

S U M M A R Y

AN ORDINANCE to amend Chapter 17 of the 1984 Detroit City Code, Finance; by amending Article V, Purchasing and Supplies, Division 1, Goods and Services, Subdivision A. Generally, Section 17-5-1 Definitions; Subdivision B. Purchasing of City Goods and Services, Section 17-5-12 Solicitation of bids, comparison of equalization credits in bids, and application of equalization credits for bids, for major purchases; exceptions; to provide for the health, safety and general welfare of the public.

BY COUNCIL MEMBER _____:

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IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

Section 1. Amend Chapter 17 of the 1984 Detroit City Code, Finance; by amending Article V, Purchasing and Supplies, Division 1, Goods and Services, Section 17-5-1 Definitions; Subdivision B. Purchasing of City Goods and Services, Section 17-5-12 Solicitation of bids, comparison of equalization credits in bids, and application of equalization credits for bids, for major purchases; exceptions, to read as follows:

CHAPTER 17, FINANCE

ARTICLE V. PURCHASES AND SUPPLIES

DIVISION 1. – GOODS AND SERVICES

Subdivision A. -Generally

Sec. 17-5-1 Definitions

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Alternative paper means paper with environmental qualities that meet or exceed United States Environmental Protection Agency standards.

Biodegradable means capable of being broken down, especially into innocuous products, by the action of living things such as microorganisms.

Certification means the designation given to a firm using standard review procedures where determined by the Human Rights Department that the firm applying for such designation meets or exceeds certain specified requirements for that category of business as determined by this article.

Certification process means the standard review process used to confer upon a firm the designation of certification as defined in this section.

City site means a location within the corporate limits of the City or property owned by the City that is outside the corporate limits of the City.

Cooperative purchases means purchases made through a cooperative purchases resource.

Cooperative purchases resource means an arrangement through which purchases may be made of goods or services that are available under open contracts issued to local, state, or federal governmental entities acting on a cooperative basis, including, but not limited to, those designated as Michigan Delivering Extended Agreements Locally (MiDEAL), American communities, and other similar arrangements among governmental entities that are identified by the Purchasing Director and posted on the City's website.

Detroit-based business (D-BB) means a business which pays City income taxes on the business's net profits and pays City property taxes on a plant or office and equipment which are ordinarily required for the furnishing of the goods or the performance of the services required by the contract and referred to in the application for certification as a Detroit-based business, or other real or personal property in the City equivalent in value to such plant or office and

equipment for not less than one taxable year immediately prior to the date of the application for certification as a Detroit-based business, which shall comply with the following requirements:

- (1) Provide verification that the firm has the physical resources, including, but not limited to, **not less than 30% of its inventory, equipment, and vehicles are located at the premises**, as well as the ability to provide the services indicated in its application for certification at the City location;
- (2) Provide verification of the ability of the business to carry out the service or repair the product to be sold to the City at the City site;
- (3) Provide references, licenses, or other means of verification acceptable to the City that the services the firm offers to the City has been provided at the City site for at least one year prior to the date of application; and
- (4) Provide verification that the business has or can procure an adequate number of employees **of which a minimum of 30% are Detroit residents with documentation evidencing the name and address of the Detroit residents used to substantiate certification**, based at its City site to perform services indicated in the application. **A Detroit resident employee of the Detroit Based Business shall be on the business entities payroll and subject to IRS required tax deductions.**

Detroit-based micro business concern (D-BMBC) means a business which meets the definitions of Detroit-based business and micro business concern as defined within this section.

Detroit-based small business (D-BSB) means any business which meets the definitions of Detroit-based business and small business concern as defined within this section.

Detroit-headquartered business (D-HB) means a business which:

- (1) Has received a certification as a Detroit-based business, as defined in this section;
- (2) Has an office within the City that serves as the administrative center where the chief executive officer and highest level management staff perform at least 51 percent of their management functions; and
- (3) Has received a certification as a Detroit-headquartered business.

Detroit-resident business (D-RB) means any business which employs a minimum of four employees at least 51 percent of which are City residents **as verified with documentation evidencing the name and address of the Detroit residents used to substantiate certification.**

A Detroit Resident Business employees shall be on the business entities payroll and subject to IRS required tax deductions.

Energy Star® compliant products mean products that meet or exceed the United States Environmental Protection Agency's Energy Star® criteria for energy efficiency.

Environmentally-preferable means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose and such comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Fiscal year means the fiscal year of the City being July 1st through June 30th.

Industrial oil means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

Invitation for bids means the complete assembly of related bid documents, including those attached or incorporated by reference, which are furnished to prospective bidders for the purpose of bidding.

Joint venture means a joint venture of separate firms, one of which is a DBB, DBSB, DRB or DBMBC, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the DBB, DBSB, DRB, or DBMBC:

- (1) Is substantially included in all phases of the contract, including, but not limited to, bidding and staffing;
- (2) Provides at least 51 percent of the total performance, responsibility, and project management of a specific job;
- (3) Receives at least 51 percent of the total remuneration from a specific contract; and
- (4) Shares in profits and losses.

Life-cycle analysis means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

Lowest responsible bidder means the bidder who, or which, submits the lowest bid, conforming to specifications, as evaluated under Section 17-5-12(b) of this Code, and who or which, meets the following standards as they relate to the particular contract under consideration. The prospective contractor must demonstrate:

- (1) Adequate financial resources for the performance of the contract, or the ability to obtain such resources as required during performance;
- (2) The necessary experience, organizational structure and resources, technical qualifications skills and facilities, or the ability to obtain them, including the ability to retain subcontractors as required;
- (3) The ability to comply with the proposed or required time of delivery or performance schedule;

- (4) A satisfactory record of integrity, judgment and performance. Contractors who, or which, are delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall be presumed to be unable to fulfill this requirement in the absence of evidence to the contrary or compelling circumstances;
- (5) The ability to conform to the requirements of the fair employment practices ordinances;
- (6) Qualification and eligibility to receive an award under applicable laws ordinances and regulations; and
- (7) The ability to produce, upon request acceptable evidence of ability to obtain financial resources and the experience, organizational structure and resources, technical qualifications, skills and facilities needed for the proper performance of the contract sought.

Lubricating oil means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential, or in an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

Major means not less than the specified dollar valuation of a contract in relation to the corresponding contract classification as follows:

Major Contracts

Type of Contract	Dollar Valuation
Purchase Contracts:	
Equipment and Supplies	\$270,000.00
Public works contracts:	

Demolition	\$678,000.00
Street paving	\$1,350,000.00
Construction	\$2,700,000.00
Nonprofessional services:	
Including but not limited to, tree removal, catering, janitorial, maintenance	\$678,000.00
Disposition of equipment and supplies unsuitable for public use	\$25,000.00

Mentor venture means a joint venture of separate firms, one of which is a D-BB, D-BSB, D-RB or D-BMBC, which has been created to perform a specific contract, and is evidenced by a written agreement which provides at a minimum that the D-BB, D-BSB, D-RB or D-BMBC:

- (1) Is substantially included in all phases of the contract, including, but not limited to bidding and staffing;
- (2) Provides at least 30 percent of the total performance, responsibility and project management of a specific job;
- (3) Receives at least 30 percent of the total remuneration from a specific contract; and
- (4) Shares in profits and losses.

Micro business concern (MBC) means a business which has average annual gross receipts of \$1,000,000.00 or less and no more than 15 employees. A business which is an affiliate or subsidiary of an entity that is not eligible for registration as a micro business concern shall not be registered as a micro business concern.

Post-consumer waste means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item, but does not mean manufacturing waste.

Price-premium payback period means the number of years that it takes for the savings in operating costs to offset any additional up-front price of the product versus a lower price, less energy efficient model, which is calculated by dividing the price premium by the annual savings in operating costs.

Readily biodegradable means the measurement guidelines according to the Organization for Economic Cooperation and Development.

Reblended latex paint means paint, which is also known as consolidated latex paint, that contains 100 percent post-consumer content from good-quality surplus with no virgin materials such as resins and colorants added.

Recycled latex paint, or reprocessed latex paint, means latex paint with a post-consumer recycled content level that a minimum meets the requirements specified by the United States Environmental Protection Agency's Recovered Materials Advisory Notice for reprocessed latex paint.

Recycled materials means materials that would otherwise be a useless, unwanted, or discarded material, except for the fact that the materials retain useful physical or chemical properties after serving a specific purpose and, therefore, can be reused or recycled.

Recycled oil means used oil that has been prepared for reuse as a petroleum product by refining, reclaiming, reprocessing or other means, provided, that the preparation or use is operationally safe, environmentally sound, and complies with federal, state, and local laws and regulations.

Recycled content paper means a paper product with no less than:

- (1) Fifty percent of its fiber weight consisting of secondary waste materials; or
- (2) Thirty percent of its fiber weight consisting of post-consumer waste.

Retreaded tires means tires that use an existing casing for the purpose of vulcanizing new tread to such casing and that meet all performance and quality standards in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

Secondary waste materials means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value, including post-consumer waste, but does not mean excess virgin resources of the manufacturing process, including fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper-machine rolls, mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

Small business concern (SBC) means a business which:

- (1) Has been in existence and operating for at least one year prior to the date of application for certification as a small business concern;
- (2) Does not meet the definition of a micro business concern as defined in this division; and
- (3) Is one of the following:
 - a. A manufacturing business which, for the three fiscal years preceding the date of application for certification, has provided full-time employment to not more than 500 persons; or
 - b. A general construction business which, for the three fiscal years preceding the date of application for certification, has average annual gross receipts of not more than \$28,000,000.00; or

- c. A specialty construction business whose average annual gross receipts have not exceeded \$12,000,000.00 in the three fiscal years preceding the date of application for certification; or
- d. A wholesale business which, for the three fiscal year preceding the date of application for certification, has provided full-time employment to not more than 100 persons; or
- e. A retail business which, for the three fiscal years preceding the date of application for certification, has average annual gross receipts of not more than \$6,000,000.00; or
- f. A service business, other than professional, which for the three fiscal years preceding the date of application for certification, has average annual gross receipts of not more than \$6,000,000.00; or
- g. A professional services business, which for the three fiscal years preceding the date of application for certification, has had average annual gross receipts of not more than \$6,000,000.00.

A business which is an affiliate or subsidiary of an entity that is not eligible for certification as a small business concern shall not be certified as a small business concern.

Used oil means a petroleum-based or synthetic oil, which through use, storage or handling has become unsuitable for its original purpose due to the presence of physical or chemical impurities or loss of original properties.

Virgin oil means oil that has been refined and formulated from crude oil, synthetic oil, or any blend of synthetic oil, and that has not been used or contaminated with physical or chemical impurities.

Volatile organic compounds means organic compounds characterized by a tendency to readily evaporate into the air, contributing to both indoor and outdoor air pollution and the creation of photochemical smog.

Subdivision B.- Purchasing of City Goods and Services

Sec. 17-5-12. - Solicitation of bids, comparison of equalization credits in bids, and application of equalization credits for bids, for major purchases; exceptions.

(a) *Solicitation of bids.* Where the purchase entails a major expenditure, the Purchasing

Director shall provide for the procurement of competitive bids as follows:

- (1) Prepare the invitation for bids, describing the City's requirements clearly, accurately and completely, avoiding unnecessarily restrictive specifications which might unduly limit the number of bidders. The invitation shall include:
 - a. A notification to all bidders that the City has a preference for environmentally-preferred goods and services and will purchase them where they are price competitive, available, and substantiated according to accepted federal and commercial standards; and
 - b. A notification to all bidders that prices bid will be compared to prices available to the City from applicable cooperative purchases resources.
- (2) Publicize the invitation for bids by advertising for bids one or more

times both in the newspaper designated to print the official business of the City and in a centralized location on the City's official website. Where appropriate, the Purchasing Director shall include advertisements in newspapers, trade journals, association postings, websites, and any other appropriate media sources. In addition, the Purchasing Director may send copies of such advertisement to persons and firms likely to be interested therein. Such advertisement shall accurately and clearly describe or refer to the subject matter of the proposed purchase and may also refer the bidder to specifications on file in the Office of Contracting and Procurement. Such advertisement shall specify the time and place of submitting bids and such other information from the specifications as the Purchasing Director shall deem advisable in the interest of the City. After publication of one advertisement, specifications shall not be changed without the publication of a new advertisement calling attention to such change. A reasonable time shall be allowed to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

- (3) **Notification of bids shall be provided in the manner set forth under Article XII, Community Outreach, Section 12-10-12 through Section 12-10-16 of this Code.**

- (4) Receive written bids submitted by prospective contractors.

- (a) **If no bids are received for a service that can be reasonably performed within city limits from a business located in Detroit, the bid shall**

remain open and the Purchasing Director shall complete target outreach and recruitment to Detroit businesses located within the City of Detroit for a period not to exceed twenty-one (21) business days to guarantee maximum awareness and encourage businesses located within the City of Detroit to bid on the service. A report on the outreach and recruitment shall be submitted to the Detroit City Council with the submission of the contract for consideration.

(b) *Comparison of equalization credits.*

- (1) Detroit-based business and Detroit-resident business. As the first step in comparing bids, the bid of any Detroit-based business or small Detroit-resident business shall be deemed a better bid than the bid of any competing firm which is not a Detroit-based business or Detroit-resident business whenever the bid of such competing firm shall be equal to or higher than the bid of the Detroit-based business or Detroit-resident business, after the appropriate equalization percentage credit ~~from the following equalization allowance table~~ has been applied to the bid of the Detroit-based firm:

<u>Equalization Allowance Table</u>	
<u>Contract Amount</u>	<u>Equalization Percentage</u>
<u>Up to \$10,000.00</u>	<u>5%</u>
<u>\$10,000.01 to \$100,000</u>	<u>4%</u>
<u>\$100,000.01 to \$500,000.00</u>	<u>3%</u>

<u>\$500,000.01 and over</u>	<u>2%</u>
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If the bidder qualifies as both a Detroit-based business and a Detroit-resident business, the equalization factor in the **following preceding** table shall be doubled. If the bidder has qualified as a Detroit-based business by virtue of being a Detroit-headquartered business, as defined in Section 17-5-1 of this Code, it shall receive the equalization factor in the **following preceding** table plus an additional three percent, provided, that an affiliate, a subsidiary, a limited-liability corporation, or other business structure shall not receive the additional three percent where the Human Rights Department determine that another related office outside the City has a larger presence than the Detroit office.

- (2) Joint ventures, mentor ventures, and Detroit-based small and micro businesses. In comparing bids, the bid of any joint venture, mentor venture, Detroit-based small business, or Detroit based micro business shall be deemed a better bid than the bid of any competing firm, which is not a joint venture, mentor venture, Detroit-based small business, or Detroit-based micro business whenever the bid of such competing firm shall be equal to or higher than the bid of the joint venture, mentor venture, Detroit-based small business or Detroit-based micro business, after the appropriate equalization percentage credit from the following equalization allowance table has been applied to the bid of the Detroit-based firm:

Equalization Allowance Table

<u>Detroit headquartered business</u>	<u>6%</u>
<u>Detroit-based business</u>	<u>6%</u>
<u>Detroit-resident business</u>	<u>6%</u>
Detroit-based small business	1%
Detroit-based micro business concern	2%
Joint venture	2%
Mentor venture	1%

(c) *Application of equalization credits.*

- (1) A bidder shall receive the equalization percentage credit for each category for which it qualifies. The firm that makes the lowest bid, as evaluated, shall be deemed the lowest bidder.
- (2) In the application of these equalization percentage credits, a joint venture shall not also be considered a mentor venture and a mentor venture shall not also be considered a joint venture. Unless certified before the deadline for submitting a bid, no bidder or firm shall receive an equalization credit as a Detroit-based business, small business or micro business concern. A joint venture or mentor venture shall not receive an equalization credit unless the Detroit-based business in the venture has been certified as such before the deadline for submitting a bid.
- (3) If a bidder claims an equalization credit as a Detroit-resident business, it shall submit documentation of its eligibility with its bid. The Office of Contracting and Procurement or the contracting department shall

determine whether the bidder ~~qualifies~~ **qualifies** for the equalization credit(s) it is claiming after the bid opening.

- (4) After applying any equalization percentage credit that is contained in this section, the Purchasing Director shall apply Sections 17-5-14 through 17-5-16 of this Code. Where Sections 17-5-14 through 17-5-16 of this Code do not apply, the contract shall be awarded to the lowest responsible bidder.

(d) *Limited bidding permitted in certain circumstances.* On the Purchasing Director's own initiative or at the request of the contracting department, the Purchasing Director may limit the bidding for a contract to Detroit-based businesses, Detroit-based small businesses, or Detroit-based micro businesses, provided, that there are at least three firms certified or registered by the Human Rights Department which would be eligible to bid for the contract. The equalization factors in Section 17-5-12 of this Code shall not apply to the solicitation of bids under this subsection. In determining whether to so limit the bidding, the Purchasing Director should make commercially reasonable efforts to maximize the utilization of Detroit-based businesses, Detroit-based small businesses, or Detroit based micro businesses. As used in this subsection only, "should" means a strong recommendation, but does not mandate the actions described.

- (e) Documentation to be made available. Any bidder who claims to be entitled to an equalization percentage credit shall agree to make the records that were necessary to establish eligibility available to the City.
- (f) Prohibition against unapproved assignments or subcontracts. A Detroit-resident

business, a Detroit based business, or a mentor venture or joint venture with a Detroit-resident business or Detroit based business may not assign or subcontract its City contracts to a non-Detroit-based business or a non-Detroit resident business without the approval of such assignment or subcontract by the Purchasing Director.

(g) Exemptions. The requirements of this section shall not be applicable where any one of the following conditions exists:

- (1) Public exigencies require the immediate delivery of the articles or performance of the service;
- (2) The Purchasing Director certifies that only one source of supply is available;
- (3) The services to be performed are professional in nature; or
- (4) The item to be acquired is rare or unique.

Section 2. All ordinances or parts of ordinances in conflict with this ordinance are repealed.

Section 3. This ordinance is declared necessary for the preservation of the public peace, health, safety, and welfare of the people of the City of Detroit.

Section 4. If this ordinance is passed by a two-thirds (2/3) majority of City Council members serving, it shall be given immediate effect and shall become effective upon publication in accordance with Section 4-118 of the 2012 Detroit City Charter; if passed by less than a two-thirds (2/3) majority of City Council members serving, it shall become effective no later than thirty (30) days after publication in accordance with Section 4-118 of the 2012 Detroit City Charter; if this ordinance specifies a certain date to become

effective, it shall become effective in accordance with the date

Approved as to form:

Lawrence T. Garcia
Corporation Counsel