

ORDINANCE NO. 026-2023

AN ORDINANCE AMENDING CHAPTER 103 OF THE MAUMEE CODIFIED ORDINANCES, UPDATING THE REQUIREMENTS FOR CONTRACTS WITHIN THE CITY OF MAUMEE TO COMPLY WITH NEW OHIO REVISED CODE (ORC) REGULATIONS, AND DECLARING AN EMERGENCY

WHEREAS, Maumee has previously adopted Chapter 103 of the Maumee Codified Ordinances and,

WHEREAS, in order to update the requirements for contracts within the City of Maumee, Chapter 103 of the Codified Ordinances and all ordinances related thereto should be amended to include the following revisions, additions and deletions.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Maumee, Ohio, that:

SECTION 1. Chapter 103 of the Maumee Codified Ordinances be, and the same hereby are amended as follows:

CHAPTER 103  
Contracts and Purchases

- 103.01 Division of Purchases and Supplies.
- 103.02 Payments to contractors regulated.
- 103.03 Contract provisions.
- 103.04 Competitive bidding.
- 103.05 Procedures and methods to be followed.

CROSS REFERENCES

Execution of contracts - see CHTR. Art. V, Sec. 4;  
ADM. 123.04

Contracts and fiscal matters - see CHTR. Art. X, Sec. 1

State law provisions - see Ohio R.C. 735.05 et seq.

Contract interest - see GEN. OFF. 525.10

~~103.01 DIVISION OF PURCHASES AND SUPPLIES.~~

~~(a) Established; Composition. There is hereby established in the Department of Finance, the Division of Purchases and Supplies, consisting of a Commissioner of Purchases and Supplies and such clerical employees as may from time to time be designated or assigned to duty in or with such Division by the Director of Finance.~~

~~(a) Duties and Functions. The Division under the direction of The Director of Finance shall have charge of and responsibility for the purchases and sales and shall keep a record thereof and shall make all purchases and sales of materials and supplies for the City in conformity with the Charter, ordinances of Council, **and** the City of Maumee Purchasing Policy. ~~and the laws of Ohio. and shall operate such store rooms as required.~~~~

~~(c) Commissioner of Purchases and Supplies. Under the supervision of the Director of Finance, the Commissioner of Purchases and Supplies shall be in charge of the Division. He shall receive such compensation as Council from time to time shall determine. Until such time as Council shall otherwise determine, the Director shall serve as Commissioner.~~

~~(b) Requisitions for Purchases. All purchases greater than twenty-five - (\$25.00), shall be made~~

~~upon requisition of and by the department, division, or board or commission for whose benefit the purchase is to be made and shall be made in accordance with the Maumee purchasing policy and approved by the Director of the department and/or Finance Director or the secretary of the board or commission to be benefited. The requisition shall designate the appropriation authorizing the expenditure by its Code number or the name of the fund which the payment is to be made therefrom.~~

~~(c) Purchase Orders. All purchases shall be made by purchase orders approved by the Commissioner, and certified by the Director of Finance that the amount required to meet the contract, agreement, obligation, payment or expenditure has been appropriated or authorized or directed for such purpose and is in the Treasury or in the process of collection.~~

~~(c) Rules and Regulations. The Commissioner Finance Director is hereby authorized and directed to establish rules and regulations for purchases, including the purchasing policy as approved by City Council, the economical and efficient management of the Division. Such rules and regulations shall not be repugnant in conflict with to the Constitution or laws of the State of Ohio, or the Charter, and the ordinances of the City.~~

#### 103.02 PAYMENTS TO CONTRACTORS REGULATED.

Unless otherwise directed by Council, payments under **agreements or contracts including those** involving the furnishing of labor and materials to the City or for construction of public improvements entered into by the City and provisions in such **agreements or contracts** relating to such payments and to the rights and remedies of the City for defaults and relating to means of insuring faithful performance thereof shall be in accordance with **this Chapter and any other Maumee Codified ordinance related to agreements or contracts.** ~~section and Section 103.03.~~

#### 103.03 CONTRACT PROVISIONS.

Notwithstanding any provision of the laws of Ohio to the contrary, unless otherwise directed by Council, all contracts **and/or agreements** entered into by the City, **including those** involving the furnishing of labor and material to the City or for the construction of public improvements shall, in addition to such other terms and provisions as may be determined to be necessary or desirable, contain the following provisions:

**(a) The contractor or vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap. The contractor or vendor shall take affirmative action in accordance with the terms outlined in its proposal and the provisions of this contract to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor or vendor agrees to post in conspicuous places, available to employees and applicants, notices to be provided by the City setting forth the provisions of the nondiscrimination clauses. The contractor or vendor shall include the provisions of this contract in every subcontract, so that such provisions shall be binding upon each subcontractor.**

**(b) All contracts shall be reviewed by and approved as required by the Maumee Charter and as to form as approved by the Law Director or a representative of the Law Director. Any contract which has not been reviewed and approved by the Law Director or designated representative shall be void and unenforceable against the City and its officials. The Law Director, in consultation with the Finance Director and City Administrator may establish standard contracts and standard contract language and clauses for use in contracts where appropriate. This provision shall not apply to contracts or agreements for purchases or supplies for the City in amounts less than \$75,000.**

**Construction Contracts.** Each construction contract bid shall contain the full name of every person or company interested in the same and shall require a bid guarantee that if the bid is accepted a contract shall be executed. For construction contracts estimated to cost over \$100,000.00 (One Hundred Thousand Dollars), or contracts where the City may elect to require a bond, the resulting contract shall require a bid bond, performance bond and payment bond. Neither a performance bond nor a payment bond shall be required for construction contracts estimated to cost \$100,000.00 (One Hundred Thousand Dollars) or under unless otherwise required by the City. The required type of bid guarantee or performance bond shall be identified in the invitation for bid.

(c) All state of Ohio provisions of law and ordinance relating to prevailing wage rates applicable to contracts for construction of public improvements shall apply.

(d) Federal prevailing wages and its regulations shall take precedent and shall apply to those public improvements that require the application of federal regulations.

(e) Except as otherwise required or permitted by state or federal law, a contract entered into by the City for the procurement of supplies, services, professional services, or construction shall not include any of the following:

(1) A provision that requires the City to indemnify or hold harmless another person;

(2) A provision that requires the City to agree to limit the liability for any direct loss to the City for bodily injury, death, or damage to property of the City caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents, or a provision that would otherwise impose an indemnification obligation on the City;

(3) A provision that requires the City to be bound by a term or condition that is unknown to the City at the time of signing a contract or that may be unilaterally changed by the other party;

(4) A provision that is not specifically negotiated with the City or an agreement or contract that is verbally accepted, accepted in writing, or electronically accepted by a City employee without authority to accept the agreement or contract on behalf of the City;

(5) A provision that provides for a person other than the Law Director to serve as legal counsel for the City without the approval of the Law Director;

(6) A provision that is inconsistent with the City's public records obligations under sections 149.351 or 149.43 of the Ohio Revised Code;

(7) A provision whereby the seller agrees to provide financing to the City for the transaction without authorization by City Council. (b) If a contract contains a term or condition described in this section, the term or condition is void ab initio, and the contract containing that term or condition otherwise shall be void at the election of the City or can be considered enforceable as if it did not contain such term or condition if the City elects not to consider the contract void. (c) A contract that contains a term or condition described in this section shall be governed by and construed in accordance with Ohio law notwithstanding any term or condition to the contrary in the contract. (d) This section does not apply to a contract awarded (1) as a sole source (2) as an emergency purchase.

(f) Any other term or condition that the City deems appropriate for the contract.

(f) (a) ~~Payments to Contractor.~~

(1) ~~Not later than the fifteenth day of each calendar month the City will make a partial payment to the contractor on the basis of a duly certified and approved estimate, prepared by the Director of Public Service, of the work performed on the project during the preceding calendar month under this contract, but to insure the proper performance of this contract, the City will retain ten percent (10%) of the amount of each estimate until final completion and conditional acceptance of all work covered by this contract.~~

~~Before the payment of any estimate is made, the contractor shall certify under oath:~~

~~A. The names and addresses of all subcontractors furnishing labor, material or services and of all persons furnishing material included in such estimate;~~

~~B. That all bills for material and labor included in preceding estimates have been paid in full or a satisfactory explanation of any failure so to do; and~~

~~C. That all bills for material and labor included in such estimate have been or will be paid from the proceeds thereof.~~

In addition to the foregoing, the Director may require the contractor to furnish waivers of lien signed by all persons furnishing labor or materials included in any estimate submitted by or on behalf of the contractor.

~~(2) Material delivered on the site of the project as shown by proper invoices therefor may be included in any estimate to the extent deemed proper by the Director.~~

~~(3) All material and work included in or covered by partial payments made hereunder shall become the sole property of the City; provided, however, that the contractor shall not thereby be relieved from sole responsibility for the care and protection of such material and work or the restoration of any damaged work nor shall the City by reason thereof be deemed to have waived any right to require full performance and fulfillment of all the terms and provisions of this contract.~~

~~(b) Payments by Contractor:~~

~~(1) The contractor shall pay:~~

~~A. For all transportation and utility services not later than the twentieth day of the calendar month next following the rendition of such services;~~

~~B. For all materials, tools and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the twentieth day of the calendar month next following that in which such materials, tools and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the thirtieth day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used; and~~

~~C. To each of his subcontractors, not later than the fifth day following each payment to the contractor, the respective amounts allowed the contractor on account of the work performed by his subcontractors, to the extent of each subcontractor's interest therein. The requirements of subsection (b)(1)B. and/or C. hereof may be waived or modified by the City for good cause shown by the contractor and on terms and conditions approved by the Director.~~

~~(2) In addition to any and all other rights by this contract granted to or reserved by the City, if the contractor shall at any time have failed, neglected or refused without just cause to pay for materials and labor furnished or services rendered to the contractor included in any previous estimate paid by the City, the City may require the contractor to pay or provide for the payment thereof prior to payment of any estimate submitted for payment in accordance with the provisions of subsection (a) hereof.~~

~~(c) Right of the City to Terminate Contract. In the event of default in the performance of, or violation of, any of the terms and conditions of this contract by the contractor or any subcontractor, the City may serve a written notice upon the contractor and the surety of its intention to terminate such contract with the reasons therefor. Unless within ten calendar days after the service of such notice such default shall be fully cured and/or such violation discontinued and all damages by reason thereof paid or provisions made for the payment thereof to the satisfaction of the City, the City, at its option, may terminate this contract by serving a written notice of such termination upon the contractor and the surety. In the event of such termination, the surety shall have the right to take over and perform this contract; provided, however, that if the surety does not commence performance thereof within fifteen calendar days after the service upon it of such notice of termination, the City may take over the work and prosecute the same to completion by contract or otherwise for the account of and at the expense of the contractor. In the event the City shall take over the work as aforesaid:~~

~~(1) The contractor and his surety shall be liable to the City for any excess cost occasioned the City~~

thereby; and

(2) The City may take possession of, and utilize in completing the work, such materials, appliances and plant as may be on the site of the work and necessary or useful in connection therewith.

~~(d) City's Right to Withhold Certain Amounts and Make Application Thereof.~~

(1) In addition to any other rights or options herein granted to or reserved by the City, the City may withhold from any payment otherwise due to the contractor hereunder an amount or amounts sufficient to cover:

A. Just claims due and payable to any person for labor or materials furnished in and about the performance of the work on the project under this contract;

B. The cost estimated by the Director of remedying, replacing or restoring any defective work or material performed or furnished in and about the project;

C. Past due payments to any subcontractor; and

D. Accrued damages for delay in accordance with the provisions of subsection (e) hereof.

(2) The City shall have the right to disburse such funds as have been withheld pursuant to this subsection to the party or parties entitled thereto, and will render to the contractor a proper accounting thereof, but in so doing shall be liable to the contractor only for gross negligence or willful misconduct in making such payment or disbursement of funds so withheld.

~~(e) Delays; Damages.~~

(1) If the contractor delays performance of this contract by refusal or failure to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time limit stipulated in the contract or any extension thereof, or fails to complete such work within such time, the City may, by written notice to the contractor, terminate his right to proceed with the work, or such part of the work as to which there has been such delay, as provided in subsection (c) hereof.

(2) If the City does not terminate the right of the contractor to proceed, the contractor shall continue the work, in which event the actual damages for such delay will be impossible to determine and in lieu thereof the contractor shall pay the City the sum of fifty dollars (\$50.00) as fixed, agreed and liquidated damages for each calendar day of such delay until the work is completed or accepted and the contractor and his sureties shall be liable for the amount thereof: provided, that the right of the contractor to proceed shall not be terminated or the contractor charged with liquidated damages because of any delay in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the enemy, acts of the City, acts of another contractor in the performance of a contract with the City, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to causes, if the contractor shall within ten calendar days from the beginning of any such delay (unless the City shall grant a further period of time prior to the date of final settlement of the Contract) notify the City in writing of the cause of delay. Upon receipt of such notice, the City shall investigate the alleged justification for the delay and may extend the time for completing the work when in its judgment the facts justify such an extension. The City's findings in respect thereto shall be final and conclusive on the parties hereto.

~~(f) Test Periods.~~ After the completion and successful operation of the project or such part thereof as is embraced in this contract, for a period of ten calendar days by the contractor, the City shall have the right to take full charge and control thereof and operate the same for a period of thirty calendar days before conditional acceptance. During the above ten-day test period, the contractor shall furnish all necessary fuel, oil, light, power and attendance. During the above thirty-day test period, the City will pay all such costs.

~~(g) Defects.~~ If within the test periods specified in subsection (f) hereof there shall appear any defect in the work, materials, apparatus or workmanship of the project or failure in the operation or performance of any part thereof or guarantees required hereunder due to the failure, neglect or refusal of the contractor to comply with the terms and provisions of this contract or the specifications

for the work, such defect or failure shall be repaired, restored, corrected or made good to the satisfaction of, and without cost to, the City. All engineering, inspection, legal and other costs and expense to the City occasioned by or resulting from such defect or failure shall be paid by the contractor upon demand by the City.

~~(h) Repairs by City. If within five calendar days after notice from the City to the contractor so to do, the contractor fails to repair, restore, correct or make good any defect or failure referred to in subsection (g) hereof, the City shall have the right so to do at the expense of the contractor and any engineering, inspection, legal and other costs and expense incurred by the City in so doing may be deducted from any money due the contractor or otherwise collected at the option of the City.~~

~~(i) Conditional Acceptance.~~

~~(1) At the expiration of the thirty calendar day test period provided for in subsection (f) hereof, if no defect or failure referred to in subsection (g) hereof shall have appeared and the contractor shall have fully completed the work to be performed under this contract, the City shall conditionally accept the project and, subject to the provisions of this contract respecting the right of the City to withhold payments, an amount which together with all previous payments shall equal ninety-eight percent (98%) of the contract price shall be paid to the contractor. The remaining two percent (2%) shall be retained by the City for a period of 365 calendar days after such conditional acceptance of the project as a guarantee (additional to that provided for by the performance bond furnished for the faithful performance of this contract) against defects or failure in the operation or performance of the work, materials, apparatus or workmanship of the project or any part thereof or any guarantees required by this contract. In the event that two percent (2%) of the contract price shall amount to less than five hundred dollars (\$500.00), the sum of five hundred dollars (\$500.00) shall be retained by the City in lieu of such two percent (2%) and the amount payable to the contractor upon such conditional acceptance may be reduced accordingly.~~

~~(2) The provisions of subsections (g) and (h) hereof shall apply to any defect in the work, materials, apparatus or workmanship of the project or failure in the operation or performance of any part thereof or guarantees required hereunder determined by the Director to have occurred, developed or appeared prior to or during such period of 365 days.~~

~~(j) Final Payment. Upon the expiration of the 365 calendar days specified in subsection (i) hereof, the Director shall satisfy himself by test, examination or otherwise that the work has been finally and fully completed in accordance with the contract and specifications, and shall make a final statement of the work done under this contract and the value thereof. Unless the same shall be found by the City to be incorrect, the City shall thereupon pay the entire amount due contractor under this contract, after deducting all amounts to be kept and retained under any provision hereof. All prior estimates and payments shall be subject to correction in the final statement and payment, but in the absence of error or manifest mistakes, it is agreed that any estimate on the certificate of the Director, when approved by the City, shall be conclusive of the work done and materials furnished as shown therein. Before the final payment is made, the contractor shall satisfy the City that all claims and bills for labor and material employed on or used in the performance of this contract have been fully paid and discharged.~~

~~(k) Final Payment to Release City. The acceptance by the contractor of the final two percent (2%) or five hundred dollars (\$500.00), as the case may be, shall be and shall operate as a release by the contractor of all claims against, and all liability of, the City under or by reason of this contract and on account of anything done, furnished or work performed pursuant thereto.~~

~~(1964 Code, Sec. 38.61)~~

#### 103.04 COMPETITIVE BIDDING.

(a) Notwithstanding any provision of the laws of the State of Ohio to the contrary, and unless otherwise specifically directed by Council, advertisement and competitive bidding shall not be required in any contract entered into by the City, involving the furnishing of equipment, services, supplies or materials to the City or for the construction of public improvements when the cost to the

City of such equipment, **non-professional** services, supplies, materials or construction is less than  ~~fifty~~ **seventy-five** thousand dollars (\$75,000).

(b) When the cost of a contract, that requires competitive bidding involving the furnishing of equipment, services, supplies, materials or construction to the City is  ~~fifty~~ **seventy-five** thousand dollars (\$75,000) or more, advertisement and competitive bidding for such contract shall take place as recommended by the City Administrator by any of the following methods:

(1) Advertisement and bidding through any web-based vendor and bid management system.

(2) Advertisement on the City of Maumee web site for a period of one week or more if such additional time is deemed necessary by the City Administrator.

(3) Advertisement in newspaper of general circulation within the City of Maumee for not less than one week.

(c) Bids may be emailed, faxed, mailed or hand delivered to the City of Maumee on or before the bidding deadline. Bids may be awarded to the lowest, most qualified responsive bid after considering the bidder experience, qualifications and/or demonstrated competence.

(d) Changes to bid documents, bidding requirements or deadlines for bids may occur anytime during the bidding process. Bidders who have submitted bid documents before changes to bid documents or requirements shall be given the opportunity to modify their bid before the bid deadline.

(e) The City Administrator is authorized to waive any bidding irregularities or technicalities in a bid document submitted and/or waive any requirements in the form of the submitted bid in the best interests of the City of Maumee.

#### 103.05 PROCEDURES AND METHODS TO BE FOLLOWED.

(a) The City Administrator or Mayor when the City Administrator is unavailable, shall be authorized to execute and enter into contracts, leases, and agreements involving the furnishing of equipment, services, supplies or materials to the City, for the construction of public improvements for the City, for purchases, or for payments deemed necessary by the City Administrator for operations of the City of Maumee, in amounts up to  ~~fifty~~ **seventy-five** thousand dollar (\$75,000.00), or the amount set forth in Section [103.04](#) of the Maumee Codified Ordinances as may be amended hereafter, whichever is greater, and after entering into said contracts and/or agreements, the City Administrator or Mayor shall provide City Council with a copy of the contract and/or agreement, or a short summary of the terms of the contract or agreement.

(b) City Council shall approve contracts or agreements in excess of  ~~fifty~~ **seventy-five** thousand dollars (\$75,000.00), or the amount set forth in Section [103.04](#) of the Maumee Codified Ordinances as may be amended hereafter, whichever is greater, that are to be awarded after competitive bidding, by motion, ordinance, or resolution. The Mayor shall be authorized to execute any such contracts or agreements, or designate in writing the Director of any Department in the Mayor's stead to execute such contracts or agreements as set forth in [Article IV Section 5](#) of the Maumee Charter.

(c) City Council shall approve contracts, leases, or agreements in excess of  ~~fifty~~ **seventy-five** thousand dollars (\$75,000.00), or the amount set forth in Section [103.04](#) of the Maumee Codified Ordinances as may be amended hereafter, whichever is greater, that may be awarded without formal advertising and bidding, for professional service contracts; contracts for expenditures in time of an emergency as defined by the Council; the purchase of new or used equipment at auctions ~~or where the Municipality submits written bids to the vendor~~; joint purchasing pursuant to agreements with other governmental units, whether state, local, or federal; sole source contracts where Council determines that formal competitive bidding is not practical or is not in the best interest of the Municipality; ~~the selection of construction managers~~; and any other circumstances as provided by ordinance or resolution. Approval of all such contracts shall be by motion, ordinance, or resolution of Council. The Mayor shall be authorized to sign any such contracts or agreements, or designate in writing the Director of any Department in the Mayor's stead to execute such contracts or agreements as set forth in [Article IV Section 5](#) of the Maumee charter.

(d) City Council shall approve labor contracts or any other labor related agreements by motion or resolution. The Mayor shall be authorized to execute any such labor contracts or agreements, or designate in writing the Director of any department in the Mayor's stead to execute such contracts or agreements as set forth in [Article IV Section 5](#) of the Maumee Charter.

(e) The Mayor or the City Administrator is authorized to execute amendments and/ or change orders to contracts which have already been duly authorized by Council and executed. If the amendment, or change order, involves the additional expenditure of funds that are in excess of twenty percent of the contract price, Council shall approve such amendment or amendments by motion. City Council shall be presented with a copy of any change orders and the cost of any change orders.

**(f) Waiver of Regulations. When City Council determines that it is in the best interests of the City, City Council, by ordinance, may waive any of the provisions of this chapter.**

SECTION 2. Any ordinances, parts of ordinances including Ord. 013-2022, Ord. 021-2022, 1964 Code, Sec. 38.61, 1964 Code, Sec. 38.60, Ord. 153-2013 or other Chapters of the Maumee Municipal Code in conflict herewith are hereby amended and/or repealed in part to reflect the foregoing changes;


SECTION 3. This ordinance is declared to be an emergency measure immediately necessary to preserve the public interest and for the health, safety and welfare of the citizens of the City of Maumee, and more specifically to allow for the immediate update of the requirements for contracts which will be a benefit for the citizens of Maumee and insure that contracts are in compliance with Ohio law, wherefore this ordinance will go into immediate effect upon its adoption by council.


SECTION 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of council's committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements of the Charter of Maumee, Ohio.

Motion to declare emergency:	Barrow	Second:	MacDonald
Yeas: 6	Nays: 0		
Motion to Pass:	Barrow	Second:	MacDonald
Yeas: 6	Nays: 0		

Passed: August 21, 2023.

  
\_\_\_\_\_  
Mayor

ATTEST:  
  
Municipal Clerk

Approved as to form by:  
  
\_\_\_\_\_  
Law Director



CERTIFICATE OF POSTING

I, Clerk of Council of the Municipality of Maumee, Ohio, do hereby certify that Ordinance/~~Resolution~~ No. 026-2023 was duty posted on 8-22-2023 and remained posted for a period of fifteen days thereafter, in not less than five of the most public places in the municipality as determined by the Council of said Municipality.

Jeani Redsie  
Clerk of Council

Date: Sept. 6, 2023