herein, unless prohibited by law, by the source of city funding, or as otherwise provided herein.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

#### **Sec. 319-1. Definitions.**

For the purpose of this chapter, the words and phrases defined in the sections hereunder shall have the meanings respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

#### **Sec. 319-1-A. Account Payable.**

"Account payable" means a liability incurred by the city pursuant to a contract, evidenced in a demand upon the city and legally due and payable by the director of finance.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

#### **Sec. 319-1-A2. Division or Department.**

"Division or department" is any administrative division, board or commission of the city.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

#### **Sec. 319-1-C. Complete and Responsive Invoice.**

"Complete and responsive invoice" means an invoice that:

- (a) Complies with any and all applicable requirements of the city's Charter, ordinances, regulations, executive orders or fiscal rules (including, but not limited to the prevailing wage ordinance), or any other applicable city, state or federal law;
- (b) Reflects the goods and/or services provided by the contractor to the agency or department scheduled to receive them;
- (c) Reflects goods and/or services that comply with contract or project specifications and are satisfactory;
- (d) Reflects goods and/or services that have successfully met requirements for any extended testing, setup, assembly and/or acceptance period;
- (e) Clearly states an invoice date, a unique invoice number and, if applicable, any city generated purchase order or contract number related to the transaction for which the invoice is being generated;
- (f) Reflects prices on the invoice that are reasonable or just and in accordance with the order or bid;
- (g) Is submitted by a contractor that has provided to the director of finance or designee an accurate taxpayer identification number and all other information necessary to identify the recipient of the city payment to the U S Internal Revenue Service or other taxing authority;
- (h) Is submitted in substantial compliance with the city's billing or invoicing instructions, including but not limited to instruction as to provision or delivery of the invoice to the proper city official or agency;

(i) Reflects that, if applicable, the contractor has complied with all pertinent requirements of and/or special conditions and other terms or conditions of the contract at issue;

(j) Is otherwise complete and free of errors;

(k) Reflects that no unresolved disputes exist between the contractor and the city with respect to the subject matter of the invoice.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-C2. Contract.**

"Contract" shall mean a formally executed, written contract or lease, or purchase order or other lawfully incurred contractual purchase obligation, prepared and undertaken in compliance with standard city procurement procedures, evidencing a lawfully incurred contractual obligation to which the city is a party and incurs financial obligations to the other party or parties.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-C3. Contractor.**

"Contractor" means a contractor, consultant, vendor or lessor under a city contract.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-D. Day.**

"Day" means calendar day, except city holidays.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-D1. Discount.**

"Discount" means a contractor authorized reduction of an account payable for early payment of a demand.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-D2. Due Date.**

"Due date" means the day a payment made by the city pursuant to a complete and responsive invoice is scheduled to be paid without assessment of interest. Such date may be calculated using contract payment terms specified in the invoice or as soon thereafter as may be practicable, as set out in Section 319-5 below.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-E. Expending Authority.**

"Expending authority" means the official of the city division or department having authority by ordinance to expend monies with respect to a particular invoice, or such person's designee.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-I. Interest Accrual Date.**

"Interest accrual date" is the date upon which the city begins to incur an obligation to pay interest on an unpaid complete and responsive invoice previously received by the city.

The interest accrual date shall be the later of thirty (30) days after the date on which the city division or department responsible for ordering the goods or services receives a complete and responsive invoice as evidenced by the city's time-stamped imprint, or the date to which the interest accrual date applicable to such invoice is adjusted as set out herein.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-I2. Invoice Date.**

"Invoice date" is the date of receipt by the city of the contractor's complete and responsive invoice.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)



**Sec. 319-1-P. Payment.**

"Payment" means:

- (a) The city treasurer places a city check or other commercial payment instrument into the U S Mail, postage prepaid,
- (b) A city check or other commercial payment instrument is available for pick-up at the request of the contractor or the expending authority, or
- (c) Funds are transferred electronically from the city to the contractor.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-P2. Prompt Payment Dispute Arbiter.**

"Prompt payment dispute arbiter" is the individual designated to settle disputes. Such arbiter shall be appointed by the city manager or designee with the advice and consent of the finance director.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-1-P3. Prompt Payment.**

"Prompt payment" means issuance of a city check or other commercial payment instrument by the city treasurer in payment of an account payable on the basis described below in Section 319-5(a).

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

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**Sec. 319-1-S. Subcontractor.**

"Subcontractor" means subcontractors, sub-consultants and suppliers of all tiers under contractors as defined herein.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-3. Exclusions from Coverage of Chapter.**

The following categories of payments are excluded from coverage by this chapter and shall not bear interest as set out herein:

- (a) Pre-payments;
- (b) Employee reimbursements;
- (c) Refunds;
- (d) Retainage prior to final payment;
- (e) Payments for which the contractor voluntarily agrees to waive interest;
- (f) Contracts in which employees are paid through the regular city payroll process;
- (g) Settlement agreements entered into by the law department;
- (h) Non-contractual assistance payments including but not limited to earned income credits;
- (i) Workers' compensation employee and provider compensation claims;
- (j) Payments to contractors drawn down directly from non-city accounts;
- (k) Other claims or litigation against the city and/or its employees cognizable in any court, arbitration, or administrative proceeding;
- (l) Lease-purchase agreements, loans or agreements similar in concept and execution, that require periodic standardized payments by the city;
- (m) Contractual payments for which the contractor has willfully refused to follow billing or invoice submittal instructions duly provided by the City.;
- (n) Payments to utility companies for on-going utility service used by the City;
- (o) Incomplete and/or non-responsive invoices.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-5. Process for Prompt Payment of Invoices and for Payment of Accrued Interest.**

(a) This section shall apply to and govern the process for prompt payment and for payment of accrued interest on a complete and responsive invoice as set out in Section 319-13 below. Interest in the amount provided at Section 319-13, up to a maximum of 10% of the total contract amount, shall be assessed and paid with respect to an account payable commencing on the later of thirty (30) days after the invoice date or the date to which the interest accrual date is adjusted as set out herein unless an unresolved dispute between the city and the contractor is pending.

(b) Upon receipt of a complete and responsive invoice the city shall endeavor to issue payment within thirty days or, as provided in the terms or conditions of the contract, provided that, if it is not practicable to do so in the city's sole discretion, payment shall be rendered as soon thereafter as is practicable.

- In addition, the city may extend or shorten the due date if the terms of the contract at issue are more advantageous to the city than the terms of this chapter. The expending authority shall specifically request such treatment for a particular payment.

- The city shall also take any and all discounts offered by a contractor, to which the city is lawfully entitled, if such terms are more advantageous to the city than the terms of this chapter.

- Partial payments shall be made upon partial deliveries, partial contract completion, or passage of a portion of a lease term, to the extent that may be authorized in the terms or conditions of the contract at issue.

(c) Interest shall accrue and be paid on an unpaid complete and responsive invoice beginning on the thirtieth (30th) day after the invoice date unless the interest accrual date has been extended beyond such thirtieth (30th) day by being adjusted as described in Section 319-7, "Adjustments to interest accrual date."

(d) If any payment to a contractor on an invoice is delayed beyond the interest accrual date the city shall pay interest to the contractor on such unpaid payment as provided herein from such interest accrual date, as the same may be adjusted, until the date that payment is rendered by the city, up to a maximum of 10% of the total contract amount.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-7. Adjustments to Interest Accrual Date.**

(a) If an invoice is not complete and responsive, the interest accrual date shall be adjusted to reflect the delay between the invoice date and the point in time when the invoice is rendered complete and responsive as determined by the expending authority or the finance department.

(b) If an invoice is not complete and responsive the expending authority or the finance department shall notify the contractor in writing or by documented phone call, facsimile transmission, or e-mail within fifteen (15) days after the invoice date. The contractor shall in that event be required, at its option, to demonstrate in writing or by documented phone call, facsimile transmission, or e-mail, to the expending authority that the originally submitted invoice has become complete and responsive, or to resubmit a new complete and responsive invoice, unless the contractor disputes the city's characterization of the original invoice as not complete and responsive, in which case the dispute shall be resolved as set out in Section 319-11(a).

(c) If the contractor is not notified within the time specified above, the interest accrual date will be adjusted as follows:

- the thirty (30) day period for payment shall run from the original invoice date to

the city's notification date at which time it shall be tolled until such time as a new invoice is received or accepted by the city after which the period for payment shall recommence until the date of payment.

(d) The interest accrual date for rendering of interest to the contractor shall be extended and adjusted in the following cases:

- When the invoice is not complete and responsive, the interest accrual date shall be extended by the number of days elapsed between the original invoice date and the date that the contractor, based on its election of remedies:

Demonstrates to the expending authority that the invoice has become complete and responsive, or

Resubmits the complete and responsive invoice to the expending authority.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-9. Subcontractors.**

This section shall apply to and govern the payment process for all subcontractors:

(a) Except as otherwise provided in Sections 1311.25 through 1311.32 of the Ohio Revised Code, or any successor statute, contractors that engage subcontractors to perform part of the work on a contract with the city shall pay subcontractors for satisfactory work in a timely fashion. A payment is timely if it is mailed, delivered or transferred to the subcontractor no later than ten (10) days after the contractor's receipt of any payment from the city.

(b) If a subcontractor is not paid in a timely fashion, the contractor shall pay interest on the balance due from the eleventh (11th) day after the contractor's receipt of any payment from the city, at the rate specified herein, unless a bona fide dispute exists between the contractor and such subcontractor.

(c) Subcontractors receiving payment as described herein shall pay their subcontractors, and be liable for interest on late payments, in the same manner as contractors are required to pay subcontractors in this section.

(d) All contractors shall promptly render payment to all subcontractors on a contract. Each contractor shall provide with each invoice to the city on each contract, beginning with the second invoice, proof of payment to subcontractors, in form and content approved by the director of finance, evidencing that all subcontractors have been duly paid out of the proceeds of the contractor's payments from the city under the contract, unless a bona fide dispute, documented in writing exists between the contractor and the unpaid sub-contractor.

(e) Notwithstanding the payment procedure otherwise set out in Section 319-7, or the provisions of any definition contained in this chapter, the processing of final pay requests on construction, reconstruction and remodeling projects shall be as follows:

- Time elapsed awaiting receipt by the city of a final release from a contractor with respect to a final payment, time elapsed in publication for and holding of final settlement pursuant to Sections 1311.25 through 1311.32 of the Ohio Revised Code or successor statute or time elapsed in the expending authority's or director of finance's seeking of legal advice or guidance from the department of law shall not count in the calculation of the interest accrual date as set out herein. Receipt by the expending authority of a final payment request invoice with all other conditions precedent required by the definition of complete and responsive invoice satisfied and an invoice date stated will commence the interest accrual date for a final payment based on the invoice date. With the exception of those steps set out in subsection (2) hereof, and except as provided in Section 319-19,

all steps necessary to process a final payment, subsequent to the receipt by the expending authority of the complete and responsive invoice for such final payment, shall count as part of the interest accrual date calculation.

- With respect to the tolling of the interest accrual date calculation for such final payment the time elapsed in publishing for and holding final settlement pursuant to Sections 1311.25 through 1311.32 of the Ohio Revised Code or successor statute, the time elapsed from the tender by the city to the contractor of a final release on the final payment until the return of such release to the expending authority, and the time elapsed in the expending authority's or director of finance's seeking of legal advice or guidance from the department of law shall not count in the calculation of the interest accrual date as set out herein.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-11. Errors and Disputes.**

(a) *Contractor disputes.*

- Disputes arising between contractors and the city as a result of official, design professional, or consultant disapproval of invoices shall be resolved in accordance with the contract documents or with the dispute resolution mechanisms in place for the particular assigned contracting agency. Otherwise, disputes arising between contractors and the city as a result of the expending authority and/or department of finance disapproval of invoices shall be resolved through the procedure set out in the contract bid documents. Disputes arising between contractors and the city as a result of the director of finance's disapproval of invoices shall be resolved through procedures established by the director of finance. Disputes pertaining to prevailing wages shall be resolved pursuant to state or federal law. Disputes between or among contractors and subcontractors arising out of the provisions of this chapter shall be resolved through a private right of action, provided that, such private right of action is not intended to grant and shall not grant subcontractor third-party beneficiary status in any contract between the city and a contractor. The city shall have no authority or obligation to adjudicate, enforce, determine, or otherwise participate in disputes between or among contractors or subcontractors arising out of the provisions of this chapter.

(b) *Internal disputes.* Disputes regarding the allocation of interest and/or the amount assessed may be referred to the prompt payment arbiter.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-13. Interest Assessment.**

(a) Interest shall be assessed and paid with respect to an account payable commencing on the later of thirty (30) days after the invoice date or the date to which the interest accrual date is adjusted as set out herein, unless an unresolved dispute between the city and the contractor is pending.

(b) The director of finance is authorized to calculate interest due, charge the applicable appropriation, and interest to the contractor at the time payment is made on the principal of any account payable.

(c) Any interest paid by the city pursuant to this chapter shall be paid at the interest rate for the calendar year, (i.e., rate per annum), which is established by the tax commissioner of the Ohio department of taxation pursuant to section 5703.47 of the Ohio Revised Code. The city shall apply the interest rate for the calendar year which includes the month for which the interest charge accrued. If the calculated interest on a single invoice is less than ten dollars (\$10.00), such interest shall not be payable by

the city.

(d) Funds for the payment of interest under this section shall be allocated and encumbered from the expending authority's budget.

(e) When federal, state or private grant regulations or statutes prevent the city from charging the federal, state or private funds with interest assessment, the city shall identify an alternative source to assess interest on late payments.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-15. Reporting.**

(a) The director of finance or designee and the budget director shall jointly report to the mayor and the city council, detailing the record of late payments and interest payments made by each department or agency pursuant to this chapter during the preceding year. This report shall be made semi-annually and shall include:

- The number and total dollar amount of late payments and interest payments by each department and agency, and city-wide;
- The percentages that the dollar amount of late payments and interest payments represent of the total dollars spent on contracting for all goods and services of whatever kind by each department and agency, and city-wide,
- Any department or agency affected by subsection (a) above shall submit recommendations for specific actions to reduce the incidence of late payments

(b) The director of finance will make interest assessments and discount reduction amounts available to each department or agency on a monthly basis.

(c) The director of finance will make an annual presentation to city council regarding the previous year's interest assessments and discount reductions. Any department or agency affected by subsection (a) above shall be available to present or submit written justification upon request from city council.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-17. Rules and Regulations; Internal Guidelines.**

(a) Rules and regulations and internal guidelines may be promulgated to effectuate the purposes of this chapter as follows:

- The managers or directors of city agencies and departments may promulgate rules and regulations to effectuate the purposes of this chapter pertaining to contracts administered by, through or from their respective agency or department.
- The director of finance may promulgate rules and regulations to effectuate the purposes of this chapter pertaining to prevailing wages and/or payment to contractors.
- All such rules and regulations shall be consistent and harmonious. Nothing contained in this chapter shall preclude the city solicitor from taking appropriate legal action as deemed necessary.

(b) Any city agency may develop its own internal processes and guidelines for the purposes of prompt payment, so long as such processes and guidelines are consistent with this chapter and any such promulgated rules and regulations.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-19. Miscellaneous.**

(a) Nothing contained in this chapter shall preclude the city from retaining without payment of interest, project funds to cover project retainage as mandated by law and/or general or special conditions of construction, as applicable, by Sections 1311.25 through 1311.32 of The Ohio Revised Code, or by other terms or conditions of the contract at issue, or to cover claims filed pursuant to Sections 1311.25 through

1311.32 of The Ohio Revised Code by subcontractors or suppliers on a construction, reconstruction or remodeling project. Nothing contained in this chapter shall preclude the city from offsetting against a contractor, without payment of interest, amounts under a contract for payment of duly assessed liquidated damages by the city pursuant to general or special conditions or other terms or conditions of a construction, reconstruction or remodeling contract, or for other offsets against a contractor by the city based upon breach or default of a contract by such contractor. (b) Notwithstanding anything otherwise contained in this chapter, neither the city nor any contractor or subcontractor shall have any obligation to pay interest when:

- Payment by the city of a progress payment is subject to and contingent upon appropriation or payment by the city of funds and reimbursement of such funds from the state or federal government, which reimbursement has not occurred on or before the interest accrual date,
- The amount requested under an invoice is subject to a dispute by the city upon which the city has prevailed against the contractor, and the city has otherwise not delayed payment beyond the interest accrual date,
- The city, pursuant to a dispute with a contractor, has set off and retained funds which would otherwise be payable to the contractor,
- The terms of the contract or subcontract, as applicable, specify other times and methods of payment or methods of resolving disputes or interest owed on delinquent payments,
- There is a bona fide dispute between a contractor and a subcontractor or between subcontractors concerning the supplies, materials or equipment delivered or the services performed which causes the payment to be late,
- Funds which would be payable to a contractor are subject to a writ of garnishment or other lawful claim, lien or levy; or
- The city has been ordered by a court of competent jurisdiction not to pay funds to a contractor.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Sec. 319-21. Effective Date.**

This Chapter shall become effective on January 1, 2003, and shall apply to contracts dated on or after such date.

(Ordained by Ord. No. 297-2002, eff. Sept. 18, 2002)

**Cincinnati Municipal Code**

**CHAPTER 321- PROCUREMENT AND DISPOSAL OF SUPPLIES,  
SERVICES, AND CONSTRUCTION.**

**Sec. 321-1. Definition.**

For the purpose of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-A. Advertisement.**

"Advertisement" shall mean the notification of an invitation to bid or request for proposal by publication in a newspaper of general circulation in the city or a newspaper regularly published under the authority of the council.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-A1. Announcement.**

"Announcement" shall mean the notification of an invitation for bids or request for proposal by public posting, mail, phone, telefacsimilie, telectronic or any other means of communication approved by the city purchasing agent.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-A2. Award.**

"Award" shall mean the written notice of a bid or proposal by the city purchasing agent, board or commission or their designee. The written notice may be a separate document or the contract itself prepared by the city purchasing agent or designee. The city may cancel an award at any time before the execution of the contract without any liability against the city.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-B. Best Interest of the City.**

"Best interest of the city" shall mean any decision made by the city manager or city purchasing agent or their designee that the officer concerned believes a specific bid may be of benefit to the efficiency or effectiveness of the operation of the city. This is a matter of discretion and the decision of the officer concerned is final.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-B1. Bid.**

"Bid" shall mean an offer in response to an "Invitation For Bid" to provide or dispose of supplies, service or construction.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-B2. Bidder.**

"Bidder" shall mean the individual, partnership, corporation or other entity responding to the city's

"Invitation for Bid."

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-C. City Purchasing Agent.**

"City Purchasing Agent" shall mean the person designated by the city manager as the chief procurement officer of the city to whom procurement authority has been delegated by the city manager or assigned by ordinance.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-C1. Competitive.**

"Competitive" shall mean the procedure established by ordinance or the city purchasing agent through which the city solicits and receives bids or proposals to furnish supplies, services, or construction, which procedure is designed to place bidders and offerors on equal terms with respect to advertising, opening, acceptance and evaluation.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-C2. Concession.**

"Concession" shall mean a contract between the city, its boards or commissions, and a bidder or offeror, whereby the city, its boards or commissions receive revenue from a bidder or offeror to use public property for the sale or disposal of a product or service.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-C3. Construction.**

"Construction" shall mean any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-C4. Contract.**

"Contract" shall mean all written agreements of the city of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction. City contracts include, but are not limited to:

- (a) Contract.
- (b) Agreements.
- (c) Purchase Order.
- (d) Annual Order.



(e) Blanket Order.

(f) No Certification.

(g) Disposal Contracts.

(h) Requirement Contract.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-C5. Contract Alteration, Modification, Change Order.**

"Contract alteration," "modification" or "change order" shall mean any written alteration in specifications, delivery point, rate of delivery, period of performance, service, quantity or other provisions of any contract.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-C6. Contractor.**

"Contractor" shall mean any person having a contract with the city.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-D. Debar.**

"Debar" shall mean the removal of a specific contractor from awards for a specific commodity or all awards.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-E. Environmentally Preferable.**

"Environmentally Preferable" shall mean supplies, services or construction that have a lesser or reduced effect on human health and the environment when compared with competing supplies, services or construction that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the supply, service or construction.

(Ordained by Ord. No. 141-1994, eff. 6-3-94)

**Sec. 321-1-I. Invitation for Bid.**

"Invitation for bid" shall mean the solicitation by the city purchasing agent or designee for quoted prices, and in some cases, specifications, on supplies, services and construction.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-M. May.**

"May" denotes the permissive.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-O. Offeror.**

"Offeror" shall mean the individual, partnership, corporation, or other entity responding to the city's

"Request for Proposals."

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

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

"Professional Services" shall mean personal services of a specialized nature requiring the exercise of peculiar skill or aptitude.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-P1. Proposal.**

"Proposal" shall mean an offer in response to a "Request for Proposal."

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-R. Request for Proposal.**

"Request for Proposal" shall mean the document that states the supply, service or construction to be

acquired; selection criteria; and if pertinent other matters, such as time schedules.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-R1. Recycled.**

"Recycled" shall mean the series of activities, including collection, separation, and processing, by which

products or other materials are recovered from the solid waste stream for use in the form of raw materials

in the manufacture of new products other than fuel for producing heat or power by combustion.

Definitions of recycling terms used in this chapter are:

(a) "Recovered Materials" shall mean waste materials and by products which have been recovered or

diverted from solid waste.

(b) "Preconsumer Materials" shall mean recovered materials which were production finished materials,

products or byproducts which did not reach the consumer for whose use they were intended, and have

been diverted from solid wastes for the purposes of collection, recycling and disposition.

(c) "Postconsumer Materials" shall mean recovered materials which were generated by a business or

consumer, have served their intended end uses, and have been separated or diverted from solid wastes

for the purposes of collection, recycling and disposition.

(d) "Recycled Content Product" shall mean a product made from pre-consumer or postconsumer

recovered materials whose portion as a percentage of the weight or volume of the product meets or

exceeds the minimum content percentage established by the city purchasing agent.

(Ordained by Ord. No. 141-1994, eff. 6-3-94)

**Sec. 321-1-S. Service.**

"Service" shall mean the furnishing of labor, time or effort by a contractor, not involving the delivery of a

specific end product other than reports which are merely incidental to the required performance. The term

shall not include employment agreements or collective bargaining agreements.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-S1. Shall.**

"Shall" denotes the imperative.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-1-S2. Supplies.**

"Supplies" shall mean all property, including, but not limited to, equipment, materials, and pharmaceuticals, and printing.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-3. Authority of the City Purchasing Agent.**

The city purchasing agent shall perform the duties and responsibilities assigned the position in the

municipal code and directed by the city manager.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-5. Procurement and Disposal Procedure Manual.**

The city purchasing agent shall promulgate and review annually a Procurement and Disposal Procedure

Manual. The Manual shall include a provision that e-mail notice will be the rule; however, for those

vendors without access to e-mail, notice will be sent by other means as well. The Manual shall include a

provision that for purchases of \$5,000 or less, notice and award must be given to an SBE listed for that

particular commodity code.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 437-2002, eff. Jan. 17, 2003)

**Sec. 321-7. Procurement Statutes Declared Inoperative.**

Ohio Revised Code Sections 9.31, 153.12, 153.13, 153.14, 153.44, 153.49, 153.50, 153.51, 153.52,

153.53, 153.54, 153.57, 153.63, 153.71, 721.03, 721.15, 733.21, 733.22, 735.01, 735.02, 735.03, 735.05,

735.051, 735.06, 735.07, 735.074, 735.09, 3375.41, 4115.31, 4115.32, 4115.33, 4115.34, 4115.35 and

5555.66 are declared inoperative with respect to contracts of the city of Cincinnati.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-9. Reserved.**

**Sec. 321-11. Procurement; \$5,000 or Less.**

The city purchasing agent may make any contract; purchase supplies, services or construction for any

work of the city involving an expenditure of not more than \$5,000 by award after announcement without

advertising, contract and bonding procedures in accordance with small purchase procedures promulgated

by the city purchasing agent. Procurement requirements shall not be artificially divided so as to fall within

the authority contained in this section.

For purchases of \$5,000 or less, notice and award must be given to an SBE listed for that particular

commodity code.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 437-2002, eff. Jan. 17, 2003)

**Sec. 321-13. Procurement; Supplies, Services and Construction in Excess of \$5,000 But Not Greater Than \$25,000.**

The city purchasing agent may make any contract for supplies, services or construction involving an

expenditure in excess of \$5,000 but not in excess of \$25,000 without additional approval by the city

manager or board or commission in whose behalf the procurement is made. In the case of any contract involving an expenditure not in excess of \$25,000 for the procurement of supplies, services or construction, the city manager or the city purchasing agent may invite competitive bidding by announcement without advertisement and may waive the requirement for a bid or performance surety. For the procurement of supplies, services, and construction in excess of \$5,000, but not greater than \$50,000, SBEs in the commodity class will receive notice via e-mail. For the procurement of supplies, services, and construction in excess of \$5,000 but not greater than \$50,000, notice and three phone quotes must first be obtained from SBEs listed in the commodity code. If there are not three SBEs for a particular commodity code, then quotes should be obtained from non-SBEs to obtain three quotes and every effort should be made to award the contract to an SBE. Surety may be required in an amount deemed necessary by the City Purchasing Agent or designee. The Purchasing Agent will have discretion on bonding for both bid and surety. Also, there should be a commodity, as well as a threshold, exemption, as determined by the Purchasing Agent. (Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 110-1994, eff. 5-6-94; a. Ord. No. 437-2002, eff. Jan. 17, 2003)

**Sec. 321-15. Procurement; Supplies, Services and Construction in Excess of \$25,000 But Not Greater Than \$100,000.**

The city purchasing agent may make any contract for supplies, services or construction involving an expenditure in excess of \$25,000 but not in excess of \$100,000 without additional approval by the city manager or board or commission in whose behalf the procurement is made. In the case of any contract involving an expenditure not in excess of \$100,000 for the procurement of supplies, services or construction, the city manager or the city purchasing agent may invite competitive bidding by advertisement and may waive the requirement for a bid or performance surety. Performance surety for construction contracts over \$50,000 shall not be waived. For the procurement of supplies, services, and construction in excess of \$50,000, but not greater than \$100,000, SBEs in the commodity class will receive notice via e-mail. (Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 110-1994, eff. 5-6-94; a. Ord. No. 437-2002, eff. Jan. 17, 2003)

**Sec. 321-17. Procurement; Supplies, Services and Construction in Excess of \$100,000.**

The city purchasing agent may make any contract to purchase supplies, services, or construction without additional approval of the city manager, or the board or commission in whose behalf the contract is made, if the contract involves an expenditure in excess of \$100,000. In the case of any contract involving an expenditure in excess of \$100,000 within a 12-month period for the procurement of supplies or services, the city purchasing agent shall invite competitive bidding by advertising and may waive the bid or performance surety, if deemed by the city purchasing agent to be in the best interest of the city. In the case of any contract involving an expenditure in excess of \$100,000 for the length of the contract, for construction, the city purchasing agent shall invite competitive bidding by advertising, may waive the posting of bid surety if deemed by the city purchasing agent to be in the best interest of the city and shall require performance surety of 100% of the contract amount. The following minimal procedure shall be used for procurements set forth above:

(a) Each week a listing of such items to be procured shall be inserted in the City Bulletin under the heading "Notice - Bids Wanted" indicating the item, reference number and bid closing date.

(b) The notice in the City Bulletin shall also indicate for each item:

(1) That sealed bids will be received at the office of the city purchasing agent until 12:00 noon (local time) on the date specified.

(2) That copies of the inquiry are available at the office of the city purchasing agent.

(3) That performance surety may be required for supplies and service and shall be required for all construction contracts over \$50,000.

The city manager or the city purchasing agent may at any time require advertisement, bid surety or performance surety on any procurement, when such procedure is deemed desirable to protect the best interests of the city. Such procurement shall be awarded on the approval of the city manager or the board or commission on whose behalf the contract is being awarded. For the procurement of supplies, services, and construction in excess of \$100,000, SBEs in the commodity class will receive notice via e-mail. (Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 110-1994, eff. 5-6-94; a. Ord. No. 437-2002, eff. Jan. 17, 2003)

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

Professional service contracts shall be the responsibility of the city manager or appropriate board or

commission. Any department, board, commission may contract for such services without competitive procedures and without requiring a performance surety. The city purchasing agent shall promulgate procedures for the procurement of professional services.  
(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-21. Bid; Competitive.**

Competitive bidding shall be used to procure all supplies, services and construction in excess of \$5,000

except as provided in Section 321-17, Procurement; Professional Services; Section 321-51, Proposal;

Competitive; Section 321-85, Contract; Sole Source; and Section 321-89, Contract; Emergency Procurement; or other similar provisions of this chapter.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

Sec. 321-22. Bid; Specifications.

(a) Specifications are any description of the physical or functional characteristics or of the nature of supplies, services or construction.

(b) All city departments, boards and commissions shall specify environmentally preferable supplies, services or construction when appropriate.

All city departments, boards and commissions shall conduct a review of supplies, services or construction

specifications to determine whether the specifications either require the use of products manufactured

from virgin materials or exclude the use of recycled products, reusable products, or products designed to

be recycled. In the event that such specifications do exclude the use of recycled products or require the

use of virgin materials, then such exclusions or requirements may be eliminated unless the department,

board or commission can demonstrate to the satisfaction of the city purchasing agent that the recycled

products would not achieve a necessary requirement or performance standard.

All city departments, boards and commissions shall recommend changes to the city purchasing agent to

ensure that performance standards for particular supplies, services or construction can be met and that the

specifications are not overly stringent, and to recommend changes to ensure that the specifications will

incorporate a requirement for the use of recycled materials, reusable products, and products designed to

be recycled to the maximum extent possible, subject to an alternative showing that either the performance

of the product will be jeopardized or that the product will negatively impact health, safety, or operational

efficiency.

The city purchasing agent may request the bidder to affirmatively demonstrate that recycled material will not jeopardize the performance of the product and will not negatively impact health, safety, or operational efficiency.

(Ordained by Ord. No. 141-1994, eff. 6-3-94)

**Sec. 321-23. Bid; Form of Invitation for Bids.**

The city purchasing agent shall state the time and place when and where invitations for bids will be

received. The form approved by the city purchasing agent shall be used, and an invitation for bid shall be

involved and not considered unless such form is used without change, alteration or addition by the bidder.

Bidders may be permitted by the city purchasing agent to bid upon all work and materials to be furnished

or upon any part of the work or materials.

Copies of any plans, details, bills of materials or specifications shall be open to public inspection at all

business hours between the day of the notice and the day for opening the bids, at the office of the

purchasing department where the bids are received, or such other place as may be designated in such

notice.

Any bid or performance surety requirements shall be stated in the invitation for bid.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-25. Bid; Surety.**

The conditions and form of bid surety shall be in accordance with Section 321-133, Surety; Bid, and

Section 321-139(a), Form of Bid Surety.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-27. Bid; Correction, Withdrawal or Cancellation of an Invitation For Bid.**

The city purchasing agent is authorized to make written corrections to invitation for bids. The city

purchasing agent may withdraw or cancel at any time any invitation for bid, if the city purchasing agent

deems such action is in the best interest of the city.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-29. Bid; Time Extension for Bid Opening.**

The time, date and place of bid openings may be extended to a later time or date by the city purchasing

agent, provided that written or oral notice of a change of time, date or place is given.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

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

Bids invited by the city purchasing agent by advertisement if the bid is expected to be in excess of

\$100,000 shall be opened at the time, date and place specified in the invitation for bid and shall be

publicly read in accordance with procedures promulgated by the city purchasing agent.

Bids invited by the city purchasing agent by announcement or by advertisement if the bid is expected to be in excess of \$25,000 but not greater than \$100,000 shall be received and recorded by the city

purchasing agent or a designee. No public opening or reading of bids is required.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 357-1994, eff. 10-28-94)

**Sec. 321-33. Bid; Waiver of Defects.**

In awarding a contract, the city purchasing agent may waive any variation from the bid requirements or

defect in a bid which does not materially affect the competitive nature of the bid, is not in violation of any

ordinance, statute or law and does not prejudice the right of the public.

A variance or defect does not materially affect the bid if the terms of the bid are clear and unambiguous,

the bid contains all essential elements of the contract, if the amount or competitive nature of the bid is not

affected and if the bidder has not received an unfair advantage from having seen the competitor's bid

documents.

In considering any waiver, the city purchasing agent shall attempt to secure the best work or materials at

the lowest price practicable and shall make such determination in a manner as to fairly and reasonably

accomplish such purpose with sole reference to the public interest.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-35. Bid; Clarification.**

The city purchasing agent may request clarification of a bid or any part thereof. Clarification shall mean

the communication between the city and the bidder regarding the bid. Such communication shall not

change the bid, the competitive nature of all bids or violate any ordinance, statute or law and shall not

prejudice the right of the public.

In considering any clarification the city purchasing agent shall attempt to procure the best supply, service

or construction at the lowest practicable price and shall make such clarifications in such a manner as to

fairly and reasonably accomplish such purpose with the sole reference to the public interest.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-37. Bid; Award to Lowest and Best.**

(a) Selection of Lowest and Best in Award of City Contracts: Except where otherwise provided by

ordinance, the city purchasing agent shall award a contract to the lowest and best bidder.

(b) Environmentally Preferable Comparison Bids: In invitations to bid designated by the city purchasing

agent as an environmentally preferable comparison bid, the city purchasing agent, in determining the



lowest and best bid, shall deem as favorable the fact that the bidding company offers supplies that contain recycled material, and shall select such bidder as the lowest and best bidder if its bid does not

exceed by more than three (3%) percent to a maximum of Ten Thousand Dollars (\$10,000.00) any

other lowest and otherwise qualified non-recycled bidder.

In such circumstances where more than one bidder offers supplies with recycled material that do not

exceed by more than 3% to a maximum of \$10,000.00 any other lowest and otherwise qualified nonrecycled

bidder, the city purchasing agent may consider information concerning compliance with the rules and regulations issued by the city manager pursuant to CMC Section 321-37.

The decision of the city purchasing agent or designee, including whether the environmentally preferable product satisfies the bid requirements, shall be final in the determination of the award.

(c) Factors to be Considered: Other factors that the city purchasing agent may consider in determining

the lowest and best bid include, but are not limited to:

(1) Information concerning the bidder's performance on prior and current contracts with the city; or

(2) Information concerning the bidder's current, past and proposed payment of prevailing wages; or

(3) Information concerning compliance with the "Non-Discrimination in Purchasing and Contracting" rules and regulations issued by the city manager pursuant to CMC Section 321-159;

or

(4) Information concerning compliance with the "SBE Subcontracting Outreach Program" rules and

regulations issued by the city manager pursuant to CMC Section 323-31.

In the event that the selection of the lowest and best bidder is based primarily upon factors 3 or 4

above, the contract award may be made subject to the following limitation: the bid may not exceed an

otherwise qualified bid by ten (10%) percent or Fifty Thousand Dollars (\$50,000.00), whichever is

lower.

(d) Total Preference Percentages Permissible: The total accumulation of all preference percentages from

all preference programs now in existence or hereafter established shall not exceed thirteen (13%)

percent to a maximum of Sixty Thousand Dollars (\$60,000.00).

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 11-1994, eff. 2-11-94; a. Ord. No. 141-1994,

eff. 6-3-94; a. Ord. No. 398-2003, eff. 11-26-03)

**Sec. 321-39. Bid; Award on Equal Bids.**

Whenever bids shall be received for supplies, services or construction and two or more bids shall, in the

opinion of the city purchasing agent, be equally entitled to be considered the lowest and best bids, the city purchasing agent shall be authorized to award such contract by lot to any one of such lowest or best bidders, or, if the number of such lowest and best bidders is not in excess of three, to divide the award and contract as the city purchasing agent deems best among them or among such of them as shall consent to such apportionment.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-41. Bid; Waiver of Bidding and Contracting Requirements Where No Acceptable Bid is Made.**

The city purchasing agent is authorized to waive all legal bidding and/or contracting requirements in order to provide for the acquisition of supplies when a situation exists because of various supply allotment programs, volatile market conditions, shortages and similar situations which causes vendors to refuse to submit acceptable bids based on all the city's legal bidding and contracting requirements; provided, however, before waiving such requirements the city purchasing agent shall have first endeavored to secure competitive bids based on all applicable city holding and contracting requirements, but when no acceptable bid is subsequently received due to one or more of the above causes, the city purchasing agent is then authorized to make award of a contract to the determined lowest and best bid of all non-acceptable bids submitted, or to negotiate a contract where no bids are received. The city purchasing agent shall report to city council semiannually on all applications of this authorization during the interim period.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-43. Bid; Rejection of Bids.**

The city purchasing agent, city manager or any other duly authorized contracting officer may reject any bid for any reason or all bids for no reason if acceptance of the lowest and best bid is not in the best interests of the city. Where there is reason to believe there is collusion or combination among bidders, the bids of those involved shall be rejected.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-45. Bid; Waiver of Bid Surety.**

When the city manager or city purchasing agent has been granted the authority by this chapter or ordinance to waive requirements for bid surety on any city bid, such waiver may be exercised only upon a finding by the city purchasing agent that the waiver will encourage competition in bidding and will not impair the city's ability to secure execution or performance of the contract.

Surety may be required in an amount deemed necessary by the city purchasing agent or designee. The purchasing agent will have discretion on bonding for both bid and surety. The purchasing agent also, there should be a commodity, as well as a threshold, exemption, as determined by the Purchasing Agent.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 440-2002, eff. Jan. 17, 2003)

**Sec. 321-47. Bid; Default.**

In case any successful bidder shall fail to execute a proper contract according to law within ten calendar days from receipt of notice of acceptance of the bid, which notice may be by tender of the contract for signature and bonding or by direct notification, or shall otherwise default as to the bid, the bidder shall be chargeable with any and all damages and losses suffered by the city of Cincinnati on account of the default, and the amount of the damages shall be fixed by the city manager.

No person or company that shall have defaulted as to any bid with the city of Cincinnati shall be permitted to bid for any business with the city of Cincinnati until the amount of the damages accruing to

the city by reason of such default shall have been fully accounted for, and in no event shall any such

defaulting person or company be permitted to bid within the period of two years from the date of the

default, except with the written permission of the city manager.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-49. Bid; Withdrawal of Bid Made in Error.**

A bidder for a contract with the city may request the withdrawal of a bid not requiring bid surety from

consideration. The city purchasing agent may allow the withdrawal if the price bid was substantially

lower than the other bids, providing the bid was submitted in good faith and the reason for the price bid

being substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due

to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity

of work, labor, or material made directly in the compilation of the bid. The request to withdraw such bid

shall be made in writing to the city purchasing agent within four business days from the bid opening

procedure.

No bid may be withdrawn under this section when the result would be the awarding of the contract on

another bid of the same bidder.

No bidder who is permitted to withdraw a bid shall benefit, directly or indirectly, from the performance of

the contract for which the withdrawn bid was submitted, without the approval of the city purchasing agent. Without such approval, the contractor to whom the contract was awarded and the withdrawing bidder are jointly liable to the city in an amount equal to any compensation paid to or for the benefit of the withdrawing bidder, in addition to any criminal penalties.

If a bid is withdrawn under authority of this section, the purchasing agent may award the contract to the next lowest bidder or reject all bids.

In the event the city purchasing agent denies the request for withdrawal and the bidder refuses to perform,

the city purchasing agent may reject all bids or award to the next lowest bidder and the bidder shall be in default

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-51. Proposal; Competitive.**

Competitive proposals may be used to procure supplies, services and construction when the city purchasing agent determines that the use of competitive bidding is either not practical or not advantageous to the city. All possible steps shall be taken to ensure competition in the competitive proposal process.

The city purchasing agent shall promulgate procedures for the competitive proposal process.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-52. Proposal; Specifications.**

(a) Specifications are any description of the physical or functional characteristics or of the nature of

supplies, services or constructions.

(b) All city departments, boards and commissions shall specify environmentally preferable supplies,

services or construction when appropriate.

All city departments, boards and commissions shall conduct a review of supplies, services or construction

specifications to determine whether the specifications either require the use of products manufactured

from virgin materials or exclude the use of environmentally preferable or recycled content products,

reusable products, or products designed to be recycled.

In the event that such specifications do exclude the use of recycled products or require the use of virgin

materials, then such exclusions or requirements may be eliminated unless the department, board or

commission can demonstrate to the satisfaction of the city purchasing agent that the recycled products

would not achieve a necessary requirement or performance standard.

All city departments, boards and commissions shall recommend changes to the city purchasing agent to

ensure that performance standards for particular supplies, services or construction can be met and that the specifications are not overly stringent, and to recommend changes to ensure that the specifications will incorporate a requirement for the use of recycled materials, reusable products, and products designed to be recycled to the maximum extent possible, subject to an alternative showing that either the performance of the product will be jeopardized or that the product will negatively impact health, safety, or operational efficiency.

The city purchasing agent may request the offeror to affirmatively demonstrate that recycled material will not jeopardize the performance of the product and will not negatively impact health, safety, or operational efficiency.

(Ordained by Ord. No. 141-1994, eff. 6-3-94)

**Sec. 321-53. Proposal; Form of Request For Proposal.**

All requests for proposals shall state the time, date and place where proposals will be received.

A request

for proposal shall state the city requirements and evaluation factors to be applied in awarding the contract.

All plans, specifications, details or bills of material shall be open for inspection during business hours

defined in the request for proposal. Any performance surety requirements shall be stated in the request for proposal.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

Sec. 321-55. Reserved.

**Sec. 321-57. Proposal; Correction, Withdrawal or Cancellation of a Request for Proposal.**

The city purchasing agent or designee is authorized to make corrections to requests for proposals. The

city purchasing agent or designee may withdraw or cancel at any time any request for proposals, if the

city purchasing agent or designee deems such action is in the best interest of the city.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-59. Proposal; Time Extension for Proposal Opening.**

The time, date and place of proposal openings may be extended to a later time or date by the city

purchasing agent or designee provided that written or oral notice of a change of time, date or place shall

be given to all persons who have received or requested a request for proposal. After the time and date for

proposal opening has passed no new offeror may submit a proposal.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-61. Proposal; Opening of Proposal.**

All proposals shall be opened at the time, date and place specified in the request for proposal and the

proposals shall be available for public inspection.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-63. Proposal; Discussion With Offerors and Revisions to Proposals.**

Discussions may be conducted with any or all offerors for the purposes of clarification to assure a full

understanding of, and responsiveness to, the request for proposal requirements. Such offerors shall be

accorded fair and equitable treatment with respect to any opportunity for discussion. Revisions may be

permitted after submissions and prior to award for purpose of obtaining the most advantageous proposals.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-65. Proposal; Award to Most Advantageous.**

Award shall be made to the offeror whose proposal is determined, in writing by the city manager, city

purchasing agent, board or commission to be the most advantageous to the city taking into consideration

price and evaluation factors set forth in the request for proposals. The contract file shall contain the basis

on which the award is made.

In request for proposals designated by the city purchasing agent as an environmentally preferable

comparison request, the city purchasing agent may consider the following factors, listed in descending

order of preference, in evaluating competitive proposals as the most advantageous to the city:

(a) The highest percentage of post-consumer material content.

(b) The highest percentage of pre-consumer material content.

In addition, the following factors may be considered in determining the most advantageous proposal.

(c) The ability of the product and package to be reused or recycled.

(d) The volume and toxicity of waste and by-products that a given product generates in its manufacture,

use and disposal.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 141-1994, eff. 6-3-94)

**Sec. 321-67. Proposal; Rejection.**

The city may reject any or all proposals or any item within a proposal for any reason, or reject all

proposals for no reason as deemed by the city purchasing agent or designee to be in the best interest of the

city.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-69. Proposal; Surety.**

Proposal surety may be required in an amount deemed necessary by the city purchasing agent or designee.

Surety may be required in an amount deemed necessary by the city purchasing agent or designee. The

purchasing agent will have discretion on bonding for both bid and surety. The purchasing agent also, there should be a commodity, as well as a threshold, exemption, as determined by the purchasing agent.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 440-2002, eff. Jan. 17, 2003)

**Sec. 321-71. Reserved.**

**Sec. 321-73. Right to Request Information.**

The city manager, city purchasing agent, board or commission may request information needed to

determine the lowest and best bid or the most advantageous proposal. Such information may include, but

is not limited to financial ability, resources, skills, capability, business integrity, past performance, equal

employment opportunity and related programs.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-75. Right to Audit Records.**

The city shall be entitled to audit the books and records of a contractor or any subcontractor under any

contract or subcontract to the extent that such books and records relate to the performance of such

contract or subcontract. Such books and records shall be maintained by the contractor for a period of one

year from the date of final payment under the prime contract and by the subcontractor for a period of one

year from the date of final payment under the subcontract, unless a shorter period is authorized in

writing.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-77. Reserved.**

**Sec. 321-79. Reserved.**

**Sec. 321-81. Contracts; Types.**

Subject to the limitations of this section, any type of contract which will promote the best interests of the

city may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement

contract may be used only when a determination is made in writing that such contract is

likely to be less costly to the city than any other type or that it is impracticable to obtain the supplies,

services, or construction required except under such a contract.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-83. Contract; Multi-Term.**

Unless otherwise provided by law, a contract for supplies or services may be entered into for any period

of time deemed to be in the best interests of the city. The term of the contract and conditions of renewal

extension, if any, are included in the solicitation and funds shall be available for the first period at the

time of contracting. Payment and performance obligations for succeeding periods shall be subject to the availability and appropriation of funds.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-85. Contract; Sole Source.**

A contract may be awarded for supplies, services or construction without competition when the city

purchasing agent determines in writing that there is only one source for the required supply, service or

construction. A requirement for a particular supply, service or construction does not justify a sole source

procurement if there is more than one potential bidder or offeror.

The determination of a sole source procurement shall be made in writing and shall include the basis

therefor and the duration of its effectiveness. In cases of reasonable doubt, competition shall be solicited.

The city purchasing agent may conduct negotiations, as appropriate, for price, delivery and terms.

The city purchasing agent shall maintain a record of sole source procurements including the contractor's

name, the amount and type of each contract, a listing of the supplies, services, or construction procured

under each contract and the identification number of the contract.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-87. Contract; Direct Award.**

A contract may be awarded for supplies, services or construction without competition when the city

purchasing agent determines in writing that it is in the best interest of the city to procure compatible

equipment accessories or replacement parts, original manufacturer for supplies, or public utility services

or to procure supplies for trial use or testing.

The determination of direct award procurement shall be made in writing and shall include the basis

therefor and the duration of its effectiveness. In cases of reasonable doubt, competition shall be solicited.

Any request to the city purchasing agent that a procurement be restricted to one contractor shall be

accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. The

city purchasing agent may conduct negotiations, as appropriate, for price, delivery and terms.

The city purchasing agent shall maintain a record of direct award procurements in excess of \$5,000,

including the contractor's name, the amount and type of each contract, a listing of the supplies, services,

or construction procured under each contract and the identification number of the contract.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-89. Contract; Emergency Procurement.**



(a) *Emergency.* Notwithstanding any other provision of this chapter, when there exists a threat to public health, welfare or safety under emergency conditions defined in procedures promulgated by the city purchasing agent requiring the immediate procurement of services, supplies, materials, construction, demolition or equipment, the city manager, upon recommendation of the city purchasing agent and the head of the department involved, may waive any advertising, contract, and surety requirements prescribed by statute or ordinance and the pre-award requirements of the equal employment opportunity program of the city of Cincinnati prescribed by ordinance and authorize the purchase, by purchase order, of the needed services, supplies, materials, construction, demolition or equipment from the lowest and best bidder as disclosed by competitive bids which may be either oral or written.

A record of all emergency purchases of supplies, services and construction in excess of \$100,000 shall be reported to city council semi-annually. Furthermore, the city purchasing agent may authorize emergency purchases of \$100,000 and less without additional approval of the city manager being required to approve the nature of the emergency.

When normal procurement requirements are waived, all possible steps shall be taken to secure maximum competition in the procurement of the needed supplies, services, or construction; and any warranted follow-up in regard to the equal employment opportunity program shall be made. A written determination of the basis for the emergency and for the selection of a particular contractor shall be included in the contract file and in the recommendation to the city manager or board or commission on purchases in excess of \$100,000.

(b) *Imminent Danger.* Notwithstanding any other provision of this chapter, when there exists a disaster, or an imminent threat or danger to public health, welfare or safety requiring the direct action of a director or the commissioner of health, such director or commissioner of health may waive any advertising, formal contract, and surety requirements prescribed by statute or ordinance and the preaward requirements of the equal employment opportunity program of the city of Cincinnati prescribed by ordinance and authorize the purchase of the needed services, supplies, materials, construction, demolition or equipment from the best bidder as disclosed by informal competitive bids which may be oral or written. If the cost is expected to exceed \$100,000, the director or the commissioner of health shall obtain the verbal approval of the city manager or the deputy city manager, or if the cost is

expected to be \$100,000 or less, obtain the verbal approval of the city purchasing agent or the city

purchasing agent's designee. The city purchasing agent may promulgate procedures for such emergency purchases involving imminent danger. A record of all imminent danger emergency purchases shall be reported to city council semi-annually.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-91. Contract; Alcoholic Beverages.**

Whenever required by state law or regulations of the department of liquor control, the city manager and

the independent boards and commissions are authorized to adopt a modified procedure for making

payments to suppliers of beer and other alcoholic beverages at city facilities by depositing in advance

with all parties having contracts to supply such beverages an amount of money not in excess of the

reasonable value of purchases of beverages anticipated to be made within a 30-day period.

Upon delivery of beverages to city locations the supplier shall deduct from the deposit the value under the

contract of the beverages delivered and shall so notify the city. The city manager or the independent board

or commission having the contract to receive such beverages may then advance an additional amount to

the supplier to replace the amount deducted from the deposit.

If at the end of the contract period the contract is not renewed, and there is money still on deposit with the

supplier, such money shall be returned by the supplier to the city after deduction of all sums due for

beverages delivered.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-93. Contract; Concessions.**

The city manager, boards and commissions, upon the determination of the city purchasing agent, are

hereby authorized to make or enter into concession contracts.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-95. Contract; Ohio Department of Administrative Services.**

The city, pursuant to Section 125.04 of the Ohio Revised Code, desiring to participate in contracts that the

Ohio Department of Administrative Services has entered for the purchase of supplies, services, materials

other than printing materials, and equipment, hereby authorizes the city manager or the city purchasing

agent in the name of the city, without advertising and bidding, to participate in such contracts. The city

hereby agrees, when the city manager or city purchasing agent finds it in the best interest of the city to

participate in such contracts, that the city will be bound by such terms and conditions as the department

prescribes, that the city will directly pay the vendor under such contract, that the city will pay a

reasonable fee to cover the administrative costs the department incurs as a result of the city's participation in the contract and that the city purchasing agent is authorized to do all the things necessary to carry out

this section. Performance surety may be waived by the city purchasing agent.  
(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-97. Contracts; Ohio Departments, Divisions, Agencies, or Other Political Subdivisions.**

The city, pursuant to Section 735.053 of the Ohio Revised Code, desiring to participate in contracts for services, materials, equipment or supplies from any department, division, agency or political subdivision of the state, hereby authorizes:

(a) The city purchasing agent to enter into a contract, without advertising and bidding, for services or the purchase of materials, equipment or supplies in accordance with the terms and conditions of any

contract of any department, division, agency or political subdivision of the state, hereby authorizes:

(b) The maximum amount of \$1,000,000 as the purchase price for any single order of any type of service, material, equipment or supply purchased.

(c) The city purchasing agent to purchase any type of service, material, equipment or supply;

(d) Such purchase to be made by the city purchasing agent so long as funds have previously been

appropriated and remain unencumbered for such purpose; and

(e) The city purchasing agent to do all things necessary and proper to carry out this section.

Performance surety may be waived by the city purchasing agent.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-99. Contract; United States Surplus Property.**

The city purchasing agent is hereby authorized to purchase United States government surplus property in

amounts in excess of \$5,000 without following the competitive bid procedures Such surplus property may

be purchased directly from the United States government or any of its agencies or through the Ohio

Valley Civil Defense Authority.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-101. Contract; General Services Administration.**

The city purchasing agent is authorized to purchase supplies from the General Services Administration of

the federal government out of funds received as federal grants when the price of such supplies as obtained

from General Services Administration is advantageous to the city.

Funds certified to contracts which because of federal statutes or regulations cannot be honored may be recertified

by the director of finance to any negotiated procurement authorized above.

Whenever it appears to the city purchasing agent that it is not possible to obtain through such negotiated procurement quantities necessary to satisfy the demands of all of the departments and divisions under the city manager and of the independent boards and commissions of the city, the city purchasing agent shall allocate such supplies and services as can be obtained to the departments and divisions under the city manager and the independent boards and commissions on a fair and equitable basis; in determining what is a fair and equitable distribution, the city purchasing agent shall consider the needs and past usage of the departments, divisions, independent boards and commissions involved, the purpose for which such supplies or services shall be applied, and its effect upon the public health and safety. (Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-103. Contract; Nullification of Competitive Purchase Procedures by Federal Authority.**

Whenever federal statutes or regulations render it impossible for the city to honor contracts entered into by the normal bidding procedures or to obtain new contracts for the normal bidding procedures of the city and whenever such federal statutes or regulations do provide a possible way for the city to obtain whatever goods or services it needs, the purchasing agent is authorized to obtain by negotiated purchase such goods or services as may be required, upon such terms and conditions as the purchasing agent deems they can best be obtained.

Funds certified to contracts which because of federal statutes or regulations cannot be honored to supply goods or services to the city of Cincinnati may be re-certified by the director of finance to any negotiated purchases authorized above.

Whenever it appears to the purchasing agent that it is not possible to obtain through such negotiated purchases, goods or services in quantities necessary to satisfy the demands of all the departments and divisions under the city manager and of the independent boards and commissions of the city, the purchasing agent shall allocate such goods and services as can be obtained to the departments and divisions under the city manager and the independent boards and commissions on a fair and equitable basis; in determining what is fair and equitable distribution, the purchasing agent shall consider the needs and past usage of the departments, divisions, independent boards and commissions involved, the purpose

for which such goods or services shall be applied, and its effect upon the public health and safety.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-105. Contracts; Ohio Industries for the Handicapped-OIH.**

The city purchasing agent, pursuant to Section 4115.34 of the Ohio Revised Code, is authorized to

purchase from the Ohio Industries for the Handicapped-OIH products or services in an amount not in

excess of \$50,000 without additional approval of the city manager or the board or commission in whose

behalf the purchase is made without competitive bidding and other procurement procedures otherwise

required for supplies and services offered by nonprofits which are part of the Ohio Industries for the

Handicapped, Inc., when, in the judgment of the city purchasing agent, such purchases are advantageous

to the city in price, value and availability.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-107. Contract; OPI Correctional Industries.**

The city purchasing agent, pursuant to Section 5147.07 of the Ohio Revised Code, is authorized to make

procurements from the OPI Correctional Industries of supplies or services in an amount not in excess of

\$50,000 without additional approval of the city manager or the board or commission in whose behalf the

procurement is made without competitive bidding and other procurement procedures otherwise required

in order to buy from OPI when, in the judgment of the city purchasing agent, such purchases are advantageous

to the city in price, value and availability.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-109. Contract; Annual Report.**

Annually, the city purchasing agent will report to city council the types and dollar amounts of recycled

products contracts used by all city departments, boards and commissions in the previous year. Additional

information regarding recycled material may also be included in the annual report.

(Ordained by Ord. No. 141-1994, eff. 6-3-94)

**Sec. 321-111. Construction; Labor and Materials.**

Bids or proposals for city projects for construction, erection, repair or alteration of a public building or

improvement which involve both work to be done and materials to be furnished shall require separate and

distinct bids or proposals for labor and for materials. Failure to separately state the price in the bid for

labor and for materials may result in disqualification of the bid or proposal.

The provisions of this section shall not apply to any project federally supported, in whole or in part, where

the total bid is less than \$2,000, in which case a lump sum bid may be given and shall not be disqualified for that reason alone. In all other cases the provisions of this section shall not apply where the total bid is less than \$4,000, in which case a lump sum bid may be given and shall not be disqualified for that reason alone.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-113. Construction; Separate Trade.**

City projects for construction, demolition, erection, repair or alteration of a public building or improvement in excess of \$10,000 which involve more than one trade craft shall be invited or requested

separately for each trade craft.

Bids for such city projects shall be invited separately for each trade craft. Contracts shall be awarded

separately to the lowest and best bidder for each trade craft unless the separate bids do not cover all the

work and materials required or the bids for the whole or two or more kinds of work or materials are lower

than the separate bids in the aggregate.

Proposals for such city projects shall be requested separately for each trade craft in accordance with this

section but awarded to the most advantageous offeror or offerors.

Bids and proposals for city projects under \$10,000 may be invited or requested either in lump sum or

separately by trade crafts at the discretion of the city purchasing agent, subject to requirements for

separation of labor and materials in such bids or proposals.

"Trade craft" shall mean (a) general construction, (b) electrical equipment, (c) plumbing and gas fitting,

(d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, or

(e) elevator work.

"Assigned contract" shall mean a bid or proposal from a trade craft that has been assigned to a general contractor's contract.

The city purchasing agent may assign any trade craft bid or proposal to a general contractor.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-115. Construction; Prevailing Wage.**

All state of Ohio provisions of law and ordinance relating to prevailing wage rates applicable to contracts

for construction of public improvements shall apply. Federal prevailing wages and its regulations shall

take precedent and shall apply to those public improvements that require the application of federal

regulations.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-117. Construction; Wrecking or Demolition Contracts; Prevailing Wage Rates.**

All provisions of law or ordinance as to the prevailing wage rates applicable to contracts for the construction of public improvements shall apply to contracts for the wrecking or demolition of existing buildings or other structures on public property in connection with the sale and removal of such property.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-119. Construction; Debarment for Violation of Prevailing Wage and Related Laws.**

(a) This section applies to any person, firm or corporation, whether denominated a "contractor," "subcontractor,"

"trade contractor," "prime contractor," etc. (hereinafter "contractor") supplying labor for any contract with the city of Cincinnati and required by law to comply with the prevailing wage provisions of Chapter 4115, Ohio Revised Code, or the provisions of the Davis Bacon and Related

Acts or the Contract Work Hours and Safety Standards Act.

(b) Upon the receipt of a notice from the Department of Industrial Relations of the State of Ohio that the prevailing wage provisions of Chapter 4115, Ohio Revised Code, have been violated by any contractor, and/or upon the receipt of a notice from the United States Department of Labor that the

provisions of the Davis Bacon and Related Acts (DBRA), 40 U.S.C.A. § 276a et seq. and/or of the

Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C.A. § 327 et seq. have been violated by any contractor, the director of purchasing shall cause a copy of said notice to be served

upon such contractor. The notice to the contractor shall be attached to a letter, signed by the director

of purchasing, notifying the contractor that the contractor has 30 days from the date of the receipt of

said letter to pay in full all amounts due to employees as mentioned in the notice from the Department

of Industrial Relations of the State of Ohio and/or the United States Department of Labor. The letter

required to be served on the contractor pursuant to this paragraph, with the attached notice from the

Department of Industrial Relations of the State of Ohio and/or the United States Department of Labor,

shall be served in person or by certified mail, return receipt requested.

(c) In the event that the certified payrolls of a contractor, filed by the contractor with the city of Cincinnati, show that the contractor has not paid the prevailing wage rates in effect for the contractor's employees, the director of purchasing shall cause a letter, signed by the director of purchasing, to be served upon the contractor notifying the contractor that the contractor has 30 days

from the date of the receipt of said letter to pay in full all amounts due to the employees who have not

been paid the prevailing wage. The letter required to be served upon the contractor pursuant to this

paragraph shall be served in person or by certified mail, return receipt requested.

(d) No contractor who has failed to pay in full to employees the amounts due to such employees for a

violation of the prevailing wage provisions of Chapter 4115, Ohio Revised Code and/or the provisions of DBRA and/or CWHSSA within 30 days of the receipt of the letter mentioned in paragraph (b) or (c) of this section shall be permitted to participate in any future contract with the city

of Cincinnati for a period of at least 2 years and until all of said amounts have been paid in full. Each contract with the city shall be considered separately in the application of the provisions of this

section. Multiple debarments of a contractor shall be served consecutively.

(e) Any contractor declared under the provisions of paragraph (d) of this section shall be given written

notice which shall be served in person or by certified mail, return receipt requested, that:

(1) Such contractor shall not be permitted to participate in any city contract for a period of at least

two years and until all of the amounts due to employees under the provisions of Chapter 4115, Ohio Revised Code, and/or DBRA and/or CWHSSA have been paid in full; and

(2) Such debarment shall commence as follows:

a. In the event that a hearing concerning the debarment is requested by the contractor before the

director of purchasing in accordance with the procedure specified in paragraph (f) of this section, on the date of the receipt by the contractor of a decision by the director of purchasing, or designee, approved by the city manager, upholding the debarment; or

b. In the event that a hearing is not requested before the director of purchasing 10 days from the

date of the receipt of the notice of debarment.

(f) Any contractor who has received a notice of debarment pursuant to paragraph (e) of this section may

request a hearing before the director of purchasing by presenting a request in writing to the director of

purchasing within 10 days of the receipt of the notice of debarment. The hearing requested pursuant

to this section shall be before the director of purchasing, or a person designated by the director of

purchasing.

(g) Any funds being withheld by the city from a contract with a contractor to secure the payment to

employees of said contractor of amounts due to the employees under the prevailing wage laws or

under DBRA or CWHSSA shall be paid by the city to the affected employees on the effective date of

the debarment or as soon thereafter as is practical.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-121. Construction; Payments on Public Improvement Contracts.**



Partial payments may be made to contractors constructing public improvements as the work progresses.

Said payments shall be made not more frequently than monthly, except when the rate of work and

amounts involved are so large that it is deemed advisable by the proper city official to make more

frequent payments, estimates and payments may be made twice a month. Said payments shall be based

upon estimates, approved by the proper city officer, of the amount of work done, including both labor and

materials incorporated in the work since the last partial payment, if any. Payments may also be made for

equipment and materials purchased by the contractor for the improvement and stored on the site or in

some other place approved by the proper city officer, but the cost of any equipment or materials so paid

for shall not be included in any subsequent partial payment, such payments shall be based on the

supplier's invoice price to the contractor.

Partial payments to the contractor for labor performed and materials and equipment incorporated into the

work under a unit or lump sum contract, shall be made at the rate of not less than 92 percent of the

estimates prepared by the contractor and approved by the proper city official. All labor performed and

materials and equipment incorporated into the work after the job is 50 percent completed shall be paid for

at the rate of 100 percent of the estimate formulated by the contractor and approved by the proper city

officer. After completion of the work and acceptance thereof by the city, the full payment due the

contractor, less the amount of partial payments made, if any, shall be paid. If the improvement is not

accepted in toto and unqualifiedly, there may be retained from the final payment an amount sufficient to

guarantee, in the opinion of the proper city officer, the completion of any work undone or the satisfaction

of any work or equipment which has not been unqualifiedly accepted.

Payment to the contractor may be withheld by the city in part or whole for violations of or failure of the

contractor to comply with the terms and conditions of the contract.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-123. Construction; Mechanics Lien.**

Applicable provisions of law and ordinances regarding the application of mechanics liens to the construction of public improvements shall apply to all construction, wrecking and demolition of buildings

or other improvements on public property.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

Sec. 321-125. Construction; Contractor's Affidavits.

The prime or general contractor on any construction contract for the city shall submit as a condition for payment an affidavit stating that all previous payments due have been made to subcontractors and that current payments due for work done will be made within 15 days after receipt of payment from the city.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-127. Reserved.**

**Sec. 321-129. Surety; Ohio.**

Surety provided by a bond shall be executed by a company licensed to do business in the state of Ohio or approved by the superintendent of insurance to execute such a surety in this state.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-131. Surety; Waiver of Bid and Performance Surety.**

When the city manager or city purchasing agent has been granted the authority by this chapter to waive requirements for bid or performance surety on any city contract, such waiver may be exercised only upon a finding by such official that the waiver will encourage competition and will not impair the city's ability to secure execution or performance of the contract.

Surety may be required in an amount deemed necessary by the city purchasing agent or designee. The purchasing agent will have discretion on bonding for both bid and surety. The purchasing agent also, there should be a commodity, as well as a threshold, exemption, as determined by the purchasing agent.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 440-2002, eff. Jan. 17, 2003)

**Sec. 321-133. Surety; Bid.**

The bid shall be accompanied by a sufficient bond, certified check, or letter of credit, to ensure that if the bid is accepted a contract will be entered into and its performance properly secured unless such requirement has been waived by the city purchasing agent.

A letter of credit submitted as bid surety shall:

- (a) Be a writing addressed to the purchasing agent of the city.
- (b) Conspicuously state that it is a letter of credit or be conspicuously so entitled;
- (c) Be issued by a commercial bank and be an irrevocable, unconditional, sight letter by its terms;
- (d) Be signed by one authorized by the bank, with attached documentation of authority to sign on behalf of the bank;
- (e) Provide for payment of the amount demanded, to the limit of the letter of credit, by the bank to the purchasing agent of the city of Cincinnati upon presentation of a written certificate by the purchasing agent of the city of Cincinnati that the contractor has failed to execute a contract with the city of

Cincinnati in accordance with its bid provided said certificate is accompanied by a draft;  
(f) The letter of credit shall remain in effect from the acceptance of bidder's bid until the bidder executes

a contract with the city of Cincinnati in accordance with the bid; and

(g) A bidder providing a bid surety to the city of Cincinnati shall use the form provided by the city

purchasing agent;

The city purchasing agent may require a bid bond, rather than a letter of credit, cashier's check or certified

check, when in the opinion of the city purchasing agent, such requirement is in the best interests of the

city of Cincinnati.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-135. Surety; Securing Performance of Contract.**

(a) A contractor shall, when required to provide performance surety, at the time the contractor enters into

a contract with the city of Cincinnati, file with the city purchasing agent a bond, cashier's check, certified check or letter of credit for the amount of the contract or for such lesser amount as the city

purchasing agent may determine.

(b) Any contractor, surety, or bank issuing a letter of credit, who submits a bond, cashier's check,

certified check, or letter of credit to secure the performance of a contract with the city of Cincinnati

shall submit such security subject to the following terms and conditions:

(1) The security shall indemnify the city of Cincinnati against all damages suffered by the failure of

the contractor to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefor and shall agree and assent to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or material furnished in carrying forward, performing or completing the contract, and shall agree and assent

that this understanding shall be for the benefit of any subcontractor, materialmen, or laborer having a just claim as well as the city of Cincinnati.

(2) The security posted pursuant to this section for the construction, erection, repair or alteration of a

public building or improvement shall remain in effect during the project and for a period of one year following the acceptance of the final statement of costs by the city manager; and

(3) The security posted pursuant to this section for contracts other than for the construction, erection,

repair or alteration of a public building or improvement shall remain in effect for such period of time as the city purchasing agent may determine.

(c) A bidder, offeror, contractor or surety providing a performance or bid surety to the city of Cincinnati

shall use the form provided by the city purchasing agent.

(d) In addition to the foregoing requirements, a letter of credit shall:

(1) Be a writing addressed to the city purchasing agent of the city of Cincinnati;

(2) Conspicuously state that it is a letter of credit or be conspicuously so entitled;

(3) Be issued by a commercial bank and be an irrevocable, unconditional, sight letter by its terms;

(4) Be signed by one authorized by the bank, with attached documentation of authority to sign on behalf of the bank; and

(5) Provide for payment of the amount demanded, to the limit of the letter of credit, by the bank to the city purchasing agent of the city of Cincinnati upon presentation of a written certificate by the city purchasing agent of the city of Cincinnati that the contractor is in default of any term or condition of the contract, provided said certificate is accompanied by a draft.

(e) The city purchasing agent may require a performance bond, rather than a letter of credit, cashier's check or certified check, when it is deemed by the city purchasing agent that such requirement is in the best interests of the city of Cincinnati.

(f) The city purchasing agent has the discretionary authority to accept a documentary letter of credit as substitute for posted security when it is deemed by the city purchasing agent that it is in the best interests of the city of Cincinnati.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-137. Surety; Amount.**

The city purchasing agent contracting for the city or any independent board or commission thereof is authorized to set reasonable amounts for performance surety in taking bids and contracting. The city purchasing agent shall require performance surety in the amount of 100% of the contract for construction over \$50,000 or demolition contracts for any amount. The city purchasing agent may require performance surety in the amount of 100% of contract for supplies and services. Statutory requirements in regard to the amount of performance surety required for said contracts are hereby declared inoperative in the city of Cincinnati.

Surety may be required in an amount deemed necessary by the city purchasing agent or designee. The purchasing agent will have discretion on bonding for both bid and surety. The purchasing agent also, there should be a commodity, as well as a threshold, exemption, as determined by the purchasing agent.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 110-1994, eff. 5-6-94; a. Ord. No. 440-2002, eff. Jan. 17, 2003)

**Sec. 321-139. Surety; Forms.**

The surety required pursuant to this Chapter 321 of the Cincinnati Municipal Code shall be in

substantially the following forms, and recovery of any claimant thereunder shall be subject to Chapter 321

of the Cincinnati Municipal Code, as amended, to the same extent as if the provisions of such sections

were fully incorporated in such surety form:

(a) *Form of Bid Surety.*

"KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_ as principal and \_\_\_\_\_ as sureties, are hereby held and firmly bound unto \_\_\_\_\_ as obligee in the penal sum

of the dollar amount of the bid submitted by the principal to the obligee on \_\_\_\_\_ to undertake

the project known as \_\_\_\_\_. The penal sum referred to herein shall be the dollar amount of the

principal's bid to the obligee, incorporating any additive or deductive alternate proposals made by the

principal on the date referred to above to the obligee, which are accepted by the obligee. In no case

shall the penal sum exceed the sum of \$ \_\_\_\_\_ dollars. (If the foregoing blank is not filled in, the

penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum

well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that, whereas the above named principal has submitted a bid for \_\_\_\_\_.

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a

proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in

the event the principal pays to the obligee the difference not to exceed ten per cent of the penalty

hereof between the amount specified in the bid and such larger amount for which the obligee may in

good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event

the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten per cent of the penalty

hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of

printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain

in full force and effect; if the obligee accepts the bid of the principal and the principal within ten days

after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same

as though set forth herein;

Now, also, if the said \_\_\_\_\_ shall well and faithfully do and perform the things agreed by \_\_\_\_\_ to be done and performed according to the terms of said contract; and shall pay all lawful

claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in

the carrying forward, performing, or completing of said contract; we agreeing and assenting that this

undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for

the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and

effect; it being expressly understood and agreed that the liability of the surety for any and all claims

hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to

the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the

obligations of said surety on its bond."

(See Section 153.571 ORC, Form of bid guaranty bond.)

(b) *Form of Performance Surety.*

"KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_ as principal and \_\_\_\_\_ as sureties, are hereby held and firmly bound unto \_\_\_\_\_ in the penal sum of \_\_\_\_\_ dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_ enter into a contract with

\_\_\_\_\_,

which said contract is made a part of this bond the same as though set forth herein;

Now, if the said \_\_\_\_\_ shall well and faithfully do and perform the things agreed by

\_\_\_\_\_

to be done according to the terms of said contract; and shall pay all lawful claims of subcontractors,

materialmen, and laborers, for labor performed and materials furnished in carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be

for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein;

then this obligation shall be void; otherwise the same shall remain in full force and effect; it being

expressly understood and agreed that the liability of the surety for any and all claims hereunder shall

in no event exceed the penal amount of this obligation as herein stated.  
The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond."

(See Section 153.57 ORC, Form of performance bond.)

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-141. Disposal and Sale of Personal Property Under \$20,000.**

Personal property of the City of Cincinnati which is determined by the city manager or city purchasing agent or board or commission or their designee having supervision or management thereof to no longer be needed for municipal purposes, the estimated value of each item of which is less than \$20,000.00, and which shall include unclaimed or forfeited property in the possession of the Police Department, may be sold, traded, auctioned, donated, destroyed, transferred, or disposed of on an "as is" basis by the city purchasing agent, the police chief or his designee:

(a) By sale by bid to the highest and best bidder. The purchasing agent has the right to reject any and all bids.

(b) By auction sale, including either traditional auction or online internet auction.

(c) By donating such items to an appropriate charitable organization operating within the city or serving the citizens of the city or other governmental body.

(d) By destruction upon the determination of the city manager that the personal property (weapons, ammunition, drugs, and drug paraphernalia only) needs to be destroyed rather than sold or donated for public safety reasons.

(e) By trade for goods or services of like value when such trade of personal property is determined by the city purchasing agent to be in the best interest of the city.

(f) By disposal or refuse collection where the personal property has minimal value.

(g) By trade-in for credit at the time of purchase of new replacement property.

(h) By sale to a retired police officer of the officer's service weapon and leather goods at the fair market

value or in accord with any applicable collective bargaining provisions. Leather goods means any or

all of the officer's gunbelt, ammunition case, chemical mace holder, handcuff case, and PR-24 holder.

The fair market values of the service revolver and leather goods shall be determined by the Chief of

Police and records of ownership and transfer of service weapons and leather goods sold shall be maintained by the police department.

(i) The city manager or a designee may establish terms for and transfer the ownership of any police dog or police horse deemed no longer fit or otherwise suitable for duty. Such transfer of ownership may be for humanitarian reasons or upon such other terms as may be established by the city manager or a designee. Any transfer of ownership pursuant to this paragraph shall be to the Cincinnati police officer who acted as the canine handler during the dog's active service, a Cincinnati police officer on the mounted patrol to whom the horse was assigned during active duty or any other suitable person determined to be capable of providing for the continued maintenance and welfare of the animal. Such transfer of ownership shall be contingent upon the execution of a release approved by the city solicitor's office.

(j) By agreement signed by the city manager.

(Ordained by Ord. No. 426-1992, eff. 10-23-92; a. Ord. No. 169-1995, eff. June 2, 1995; a.

Ord. No. 181-

1998, eff. June 5, 1998; a. Ord. No. 397-2003, eff. Dec. 25, 2003; a. Ord. No. 177-2004, eff.

June 18,

2004)

**Sec. 321-143. Disposal and Sale of Personal Property in Excess of \$20,000.**

Personal property of the city of Cincinnati which is determined by the city manager or city purchasing

agent or board or commission or their designee having supervision or management thereof to no longer be

needed for municipal purposes, the estimated value of each item being in excess of \$20,000, may be sold

to the highest and best bidder on an "as is" basis by the city purchasing agent by the following procedures:

(a) For sales when the estimated value is in excess of \$20,000 but not in excess of \$100,000, formal

advertising is not required.

A listing of items to be sold which are estimated to be in excess of \$20,000 but not in excess of \$100,000 shall be inserted in The City Bulletin under the heading "Notice - Bids Wanted"

indicating

the item, reference number and bid closing date.

The notice in The City Bulletin shall also indicate for each item:

(1) That bids will be received at the office of the city purchasing agent until 3:00 p.m. (local time) on

the date specified.

(2) That copies of the inquiry are available at the office of the city purchasing agent.

The city manager or the city purchasing agent may at any time require formal advertisement or bid surety on any sale of \$100,000 or less, when such procedure is deemed desirable to protect the best interests of the city.

(b) For sales when the estimated value is in excess of \$100,000, the bids shall be:

(1) Sealed.

(2) Advertised under the formal advertising, bid and contract procedures.



(3) Bid surety shall be required on such bids.

(4) The city purchasing agent may make a written contract with the highest and best bidder after formal advertisement.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-145. Alterations, Modifications and Change Orders.**

Contracts entered into by the purchasing agent shall be between the city and the bidder or offeror.

When determined by the city purchasing agent or a person designated by the city purchasing agent it

becomes necessary, in the performance of a contract, to make alterations or modifications in the contract,

such alterations or modifications shall only be made upon the order of the city purchasing agent or a

person designated by the city purchasing agent, but such order shall be of no effect until the price to be

paid for the alteration or modification of the contract has been agreed upon in writing and signed by the

city purchasing agent or a person designated by the city purchasing agent and the contractor.

Whenever

such a change is executed, it shall be considered as being a part of the original contract, and the surety

executed shall be held to include and cover it.

No contractor may recover anything for work or material because of any such alteration or modification

unless the contract is made in such manner, nor shall contractors be allowed to recover for such work and

material, or either, more than the agreed price.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-147. Assignments.**

"Assignment" shall mean a transfer of any rights, obligations, responsibilities or payments by a bidder,

offeror or contractor in a bid, proposal or contract of the city to another individual, partnership, corporation or other entity.

Any assignment of a bid, proposal or contract of the city shall be ineffective unless the city purchasing

agent consents to such assignment.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-149. Reserved.**

**Sec. 321-151. Default; Duty When Contractor Fails to Prosecute the Work.**

When the work under any contract made by the city is neglected by the contractor or such work is not

prosecuted with the diligence and force specified or intended in the contract, the city purchasing agent or

contracting authority may make requisition upon the contractor for such additional specific force or

materials to be brought into the work under such contract or to remove improper materials from the

grounds as in their judgment the contract and its faithful fulfillment requires. Not less than five days' notice in writing of such action shall be served upon the contractor or agent in charge of the work. If the contractor fails to comply with such requisition within 15 days, the city purchasing agent or contracting authority may employ upon the work the additional force, or supply the special materials or such part of either as deemed proper, and may remove improper materials from the grounds. Separate estimates of all additional force or materials employed or supplied shall be certified by the city purchasing agent or contracting authority and shall be paid by the director of finance. The amount so paid shall be charged against the contractor and be deducted from the next or subsequent estimate. The amount or any part thereof not so paid may be recovered by action from the contractor and contractor's sureties.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-153. Default; Further Bids or Proposals Refused.**

No person or company that shall have defaulted as to any bid, proposal or contract with the city of Cincinnati shall be permitted to submit a bid or proposal for any business with the city of Cincinnati until the amount of the damages accruing to the city by reason of such default shall have been fully accounted for, and in no event shall any such defaulting person or company be permitted to submit a bid or proposal within the period of two years from the date of the default, except with the written permission of the city manager.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-155. Default; Payment Withheld.**

Payment to the contractor may be withheld by the city in part or whole for violations of or failure of the contractor to comply with the terms and conditions of the contract.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

**Sec. 321-157. Repealed.**

(Ordained by Ord. No. 426-1992, eff. 10-23-92; r. Ord. No. 331-1999, eff. 8-4-99)

**Sec. 321-159. Non-Discrimination in Purchasing and Contracting.**

The city manager shall issue and enforce rules and regulations to carry out the meaning and purpose of a Non-Discrimination in Purchasing and Contracting Program, substantially in conformance with the content of Part II, Section 2, the "Legislative Recommendation Report To The City of Cincinnati" dated December 17, 2002, prepared by Griffin & Strong, P.C., (hereinafter referred to as the "Legislative

Recommendation Report"), a copy of which is on file in the office of the Clerk of City Council. (Ordained by Ord. No. 426-1992, eff. 10-23-92; r. Ord. No. 110-1994, eff. 5-6-94; reordained by Ord. No.

439-2002, eff. Jan. 17, 2003)

**Sec. 321-161. Construction Employment Demographics.**

Resolution No. 32-1983. Such resolution applies to all construction contracts unless waived by the city

purchasing agent.

(Ordained by Ord. No. 426-1992, eff. 10-23-92)

## **Cincinnati Municipal Code**

### **CHAPTER 323 – SMALL BUSINESS ENTERPRISE PROGRAM**

#### **Sec. 323-1. Definitions.**

For the purpose of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

#### **Sec. 323-1-B. Brokerage.**

"Brokerage" or "Broker" shall mean a person or firm which contracts with third parties on behalf of the broker's principal or specialist who represents buyers of goods, without taking possession or ownership of these goods or an agent employed to make bargains and contracts for a compensation. A broker acts as middleman in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. An independent manufacturer's representative or a distributor is not a broker.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

#### **Sec. 323-1-C. Certification.**

"Certification" or "Recertification" shall mean a Small Business Enterprise (SBE), MBE or WBE that meets the qualification criteria set forth in this chapter in the rules and regulations promulgated under the authority of this chapter for participation in the program in the appropriate construction, supply or service category for which the contract is being awarded and is approved by the contract compliance officer or the contractor compliance officer's designee. Certification or recertification relate to qualifications regarding ownership and control, not the quality of the service or product.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

#### **Sec. 323-1-C1. Commercially Useful Function.**

"Commercially Useful Function" shall mean that the business is directly responsible for providing the supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. An SBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. A business which stocks sufficient quantities of supplies in direct inventory, held for sale or resale, to cover anticipated future demands for the supplies is a "commercially useful function". SBEs that engage in the business of providing brokerage shall not be deemed to perform a "commercially useful function" unless the brokerage services are those required and sought by the City.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

#### **Sec. 323-1-C2. Contract.**

"Contract" shall mean a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for:

- (a) Construction.
- (b) Supplies.
- (c) Services.
- (d) Professional Services.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

#### **Sec. 323-1-C3. Construction.**

"Construction" shall mean construction as defined in Section 321-1-C3.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

#### **Sec. 323-1-I. Independent Ownership and Control.**

"Independent Ownership and Control" or "Independently Owned and Controlled" shall mean the degree to which SBEs own and participate in the management of the partnership, corporation or joint venture, by considering the SBE's participation in the decisions affecting the day-to-day operations of the business, by considering the ability of the SBEs to function and carry out daily business activities without assistance from the majority partner other than in ways specified in the partnership or corporation papers, and by considering the SBE's proportionate interest in the capital, assets, profits and losses of the business. In determining whether a partnership or corporation is at least 51% independently owned and controlled by SBEs and in determining whether such SBEs have at least 51% independent ownership and control, the Contract Compliance Officer may use discretion in weighing the foregoing factors, as well as any other factor, which in the City's opinion affects independent ownership and control.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-J. Joint Venture.**

"Joint Venture" shall mean a combination of two or more persons, firms or corporations who, without any partnership or corporate designation, join to carry out a single business project or undertaking which is limited in scope and duration. Under this chapter, SBEs shall be allowed to joint venture only with another SBE or shall be allowed to joint venture with a non-SBE for contracts in excess of one million dollars. The certification of a joint venture will terminate upon completion of the City contract for which the joint venture was formed.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-M. Minority Business Enterprise.**

"Minority Business Enterprise" or "MBE" shall mean:

- (a) a sole proprietorship that is totally independently owned and controlled by an individual who is a minority group member; or
- (b) a joint venture which is totally independently owned and controlled by minority group members; or
- (c) a partnership or corporation that is at least 51% independently owned and controlled by minority group members; or
- (d) a nonprofit organization if at least 51% of the board of directors are minority group members as defined in their articles of incorporation, whose mission is to serve minority business enterprises; and
- (e) such business shall have been in existence at least one year prior to application for participation in the MBE program; and
- (f) such business shall have maintained fixed offices located within the geographical boundaries of Hamilton County at least one year prior to application for participation in the MBE program; and
- (g) such business must perform a commercially useful function; and
- (h) such business has been certified by the City.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-M1. Minority Group Members.**

"Minority Group Members" shall mean persons who are citizens of the United States who are African American, Hispanic, Asian or Native American as follows:

- (a) African American - a person having origin in the Black racial group of Africa.
- (b) Hispanic - persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture origin.
- (c) Asian American - persons having origin in the original people of the Far East or the

Pacific Islands.

(d) Native American - an individual having origin in any of the original people of North America and who maintain cultural identification through tribal affiliation.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-P. Professional Services.**

"Professional Services" shall mean professional services as defined in Section 321-1-P, Professional Services.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-W. Women's Business Enterprise.**

"Women's Business Enterprise" or "WBE" shall mean:

(a) a sole proprietorship that is totally independently owned and controlled by an individual who is a woman; or

(b) a partnership, corporation or joint venture which is totally independently owned and controlled by women; or

(c) a partnership or corporation that is at least 51% independently owned and controlled by women; or

(d) a nonprofit organization if at least 51% of the board of directors are women as defined in their articles of incorporation, whose mission is to serve women business enterprises; and

(e) such business shall have been in existence at least one year prior to application for participation in the WBE program; and

(f) such business shall have maintained fixed offices located within the geographical boundaries of Hamilton County at least one year prior to application for participation in the WBE program; and

(g) such business must perform a commercially useful function; and

(h) such business has been certified by the City.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-S. Small Business Enterprise.**

A Small Business Enterprise@ or ASBE@ shall mean a firm for which the gross revenue or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. Sec. 121.201 does not exceed the size standards as defined pursuant to Section 3 of the SBE Act and for which the net worth of each owner does not exceed \$750,000.

(a) Such business shall have been in existence at least one year prior to application for participation in the SBE program; and

(b) Such business shall have maintained fixed offices located within the geographical boundaries of Hamilton County at least one year prior to application for participation in the SBE program; and

(c) Such business must perform a commercially useful function; and

(d) Such business has been certified by the city.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999; a. Ord. No. 435-2002, eff. Jan. 17, 2003; a. Ord. No. 107-2003, eff. May 15, 2003)

**Sec. 323-1-S1. Services.**

"Services" shall mean services as defined in Section 321-1-S1. Services.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-S2. Supplies.**

"Supplies" shall mean supplies as defined in Section 321-1-S2. Supplies.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-1-W. Women's Business Enterprise.**

"Women's Business Enterprise" or "WBE" shall mean:

- (a) a sole proprietorship that is totally independently owned and controlled by an individual who is a woman; or
- (b) a partnership, corporation or joint venture which is totally independently owned and controlled by women; or
- (c) a partnership or corporation that is at least 51% independently owned and controlled by women; or
- (d) a nonprofit organization if at least 51% of the board of directors are women as defined in their articles of incorporation, whose mission is to serve women business enterprises; and
- (e) such business shall have been in existence at least one year prior to application for participation in the WBE program; and
- (f) such business shall have maintained fixed offices located within the geographical boundaries of Hamilton County at least one year prior to application for participation in the WBE program; and
- (g) such business must perform a commercially useful function; and
- (h) such business has been certified by the City.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-3. Purpose.**

The purpose of the SBE program of the city is to promote the economic welfare of the people of the City of Cincinnati, to mitigate the effects of discrimination against SBEs and to promote full and equal business opportunity for all persons doing business with the City of Cincinnati by assisting SBEs to actively participate in the city's procurement process, and by working to eliminate SBE discrimination in public markets.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-5. Rules and Regulations.**

The city manager shall issue and enforce rules and regulations to carry out the meaning and purpose of the small business enterprise program authorized by this chapter.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-7. Program Goals.**

(a) The City of Cincinnati's Annual Goal for SBE participation shall be 30% of the city's total dollars spent for construction supplies, services, and professional services. The city of Cincinnati MBE/WBE annual participation goals of 30% construction, 15% supplies/services, and 10% professional services will be monitored, tracked internally, and reported annually to city council along with annual SBE participation rates.

(b) SBE participation is counted as follows:

- Once a firm is determined to be an eligible SBE, in accordance with this policy, the total dollar value of the contract awarded to the SBE is counted toward the SBE participation rate.
- The City of Cincinnati or a contractor may count toward its SBE rate a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contract of the SBE partner in the joint venture.
- The City of Cincinnati or a contractor may count toward its SBE rate only expenditures to SBEs that perform a "commercially useful function" in the work of a contract. An SBE is considered to perform a "commercially useful function" when it is responsible for execution of a distinct element of the work of a contract

and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an SBE is performing a commercially useful function, the City of Cincinnati or a contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

- Consistent with normal industry practices, an SBE may enter into subcontracts. If an SBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function. The SBE may present evidence to rebut this presumption to the City of Cincinnati. (Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

### **Sec. 323-9. Eligible Firms.**

(a) *Requirements.* To be eligible for certification as an SBE, each applicant must meet the definition of an SBE as defined in § 323-1-S.

(b) *Certification Process.* A business seeking certification as an SBE must:

- Submit an application to the City of Cincinnati on the prescribed form, affirming under penalty of perjury that the business qualifies as a City of Cincinnati SBE.
- If requested by the City of Cincinnati, the applicant must provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.
- The City of Cincinnati will certify the applicant as an SBE or provide the applicant with written justification of denial of certification within 90 days after the date the city receives a satisfactorily completed application from the applicant.
- The City of Cincinnati's staff will review and evaluate applications, and may reject an application based on one or more of the following: the applicant does not meet the requirements of the definition of an SBE; the application is not satisfactorily completed; the application contains false information; and the applicant does not provide required information in connection with the certification review conducted by the City of Cincinnati.
- Firms certified by other government agencies will be required to be certified under this chapter regardless of previous certification.

(c) *Recertification.* The certification is valid for a two-year period beginning on the date the city certified the applicant as an SBE concern. Upon expiration of the two-year period, a business that desires recertification must: return a completed recertification form as provided by the city; and comply with the requirements specified in this section which apply to the certification process.

(d) *Revocation.* The City of Cincinnati shall revoke the certification of a business if it is determined that a business does not meet the definition of an SBE or that business fails to provide requested information in connection with a certification review conducted by the OCC. Prior to taking formal action, the OCC staff shall provide the business with written notice of the proposed revocation. The OCC staff shall then prepare a recommendation regarding the proposed revocation for review by the contract compliance office r. The decision of the city manager or the city manager's designee is final.

(e) *Certification Reviews.* The OCC will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate, and that the business remains eligible after certification has been granted. Certification is subject to revocation if it is determined that a business does not qualify as a City of Cincinnati SBE under the terms of this chapter. Certification



reviews may be conducted for any business for which the city determines a certification review is warranted. Businesses subject to certification reviews must provide the City of Cincinnati with any information requested to verify the certification eligibility of the business.

(f) *Self-Certification*. The city manager shall issue and enforce rules and regulations to provide for self-certification of SBEs for bids between \$5,000.00 and \$50,000.00 subject to penalties for perjury/falsification. The self-certification process will not be subject to routine audits. On bids over \$50,000.00, the SBE must be certified in advance by the Office of Contract Compliance pursuant to the provisions of CMC Section 323-9(b).

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999; a. Ord. No. 436-2002, eff. Jan. 17, 2003; a. Ord. No. 107-2003, § 2, eff. May 15, 2003)

### **Sec. 323-11. Sanctions.**

The contract compliance officer shall apply penalties against certified SBEs for violations of the provisions of this chapter or of the rules and regulations promulgated under the authority of this chapter, and shall apply penalties against any non-SBE firms which assist, participate, or initiate SBEs in misleading the city about ownership and control of a would be SBE, MBE or WBE. The nature and extent of penalties applied shall be reviewable on appeal to the contract compliance advisory board which acts as an advisor to the city manager. Penalties which are applied against firms by virtue of this section, shall be considered in making future contract awards to such firms. Penalties for a violation of this chapter or the rules and regulations under the authority of this chapter shall be as set forth in Section 323-99.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

### **Sec. 323-13. Appeal.**

(a) *Noncompliance and denial of certification*. Upon a determination of noncompliance with the requirements of this chapter or a denial of certification as an SBE by the contract compliance officer, the contract compliance officer shall notify the affected party in writing by certified mail, setting forth the reasons for the determination of noncompliance or denial of certification.

(b) *Time for Filing Notice of Appeal*. Any contractor, bidder or offeror who has been denied certification as an SBE or against whom a determination of noncompliance with the requirements of this chapter has been found by the contract compliance officer may appeal the determination of noncompliance or denial of certification by filing a notice of appeal with the director of OCC in writing within seven (7) days of receipt of the notice of the determination of noncompliance or denial of certification.

(c) *Notice of Hearing Date and Hearing*. Upon receipt of the notice of appeal from the aggrieved party by the contract compliance officer of OCC, the OCC within three (3) working days of receipt of the notice, shall forward the notice to the contract compliance advisory board.

(d) *Contract Compliance Advisory Board*. The city manager shall structure a contract compliance advisory board of the city to include; representatives of the city, labor, SBEs, and citizens. The board shall make recommendations to the city manager for appeals. Board members shall serve for a period of two years. The decision of the city manager or the city manager's designee, for appeals shall be final. The board shall set a hearing date not more than twenty-eight (28) days from the date of receipt of the notice from the contract compliance officer. The board shall cause notice of the hearing to be served upon all parties, by certified mail. Such notice shall set forth

with particularity the charges filed by the aggrieved business and shall include the hearing date, time, and place. At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence in either party's possession concerning the determination of noncompliance with the requirements of this chapter.

(e) *Decision.* The board shall, within seven (7) days of the conclusion of the hearing, make a written recommendation to the city manager or the city manager's designee on the appeal, which recommendation shall affirm, modify, or reverse the determination of noncompliance or the denial of certification by the board. The board shall decide whether the determination of noncompliance being appealed was in accordance with the law and the terms and conditions of the solicitation before the contract is awarded or penalties are imposed, except in emergency situations as determined by the city purchasing agent. If the city manager finds for the aggrieved party, the business shall be certified as an SBE and added to the certification maintained by the city or the business shall be found in compliance with the requirements of this chapter and permitted to submit a bid or proposal in response to the city's solicitation. The decision of the city manager or the city manager's designee shall be final, subject to the right of appeal as provided by law.

(f) *Notice of Decision.* The city manager shall issue written notice if the decision on the appeal to all parties after receiving the recommendation of the board. The notice of the decision shall be sent to all parties by certified mail and shall set forth the reasons for the decision.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

### **Sec. 323-15. Office of Contract Compliance (OCC).**

The office of contract compliance (OCC) shall have the following functions and duties:

(a) Information. The OCC shall act as a resource for small business information.

(b) Outreach to SBEs. Information dissemination and communication with SBEs are integral parts of the city of Cincinnati's SBE Program. As a part of its outreach program, the city of Cincinnati's SBE staff will solicit input from representatives of SBEs, trade associations, and community organizations.

(c) Certification. The OCC shall be responsible for certification, recertification, decertification of SBEs, under this chapter in accordance with Section 323-27.

(d) Direct assistance to SBEs. The OCC will assist SBEs in overcoming barriers to program participation. This assistance will be offered directly by the city of Cincinnati, as well as by referral to other assistance agencies through established, comprehensive, and continuous programs. Businesses requiring management and technical assistance will be identified through a questionnaire, personal experience with these businesses, and requests for assistance.

(e) Records and Reports of Contractors. The OCC shall maintain records and reports submitted by contractors in accordance with the provisions of this chapter.

(f) The OCC in conjunction with other city agencies will monitor SBE participation levels on projects throughout the duration of a contract.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

### **Sec. 323-17. City Maintained Records and Reports.**

(a) The effectiveness of this program will be measured by a review of data indicating prime and subcontract awards to SBEs, MBEs, and WBEs. Program effectiveness measurements will also include efforts by the city of Cincinnati staff to provide prime contracting opportunities for SBEs. At the end of each contract, the office of contract

compliance will prepare a report on the utilization of firms in the SBE program. Data in this report will include information on the gross income size of the firms participating on each contract. Each project manager and procurement officer will continuously maintain, and compile monthly, information relating to the departments' use of SBEs, including information regarding subcontractors and efforts toward SBE program participation. Data on MBE and WBE utilization will be used to determine if there are barriers to their participation which persists despite efforts to assist SBEs.

(b) At the end of a contract, the city shall require a contractor to report to OCC the identity of each SBE to whom the contractor has awarded a subcontract for the purchase of services, professional services, supplies, materials, and equipment.

(c) The city of Cincinnati shall prepare annually a consolidated report based on a compilation and analysis of the reports submitted by each project manager and procurement officer, and information provided by the finance department. This record-keeping system identifies and assesses SBE, MBE and WBE contract awards, prime contractors' progress in achieving SBE subcontract participation, and other SBE development and contracting efforts. Specifically, the OCC in conjunction with all city agencies will maintain records showing:

- Awards to SBEs, including names of contractors and subcontractors, nature of the work and services performed, and the percentage of SBE, MBE and WBE participation per contract. The city of Cincinnati will obtain regular reports from prime contractors on their progress in meeting contractual SBE commitments;
- Specific efforts to identify and award contracts to SBEs;
- Copies of direct mailings to SBEs;
- Pre-bid conference information as it relates to the SBE program;
- Requests for assistance from the SBEs interested in bidding or proposing on city of Cincinnati contracts and subcontracts;
- Workshops, seminars and training programs conducted for SBEs; and
- Efforts to assist SBEs in acquiring bonding and insurance.

(d) The city of Cincinnati staff will submit annual SBE development reports to city council. These reports shall include:

- The number of contracts awarded to SBEs, MBEs, and WBEs;
- A description of the general categories of contracts awarded to SBEs, MBEs and WBEs;
- The dollar value of contracts awarded to SBEs, WBEs and MBEs;
- The percentage of the dollar value of all contracts awarded to SBEs, MBEs, and WBEs during the preceding year;
- The actual dollar amount paid to SBE, WBE, MBE and non SBE vendors as prime or subcontractors;
- The percentage of dollar amount paid to SBE, WBE, MBE compared to the total.
- The MBE information will be further desegregated by the following minority group designations as defined in Section 323-1-M1: African American, Hispanic, Asian American, and Native American. The city of Cincinnati does not discriminate against any company or group of companies in its contracting and procurement activities on the basis of race, color, age, religion, sex, national origin, handicap/disability or veteran status. The SBE opportunity does not propose any numeric goals determined by the rate of program participation by minorities or women, but will require this information at the end of city contracts. The program is designed to include all segments of the region's business

community by increasing the competitiveness and profitability of all small businesses as defined within this program.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-19. Small Business Enterprise Handbook.**

The OCC and Purchasing Division will develop a written handbook containing the following:

- (a) Procedures outlining specific steps on how to bid;
- (b) Prerequisites for bidding on contracts;
- (c) Information on how plans and specifications can be obtained;
- (d) Names of persons to contact concerning questions on bid documents;
- (e) Names of procurement officers and office hours;
- (f) Types of supplies and services purchased; and
- (g) Explanations of standard contract implementation procedures and requirements, concerning such matters as timely performance of work, contract changes, and payment schedules.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-21. Small Business Enterprise Directory.**

The OCC and Purchasing Division will create an SBE directory that lists SBEs categorized by types of firms to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialty(ies). The directory will be continuously updated and maintained on the computer and on hard copy. In compiling this directory, the city of Cincinnati will identify and certify as many SBEs as possible that have the potential of doing business with the city of Cincinnati. The city of Cincinnati will maintain and have available an updated SBE Directory and source list(s) for each bid/proposal solicitation to facilitate identifying SBEs with capabilities relevant to general contracting requirements and to particular solicitations. The city of Cincinnati will make the directory and source list(s) available to bidders and offerors in their efforts to meet the SBE commitments.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-23. Procedures for SBEs to have an Equitable Opportunity to Compete for Contracts and Subcontracts.**

Specific affirmative procedures to be utilized by the OCC staff and city agency contracts/procurement staff to encourage maximum practicable opportunities for SBE participation include the following:

- (a) Assist SBEs in obtaining insurance and surety bonds where necessary in the performance of contracts, including, but not limited to: Package contracts so that dollar amounts do not require bonding; encourage prime contractors to waive bonding or assist SBE subcontractors in obtaining bonding; and encourage staged bonding where feasible, when bonding is carried over from one project stage to the next.
- (b) Encourage the formation of joint ventures among SBEs and between SBEs and firms which provide opportunity for the SBE to gain experience. The OCC staff will assist prime contractors in identifying interested SBEs for subcontracts and joint ventures; provide information on the city of Cincinnati's organization and contractual needs and offer instructions on bid specifications, procurement policy, procedures, and general bidding requirements;
- (c) OCC in conjunction with the city purchasing division shall provide specifications and requests for proposals to the SBE community in a timely manner to allow SBEs

adequate time to develop responsible and responsive bids, quotations, and proposals. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material will be made available at no charge to SBE development agencies;

(d) The city finance department in conjunction with affected city agencies establish prorated payment and delivery schedules where feasible, to minimize cash flow problems faced by small firms. The city of Cincinnati will provide guidance to SBE contractors regarding maintenance of a positive cash flow in order that current obligations can be met;

(e) Wherever feasible, use the least complicated bid forms appropriate for each procurement solicitation;

(f) Hold pre-bid/proposal conferences to explain SBE commitments as well as forms that must be submitted with a bid or proposal;

(g) Permit bidders/offerors to review and evaluate successful bid/proposal documents of similar procurement and use debriefing sessions to explain why certain bids were unsuccessful;

(h) Provide projected procurement information and contracting schedules through the city bulletin and other outreach efforts;

(i) Conduct internal information workshops to inform and acquaint the city of Cincinnati staff with the goals and objectives of the city of Cincinnati's SBE plan, and to sensitize them to the problems of SBE;

(j) Maintain records showing specific efforts to identify and award contracts to SBEs and establish a monitoring system to ensure that all contractors, subcontractors, consultants, and vendors comply with contract specifications related to SBE utilization; and

(k) Inform SBEs of bid notices and specifications related to their capability by placing bid notices in the city bulletin, major local newspapers, and other periodicals. Bid notices will also be sent to local trade associations, technical assistance agencies, economic development groups, and SBEs with capabilities relevant to the bid notice as identified by the city of Cincinnati's SBE data bank. Bid specifications will be made available to SBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes are also available to SBEs.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

### **Sec. 323-24. Small Business Assistance.**

The City of Cincinnati will offer the following assistance directly to SBEs:

(a) The OCC and purchasing division staffs will provide information on the city of Cincinnati's contractual requirements and projected procurement opportunities.

(b) The OCC and purchasing division staffs will provide counseling and training sessions for SBEs. The city of Cincinnati staff will be available to interested business representatives to explain (in detail) instructions for preparation of bid specifications, the city of Cincinnati procurement policies, procedures, and general bid requirements. The SBE program Officer will coordinate and follow-up all requests for assistance to insure that all necessary information was provided.

(c) The OCC will provide coordination and referral to existing business development organizations.

(d) Upon request, SBEs will be provided with information on specific reasons for unsuccessful bids through debriefing sessions. The city of Cincinnati will review individual solicitations to ensure that insurance and bonding provisions are not

excessive. Assistance in obtaining insurance and bonding will be provided to SBEs.

(e) The OCC will provide intensive workshops and training sessions on identified SBE problem areas, i.e., pricing and estimating, joint venture formation, accounting principles, marketing, etc.

(f) Information on the city of Cincinnati's SBE program will be disseminated through written materials, seminars, workshops, and specialized assistance to individual firms.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

**Sec. 323-25. Contractors and Subcontractors Assistance to Comply with Applicable SBE Requirements.**

The OCC and purchasing department staffs are available to assist contractors and subcontractors in implementing this program. As a standard procedure, such assistance includes:

(a) Clear identification of the city of Cincinnati's SBE provisions in all the city of Cincinnati's solicitations;

(b) Pre-bid/proposal conference to explain the city of Cincinnati's SBE program;

(c) Identification of certified SBEs per the city of Cincinnati solicitation including a list of certified SBEs available to all document holders;

(d) Lists of document holders will be available to interested SBEs.

(e) The OCC in conjunction with other city agencies will monitor SBE participation levels on projects throughout the duration of a contract.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

Sec. 323-27. Repealed.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999; r. Ord. No. 438-2002, eff. Jan 17, 2003)

Sec. 323-29. Repealed.

(Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999; r. Ord. No. 438-2002, eff. Jan 17, 2003)

**Sec. 323-31. Subcontracting Outreach Program.**

The city manager shall issue and enforce rules and regulations to carry out the meaning and purpose of the Subcontracting Outreach Program, substantially in conformance with the content of Part II, Section 1, the "Legislative Recommendation Report To The City of Cincinnati" dated December 17, 2002, prepared by Griffin & Strong, P.C., (hereinafter referred to as the "Legislative Recommendation Report"), a copy of which is on file in the office of the Clerk of City Council.

(Ordained by Ord. No. 438-2002, eff. Jan. 17, 2003)

**Sec. 323-99. Penalties.**

The provisions of this section shall be incorporated into city contracts. The contractor shall agree that a breach of the provisions of this chapter or the contract shall subject the contractor to any or all of the following penalties:

Withholding of ten percent (10%) of all future payments under the contract until it is determined that the contractor is in compliance;

Withholding of all future payments under the contract until it is determined that the contractor is in compliance;

Default; payment withheld under Section 321-155 of the Cincinnati Municipal Code; or

Default; further bids or proposals refused under Section 321-153 of the Cincinnati Municipal Code.

A minimum of two (2) years suspension from new awards to do business with the city;

Permanent debarment from doing business with the city.

For good cause shown, the director of OCC may grant a stay of the penalty pending appeal; however, in no case shall the stay impede the city's contracting authority. (Ordained by Ord. No. 335-1999, eff. Aug. 4, 1999)

## **Cincinnati Municipal Code**

### **CHAPTER 325 – EQUAL EMPLOYMENT OPPORTUNITY PROGRAM (NON-CONSTRUCTION WORKFORCE)**

#### **Sec. 325-1. Scope.**

This Chapter 325 Equal Employment Opportunity Program of the Cincinnati Municipal Code shall apply to all City contracts, including its boards and commissions contracts, exceeding \$5,000.00.

(Ord. No. 331-1999, eff. Aug. 4, 1999)

#### **Sec. 325-3. Rules and Regulations.**

The city manager shall issue and enforce rules and regulations for the equal employment opportunity program authorized by this chapter.

(Ord. No. 331-1999, eff. Aug. 4, 1999)

#### **Sec. 325-5. Duties of the Office of Contract Compliance.**

The office of contract compliance (OCC) shall have the following functions and duties:

- (a) Administration and enforcement of the equal employment opportunity program set forth in this chapter.
- (b) Establishment of procedures to effectuate the equal employment opportunity program set forth in this chapter.
- (c) Determination in writing, with reasons thereof, whether potential contractors are in compliance with the equal employment opportunity program set forth in this chapter before the award of any bid or proposal or the execution of any city contract.
- (d) Approval of affirmative action programs submitted by potential contractors.
- (e) Investigation of alleged violations of this chapter and the issuance of written determinations following such investigations, stating the reason thereof.
- (f) Maintenance of statistical data showing the demographic characteristics of the available pool of labor skills on which the city relies for determinations of compliance by contractors with this chapter.
- (g) Provision of all necessary forms, applications, documents and papers necessary to comply with this chapter.
- (h) Determination of whether a potential contractor has met the requirements of this chapter. If bids are submitted, this determination must be made within 15 days by the contract compliance officer.
- (i) Review cases where a contractor fails to implement previously made affirmative action agreements to determine whether there should be further efforts or alternative approaches, including but not limited to, contacts with industry, related labor unions, and requests for the assistance of any pertinent federal agency for further negotiations.
- (j) Determination of whether any penalty set forth in § 325-99 Penalties for Noncompliance is appropriate.
- (k) Notification to an affected party by certified mail of a determination of noncompliance with this chapter and that the party has the right to appeal such determination of noncompliance with this chapter. Such request for an appeal shall be sent by the affected party to the contract compliance officer within seven days of receipt of the notice of noncompliance.

(Ord. No. 331-1999, eff. Aug. 4, 1999)

#### **Sec. 325-7. Requirements for Execution of City Contracts.**

No contract shall be executed on behalf of the city or its boards and commissions unless at least one of the following requirements is met:



(a) Reflection of labor pool demographics with a workforce of 15 or more employees. The contractor has demonstrated that the contractor's local workforce, if consisting of 15 or more employees, reflects the demographic characteristics of the available pool of labor skills normally utilized by the contractor, according to the Office of Federal Contract Compliance Programs (OFCCP) guidelines, as amended, for the Metropolitan Statistical Area (MSA) in which the contractor's workforce is based. If a contractor has a Cincinnati MSA workforce of 15 or more employees, the contractor shall meet this requirement if the contractor's Cincinnati MSA workforce reflects the demographic characteristics of the Cincinnati MSA.

(b) The contractor has demonstrated good faith efforts to comply with the contractual requirement of this chapter. Such good faith is to be demonstrated by an existing Affirmative Action Program, including but not limited to training programs, advertising, recruitment efforts, goals, and timetables; to be approved by the contract compliance officer. An Affirmative Action Program shall be approved if it is pursuant to an order of a federal court with jurisdiction over the contractor's employment practices or if it meets the standard of the EEOC and OFCCP guidelines, as amended, provided that certification by the EEOC or OFCCP shall be accepted as fulfillment of this subsection only when issued within 30 days of the submission of the contractor's program to the city.

(c) The contract has been determined to be an emergency procurement pursuant to Sec. 321-65 C.M.C., or to be available only through a sole source pursuant to § 321-89 C.M.C.

(d) The contractor has fourteen or less employees.

(Ord. No. 331-1999, eff. Aug. 4, 1999)

### **Sec. 325-9. Equal Employment Opportunity Clause.**

The Equal Employment Opportunity (EEO) clause is required to be in or incorporated by reference in all city contracts, including the city's boards and commissions contracts, exceeding \$5,000, and shall read as follows:

"This Contract is subject to the City of Cincinnati's Equal Employment Opportunity Program contained in Chapter 325 of the Cincinnati Municipal Code. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee, or applicant for employment, because of race, religion, color, sex, or national origin. As used here, the words 'shall not discriminate' means and includes without limitation the following:

- Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

- The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

(b) The Contractor shall, in all solicitations or advertisements for employees, placed by or on behalf of the contractor, state that qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

(c) The Contractor shall furnish all information and reports required by the contract compliance officer pursuant to this chapter, and shall permit access to the books, records, and accounts of the Contractor during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with

the program.

(d) The Contractor shall take such action with respect to any subcontractor as the city may direct as a means of enforcing the provisions herein, including penalties and sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in or is threatened with litigation as a result of such direction by the city, the city may enter into such litigation as is necessary to protect the interest of the city and to effectuate the Equal Employment Opportunity Program of the city; and, in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.

(e) The Contractor shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed shall contain information as to employment practices, policies, programs, and statistics of the contractor.

(f) The Contractor shall include the provisions of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

(g) A finding, as hereinafter provided, that a refusal by the Contractor to comply with any portion of this Equal Employment Opportunity Program, may subject the offending party to any or all of the following penalties:

- Refusal of all future bids or proposals for any contract with the city or its boards or commissions until such time as the Contractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this chapter;
- Cancellation of the contract;
- In a case in which there is substantial or a material violation of the compliance procedures herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided."

(The terms "Contract" and "Contractor" in this EEO clause may be replaced with similar terms used in a contract and the paragraphs may be lettered or numbered similar to those in a contract.)

(Ord. No. 331-1999, eff. Aug. 4, 1999)

Cross references: Penalty, § 325-99.

**Sec. 325-11. Notice to and Requirements of Bidders and Offerors.**

(a) The city shall include, as a part of any contract specifications published for the use of prospective bidders and offerors, a notice that all bidders or offerors will be required to comply with this chapter.

(b) Each bidder or offeror shall submit any information required by this chapter in duplicate to the contract compliance officer. Each bidder or offeror shall file, as part of the documents of such contract, employment information in such form as may be required by the contract compliance officer and shall ensure that each subcontractor also files such information.

(Ord. No. 331-1999, eff. Aug. 4, 1999)

**Sec. 325-13. Enforcement and Appeal.**

(a) If there is substantial or material violation of the compliance procedure set forth in

this chapter or as may be provided for by the contract, appropriate proceedings may be brought by the city to enforce those provisions, including the enjoining, within applicable law, of contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent, directly or indirectly, compliance with the policy provided in this chapter.

(b) If the contract compliance officer determines that the contractor has violated or has failed to comply with the equal employment opportunity requirements of the contract, after affording such contractor a reasonable time to correct such situation and where negotiations have been of no avail, such officer shall make a finding of noncompliance and shall transmit the findings and recommendations thereon to the city manager or the city manager's designee and to the contract compliance advisory board, which shall hold a hearing thereon if requested by the contractor.

(Ord. No. 331-1999, eff. Aug. 4, 1999)

**Sec. 325-99. Penalties for Noncompliance.**

The refusal or failure by a contractor to comply with any provision of this chapter may subject the offending party to any or all of the following penalties:

(a) Cancellation of the contract.

(b) Refusal of all future bids for any contract with the city or any of its boards or commissions until such time as the contractor or subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this chapter.

(Ord. No. 331-1999, eff. Aug. 4, 1999)