

## CHAPTER 226: CONTRACTS

### Section

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#### ***Cross-reference:***

*Fire protection contracts, see § 246.11*

*Police protection contracts, see § 244.15*

*Unlawful interest in contracts, see § 654.10*

#### ***Statutory reference:***

*Contracts for utility services without advertising for bids, see R.C. § 9.30*

*Contracts for work on public buildings and improvements, see R.C. §§ 153.50 et seq.*

*Gas company monopolies prohibited, see R.C. § 743.33*

*Police protection contracts, see R.C. §§ 505.43, 737.04*

*Service contracts with county, see R.C. §§ 307.14 et seq.*

### **§ 226.01 GENERAL RESTRICTION.**

The Council shall not enter into any contract which is not to go into full operation during the term for which all the members of the Council are elected.

(R.C. § 731.48)

### **§ 226.02 CONTRACTS BY COUNCIL.**

(a) All contracts made by the Council shall be executed in the name of the municipality and signed on its behalf by the Mayor and Clerk. Except where the contract is for equipment, services, materials or supplies to be purchased under R.C. § 125.04, 713.23(D) or 5513.01, or available from a qualified nonprofit agency pursuant to R.C. §§ 4115.31 through 4115.35, or required to be purchased from a qualified nonprofit agency under R.C. §§ 125.60 through 125.6012, when any expenditure, other than the compensation of persons employed in the municipality, exceeds \$50,000, the contracts shall be in writing and made to the lowest and best bidder after advertising once a week for not less than two consecutive weeks in a newspaper of general circulation within the municipality. The Council may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the Council's internet web site. If the Council posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general

circulation within the municipality, provided that the first notice published in such newspaper meets all of the following requirements:

- (1) It is published at least two weeks before the opening of bids.
- (2) It includes a statement that the notice is posted on the Council's internet web site.
- (3) It includes the internet address of the Council's internet web site.
- (4) It includes instructions describing how the notice may be accessed on the Council's internet web site.

(b) The bids shall be opened and shall be publicly read by the Clerk or a person designated by the Clerk at the time, date and place specified in the advertisement to bidders or specifications. The time, date and place of bid openings may be extended to a later date by the Council, provided that written or oral notice of the change shall be given to all persons who have received or requested specifications no later than 96 hours prior to the original time and date fixed for the opening. This section does not apply to the municipality if an Administrator has been appointed pursuant to the provisions of R.C. § 735.271, or a substantially equivalent municipal ordinance.

(R.C. § 731.14)

### **§ 226.03 CONTRACTS BY VILLAGE ADMINISTRATOR; CENTRAL PURCHASING.**

(a) If the municipality has established the position of Administrator as provided by R.C. § 735.271, or a substantially equivalent municipal ordinance, the Administrator shall make contracts, purchase supplies and materials and provide labor for any work under the Administrator's supervision involving not more than \$50,000. When an expenditure, other than the compensation of persons employed by the municipality, exceeds \$50,000, the expenditure shall first be authorized and directed by ordinance of the Council. When so authorized and directed, except where the contract is for equipment, services, materials, or supplies to be purchased under R.C. § 125.04, 713.23(D) or 5513.01 or available from a qualified nonprofit agency pursuant to R.C. §§ 4115.31 through 4115.35, or required to be purchased from a qualified nonprofit agency under R.C. §§ 125.60 through 125.6012, the Administrator shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the municipality or as provided in R.C. § 7.16. The bids shall be opened and shall be publicly read by the Administrator or a person designated by the Administrator at the time, date and place specified in the advertisement to bidders or specifications. The time, date and place of bid openings may be extended to a later date by the Administrator, provided that written or oral notice of the change shall be given to all persons who have received or requested specifications no later than 96 hours prior to the original time and date fixed for the opening. All contracts shall be executed in the name of the municipality and signed on its behalf by the Administrator and the Clerk.

(b) The Council may provide, by ordinance, for central purchasing for all offices, departments, divisions, boards and commissions of the municipality, under the direction of the Administrator who shall make contracts, purchase supplies or materials, and provide labor for any work of the municipality in the manner provided by this section.

(R.C. § 731.141)

**§ 226.04 BIDS AND PROCEEDINGS.**

Each bid on any contract under § 226.02 or 226.03 shall contain the full name of every person interested in the bid. If the bid is for the construction, demolition, alteration, repair or reconstruction of an improvement, it shall meet the requirements of R.C. § 153.54. If the bid is for any other contract authorized by § 226.02 or 226.03, it shall be accompanied by a sufficient bond or certified check, cashier's check or money order on a solvent bank or savings and loan association that, if the bid is accepted, a contract will be entered into and the performance of it properly secured. If the bid for work embraces both labor and materials, it shall be separately stated, with the price thereof. The Council or Administrator, in the event an Administrator has been appointed as provided by R.C. § 735.271, or a substantially equivalent municipal ordinance, may reject any and all bids. The contract shall be between the municipality and the bidder, and the municipality shall pay the contract price in cash. When a bonus is offered for completion of a contract prior to a specified date, the Council or Administrator, in the event an Administrator has been appointed as provided in R.C. § 735.271, or a substantially equivalent municipal ordinance, may exact a prorated penalty in like sum for each day or delay beyond the specified date. When there is reason to believe there is collusion or combination among bidders, the bids of those concerned therein shall be rejected. (R.C. § 731.15)

**§ 226.05 AWARD TO LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.**

- (a) (1) If the municipality is required by law or by an ordinance or resolution adopted under division (c) of this section to award a contract to the lowest responsive and responsible bidder, a bidder on the contract shall be considered responsive if the bidder's proposal responds to bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise give the bidder a competitive advantage. The factors that the municipality shall consider in determining whether a bidder on the contract is responsible include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills and ability to execute the contract properly.
- (2) For purposes of this division, the provision of a bid guaranty in accordance with R.C. § 153.54(A)(1) and (B) issued by a surety licensed to do business in this state is evidence of financial responsibility, but the municipality may request additional financial information for review from an apparent low bidder after it opens all submitted bids. The municipality shall keep additional financial information it receives pursuant to a request under this division confidential, except under proper order of a court. The additional financial information is not a public record under R.C. § 149.43.
- (3) An apparent low bidder found not to be responsive and responsible shall be notified by the municipality of that finding and the reasons for it. The notification shall be given in writing and by certified mail.

(b) Where the municipality has adopted an ordinance or resolution under division (c) of this section and determines to award a contract to a bidder other than the apparent low bidder or bidders for the construction, reconstruction, improvement, enlargement, alteration, repair, painting or decoration of a public improvement, it shall meet with the apparent low bidder or bidders upon a filing of a timely written

protest. The protest must be received within five days of the notification required in division (a) of this section. No final award shall be made until the municipality either affirms or reverses its earlier determination. Notwithstanding any other provision of the Ohio Revised Code, the procedure described in this division is not subject to R.C. Chapter 119.

(c) The municipality may, by ordinance or resolution, adopt a policy of requiring each competitively bid contract it awards to be awarded to the lowest responsive and responsible bidder in accordance with this section.

(R.C. § 9.312)

### **§ 226.06 ALTERATIONS OR MODIFICATIONS OF CONTRACTS.**

When it becomes necessary in the opinion of the Council or Administrator, in the event an Administrator has been appointed as provided in R.C. § 735.271, or a substantially equivalent municipal ordinance, in the prosecution of any work under contract, to make alterations or modifications in the contract, the alterations or modifications shall be made only by the Council by resolution or by the Administrator in writing, in the event an Administrator had been appointed as provided in R.C. § 735.271, or a substantially equivalent municipal ordinance, but the resolution or written modification shall be of no effect until the price to be paid for the work and material, or both, under the altered or modified contract has been agreed upon in writing and signed by the contractor, and by the Mayor or Administrator in the event an Administrator has been appointed as provided in R.C. § 735.271, or a substantially equivalent municipal ordinance, on behalf of the municipality. No contractor shall recover anything for work or material because of any alteration or modification unless the contract is made as provided in this section, nor shall the contractor recover for the work or material, or either, more than the agreed price. The law relating to requiring bids and the awarding of contracts for public buildings, so far as they apply, shall remain in effect. A duplicate copy of each contract shall be filed in the office of the Treasurer.

(R.C. § 731.16)