



## Legislation Text

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130100

SUBSTITUTE 2

130088

ALD. BOHL

A substitute ordinance relating to city purchasing regulations.

310-1 rn

310-1 cr

310-4-3 am

310-5 rn

310-7 rn

310-9 rn

310-11 rn

310-12 am

310-13 rc

310-14-2-b am

310-14-3-a am

310-15 rc

310-16 am

310-17-0 am

310-17-1-a am

310-17-2-b am

310-17-2-d-1 am

310-17-2-e-3 am

310-17-3-a am

310-17-3-b-1-0 am

310-17-3-c am

310-17-3-d am

310-17-3-e-1 am

310-17-3-f am

310-17-4 am

310-17-5-0 rc

310-17-6 am

310-18-2 am

310-18.3-3 am

310-18.3-4 am

310-18.3-5 am

310-18.3-6 rc

310-18.3-7 am

310-18.5 am

310-18.7-3 am

310-18.9-2 am

310-18.9-3 am  
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310-18.9-10 am  
310-18.9-11 am  
310-19-1 rc  
310-19-3 am  
310-19-3-a am  
310-19-3-b am  
310-21 rp  
310-23 rp  
310-25 rp  
310-27 rp  
310-29 rn  
310-31 rp  
365-3-1 am  
365-3-3 cr  
365-5 am  
365-7-1-a am  
365-7-1-b am  
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370-1-8 am  
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370-5-1-0 am  
370-5-4-0 am  
370-5-4-d am  
370-5-5 am  
370-9 am

This ordinance defines certain terms used in code provisions relating to the city's purchasing regulations consistent with amendments made in ch. 16 of the charter in common council file number 130088, passed on July 23, 2013, and updates charter references in the code to correspond to these revisions. This ordinance also establishes that the threshold at which various existing purchasing regulations become applicable is the same threshold at which formal competitive bidding is required. Furthermore, this ordinance deletes obsolete provisions relating to public printing contracting and a central storeroom.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 310-1 of the code is renumbered 310-2.

Part 2. Section 310-1 of the code is created to read:

**310-1. Definitions.** In this chapter:

**1. CONTRACTING AGENCY** means any city department, agency, board, commission or officer that

has contracting authority.

2. DEPARTMENT means the department of administration.
3. FORMAL COMPETITIVE BIDDING shall have the meaning given in s. 16-01-1 of the charter.
4. PURCHASING DIRECTOR means the city purchasing director granted the authority to purchase in s. 16-05-1-a of the charter.

Part 3. Section 310-5, 7, 9 and 11 is renumbered 310-3 to 6.

Part 4. Section 310-4-3 of the code is amended to read:

**310-4. Chief Information Officer.**

3. COORDINATION AND COOPERATION WITH THE DEPARTMENT ~~[[OF ADMINISTRATION]]~~. All officials and ~~[[employees]]~~ >>employees<< of the city shall assist the department ~~[[of administration]]~~ and the chief information officer in fulfilling their information and technology responsibilities and shall make available all records, documents and other materials necessary ~~[[to]]~~ >>for<< the performance of the department's functions as provided herein. All city departments and agencies shall:

Part 5. Section 310-12 of the code is amended to read:

**310-12. Professional Service Contract Limitations.** If a ~~[[department]]~~ >>contracting agency<< enters into a professional service contract, as defined in ~~[[s. 310-13-2-a]]~~ >> s. 310-13-2-b<<, with any person who has retired from that department and is receiving a retirement allowance from the employees' retirement system, the combined annual value of the professional service contract and the retirement allowance may not exceed the retired person's earnable compensation, as defined under s. 36-02-12 of the charter, during the 12 months immediately preceding the retirement date, and the contract term shall not exceed a period longer than 18 months. The common council may waive these limitations by resolution for special circumstances, as it, in its sole discretion, shall determine and deem necessary.

Part 6. Section 310-13 of the code is repealed and created to read:

**310-13. Service Contract Wage Requirements.**

1. PURPOSE. The purpose of this section is to ensure a living wage for all employees of contractors and subcontractors performing services for the city.
2. DEFINITIONS. In this section:
  - a. "Living wage" means the amount required to produce, for 2,080 hours worked, an annual income equal to the U.S. department of health and human services' most recent poverty guideline for a family of 3 in the 48 contiguous states, as determined by the city clerk on March 1 of each year.
  - b. "Professional service contract" means any contract in which the majority of workers engaged in the performance of the contract perform work which:
    - b-1. Is predominantly intellectual and varied in nature, as opposed to work which involves routine mental, manual, mechanical or physical labor.
    - b-2. Requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital.
  - c. "Service contract" means a contract having a value exceeding \$5,000 that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to

furnish an end item of supply. A “service contract” does not include a “professional service contract” under par. b., a department of public works contract subject to s. 66.0903, Wis. Stats., a contract administered by the office of community development grants administration or a contract with the Milwaukee public schools.

**3. LIVING WAGE REQUIREMENT.** Unless contrary to federal, state or local law, all workers, whether permanent or temporary, full-time or part-time, employed in any work performed as part of a service contract with a contracting agency, as defined in sub. 2-c, shall receive and be paid a sum of not less than the living wage. No contractor may use the living wage requirement of this subsection to reduce the wage paid to any person employed by the contractor.

**4. SERVICE CONTRACT BID AND REQUEST-FOR-PROPOSAL SPECIFICATIONS.** A contracting agency shall add a digest of the provisions of this section to all specifications for service contract work upon which they call for formal competitive bids or issue requests for proposals unless the purchasing director approves the waiver of the provisions in cases where it is likely that no bids or proposals will be received without such a waiver.

**5. SPECIFICATIONS FOR SERVICE CONTRACTS.** No service contract, as defined in sub. 2-c, shall be entered into by a contracting agency unless the contract contains the following stipulations or their equivalent:

a. The contractor agrees to pay all workers employed by the contractor in the performance of this contract, whether on a full-time or part-time basis, a base wage of not less than living wage.

b. The contractor agrees to make a sworn report or affidavit, within 10 days following the contractor's completion of the contract, or every 3 months, whichever occurs first, and to procure and submit a like sworn report or affidavit from every subcontractor employed by the contractor to the contracting agency regarding every person employed on or under this contract or subcontract. The affidavit or report shall include, but not be limited to, for the specified time period, the person's name, address, type of work performed, total hours worked on the service contract, hourly wage rate, gross earnings, and employer's contribution to vacation, welfare and pension trust funds. The reports or affidavits shall be accompanied by a statement that each employee has been paid in full the amount of not less than living wage and that there has not been, nor is to be, any rebate or refund of any part of said wages by the employee to the employer.

c. If any documents submitted to a contracting agency by the contractor contain any false, misleading or fraudulent information, or if the contractor fails to comply with the provisions of s. 310-13, the contracting agency may withhold payments on the contract, terminate, cancel or suspend the contract in whole or in part, or, after a due process hearing, deny the contractor the right to participate in future city contracts for a period of one year after the first violation is found and for a period of 3 years after a second violation is found.

**6. POSTING OF WAGE RATE.** For every service contract, as defined under sub. 2-c, the living wage required by sub. 3 shall be kept posted by the contractor at the site of the work in a prominent place where it can be easily seen and read by persons employed in the performance of the contract. In addition, a copy of the living hourly wage requirement shall be supplied to any person employed in the performance of a service contract at the request of the person within a reasonable period of time after the request.

**7. MONITORING AND ENFORCEMENT.** a. Responsibility. The department shall monitor and enforce all service contracts for compliance with this section except for service contracts executed by the department of public works which shall be monitored and enforced by the department of public works. The department or department of public works shall review and monitor the sworn reports or affidavits periodically submitted by service contractors, receive and investigate complaints from service contractors and service contract employees relating to compliance with this section, and impose appropriate sanctions upon any contractor who provides false information to the department

or department of public works or fails to comply with the provisions of this section.

b. Employee Complaints. Any person employed in the performance of a service contract may, within one year from the date of an alleged failure to comply with sub. 3, file a written complaint with the department or department of public works regarding the service contractor's alleged failure to comply with sub. 3. No service contractor may discharge, reduce

the compensation of or otherwise retaliate against any person employed in the performance of a service contract for making a complaint or for using any civil remedies to recover damages.

c. Appeals. Any service contractor or service contract employee who objects to any decision or action of the department or department of public works concerning the application or enforcement of this section may appeal the decision to the purchasing director or administrative review appeals board in the case of department of public works service contracts in a manner similar to the process provided in s. 310-19-4.

d. Sanctions. Any contractor or subcontractor engaged in a service contract who has been found by the department or department of public works to have submitted any false, misleading or fraudulent information, or to have failed to comply with the provisions of this section, may be subject to any of the following sanctions, imposed by the department or department of public works:

d-1. Withholding of payments.

d-2. Termination, suspension or cancellation of the contract in whole or in part.

d-3. After a due process hearing, denial of the right of the contractor or subcontractor to participate in future city contracts, by himself or herself, partner or agent, or by any corporation of which he or she is a member, for a period of one year after the first violation is found and for a period of 3 years after a second violation is found.

Part 7. Section 310-14-2-b of the code is amended to read:

### **310-14. Slavery Era Business, Corporate and Insurance Disclosure.**

#### **2. DEFINITIONS.**

b. "Contract" means any agreement, franchise, lease or concession including an agreement for any professional ~~[[or technical personal]]~~ services, the performance of any work or service, the provision of any materials or supplies or rendering any service to ~~[[the city of Milwaukee]]~~ >>a contracting agency<< or the public, which is let, awarded or entered into with or ~~[[on behalf of the city of Milwaukee or]]~~ >>by<< any ~~[[awarding department of the city]]~~ >>contracting agency<<.

Part 8. Section 310-14-3-a of the code is amended to read:

#### **3. DISCLOSURE.**

a. Each contractor >>whose company was established during the slavery era<< with whom the city enters into a contract, whether or not subject to ~~[[competitive bid]]~~ >>formal competitive bidding<<, shall complete an affidavit, prior to or contemporaneous with entering into the contract verifying that the contractor has searched any and all records of the company or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any enslaved persons or slaveholders described in those records must be disclosed in the affidavit.

Part 9. Section 310-15 of the code is repealed and created to read:

**310-15. Purchase of Products Made from Recycled Materials. 1.** Each contracting agency shall, to the extent practicable, make purchasing decisions that maximize the purchasing of materials and

products using recycled materials and recovered materials.

2. Each contracting agency shall ensure that the average recycled or recovered content of all paper purchased by the contracting agency is no less than the U.S. environmental protection agency's published recycled-content recommendations.

3. Each contracting agency that awards contracts for equipment and supplies shall, to the extent practicable, award contracts for equipment and supplies that will minimize the amount of solid waste generated by the city. Each contracting agency shall, to the extent practicable, diminish the purchase of single-use disposable products and substitute the purchase and use of multiple-use, durable products.

Part 10. Section 310-16 of the code is amended to read:

**310-16. Placement of Vending Machines on City Property.** ~~[[Effective November 4, 2005, no]]~~  
>>No<< city department or ~~[[employee]]~~ >>employee<< or agent thereof may request and permit the placement of a vending machine in any city office or facility or elsewhere on city property, or enter into an agreement or contract for such placement, unless the placement of the vending machine, and any agreement or contract therefore, has been reviewed and approved by the city purchasing director and the commissioner of public works or the commissioner's designee.

Part 11. Section 310-17-0 of the code is amended to read:

**310-17. ~~[[Procurement of Various Items]]~~ >>Ethical Purchasing<<.**

Part 12. Section 310-17-1-a of the code is amended to read:

**1. PURPOSE.**

a. It is in the city's best interest to procure items from responsible vendors and manufacturers who provide a safe, non-discriminatory work environment, and who compensate their ~~[[employees]]~~ >> employees<< with non-poverty wages.

Part 13. Section 310-17-2-b of the code is amended to read:

**2. DEFINITIONS.**

b. "Contractor" means the business entity with which ~~[[the city]]~~ >> a contracting agency<< enters into a contract.

Part 14. Section 310-17-2-d-1 of the code is repealed and created to read:

d-1. Domestic manufacturers. A base hourly wage of the amount required to produce, for 2,080 hours worked, an annual income equal to the U.S. department of health and human services' most recent poverty guideline for a family of 3 in the 48 contiguous states plus either health benefits or an additional 20% in hourly wages to be adjusted by the city clerk on March 1 of each year.

Part 15. Section 310-17-2-e-3 of the code is amended to read:

e-3. Termination of its ~~[[employees]]~~ >> employees<< only with just cause.

Part 16. Section 310-17-3-a of the code is amended to read:

### 3. REQUIREMENTS FOR APPAREL PURCHASES.

a. Application. ~~[[Contracting departments]]~~ >>Unless contrary to federal, state or local law, contracting agencies<< shall award contracts to responsible manufacturers for all apparel contracts ~~[[ in excess of \$5000]]~~ >>subject to formal competitive bidding<<. These contracts may include any or all of the following activities relating to apparel: purchase, rental, laundering and dry cleaning.

Part 17. Section 310-17-3-b-1-0 of the code is amended to read:

#### b. Affidavits.

b-1. No contracts for items referenced in par. a shall be entered into by contracting ~~[[ departments]]~~ >>agencies<< unless the lowest responsible bidders first submit to the purchasing director sworn reports or affidavits which include the following information for the specified time periods of the contracts:

Part 18. Section 310-17-3-c and d of the code is amended to read:

c. ~~[[Contract bid]]~~ >>Bid<< specifications. Contracting ~~[[ departments]]~~ >>agencies<< shall add a digest of the provisions of this section to all specifications for apparel purchasing, renting, laundering and dry cleaning upon which they ~~[[ issue invitations to]]~~ >>solicit by formal competitive<< bid.

d. Specifications for apparel contracts. No contract for the purchasing, renting, laundering and dry cleaning of items of apparel covered under this ~~[[ paragraph]]~~ >>section<< shall be entered into by ~~[[ the city]]~~ >>a contracting agency<< unless the contract contains a stipulation stating that the contractor agrees to provide ~~[[ in fulfillment of the contract]]~~ items from responsible manufacturers >>in fulfillment of the contract<<, and that the contractor agrees to include an equivalent stipulation in all subcontracts.

Part 19. Section 310-17-3-e-1 of the code is amended to read:

#### e. Monitoring and enforcement.

e-1. Responsibility. The ~~[[ business operations division – procurement services section – department of administration]]~~ >>purchasing director<< shall be responsible for monitoring contracts for compliance with this paragraph. The ~~[[ department]]~~ >>contracting agency<< shall review and monitor the sworn reports or affidavits submitted by contractors, receive and investigate complaints relating to compliance with this section, and impose appropriate sanctions upon any contractor who provides false information to the ~~[[ department ]]~~ >>contracting agency<< or fails to comply with the provisions of this section.

Part 20. Section 310-17-3-f of the code is amended to read:

f. Sanctions. Any contractor or subcontractor engaged in a contract who has been found by the ~~[[ business operations division – procurement services section – department of administration]]~~ >>purchasing director<< to have submitted any false, misleading or fraudulent information shall be referred to the district attorney for investigation. In addition ~~[[ to such fraudulent conduct]]~~, any such contractor or subcontractor who has otherwise failed to comply with the provisions of this section, may be subject to any of the following sanctions ~~[[ imposed by the business operations division]]~~:

f-1. Withholding of payments.

f-2. Termination, suspension or cancellation of the contract in whole or in part.

f-3. After a due process hearing, denial of the right of the contractor or subcontractor to ~~[[bid in]]~~ >> participate in<< future city contracts, by himself or herself, partner or agent, or by any corporation of which he or she is a member, for a period of one year after the first violation is found and for a period of 3 years after a second violation is found.

Part 21. Section 310-17-4 of the code is amended to read:

#### 4. REQUIREMENTS FOR NON-APPAREL PURCHASES.

a. Application. ~~[[Contracting departments]]~~ >> Unless contrary to federal, state or local law, contracting agencies<< shall award contracts to responsible manufacturers for all non-apparel items, materials, supplies and equipment ~~[[in excess of \$30,000]]~~ that are ~~[[bid by the city]]~~ >> subject to formal competitive bidding<<. The requirements of this paragraph shall not apply to items, materials, supplies and equipment to be furnished as part of a public works contract subject to s. 66.0903, Wis. Stats.

b. ~~[[Contract bid specifications]]~~ >> Specifications<<. No contracts for ~~[[purchases]]~~ >> the purchase << of non-apparel items referenced in this subsection shall be entered into by ~~[[the city]]~~ >> a contracting agency<< unless the bidder affirms on the bid that he or she is familiar with the requirements of this subsection and affirms that he or she will comply with the requirements contained in this subsection. The >> request for<< bid shall state >> that<< failure to comply ~~[[may]]~~ >> shall<< result in bid rejection.

c. Affidavits. No contracts for items referenced in par. a shall be entered into by contracting ~~[[ departments]]~~ >> agencies<< unless the lowest responsible bidders first submit ~~[[to the purchasing director]]~~ sworn reports or affidavits which >> identify any manufacturers to be used in fulfillment of the contract and << include a statement by the bidders that the ~~[[bidder's]]~~ >> manufacturer's<< facilities identified pursuant to this subsection are responsible manufacturers ~~[[as defined in sub. 2-e]]~~ >> of non-apparel items, materials, supplies and equipment that demonstrate all of the requirements contained in sub. 2-e-1 to 4<<.

d. Monitoring and enforcement. The ~~[[business operations division – procurement services section – department of administration]]~~ >> purchasing director and any other contracting agency that executes a contract to which this subsection applies<< shall be responsible for monitoring contracts for compliance with this paragraph.

e. Sanctions. Any contractor engaged in a contract who has been found by the ~~[[business operations division – procurement services section – department of administration]]~~ >> purchasing director and any other contracting agency that executes a contract to which this subsection applies<< to have submitted any false, misleading or fraudulent information >> or has otherwise failed to comply with the provisions of this subsection<< may be subject to the sanctions ~~[[referenced]]~~ >> provided<< in sub. 3-f.

Part 22. Section 310-17-5-0 of the code is repealed and created to read:

5. WAIVER. The requirements of this section may be waived in writing by the purchasing director if all bidders to a contract are deemed ineligible under this section.

Part 23. Section 310-17-6 of the code is amended to read:

6. APPEALS. Any contractor who objects to any decision or action of the ~~[[business operations division]]~~ >> contracting agency<< relative to this section may appeal the decision to the purchasing appeals board pursuant to s. 310-19.



Part 24. Section 310-18-2 of the code is amended to read:

**310-18. Purchase of Ethanol-fueled Vehicles.**

2. ETHANOL-FUELED VEHICLES. To the greatest extent practicable, the [[city]] purchasing director and any other [[~~officer, agent, agency, committee, board or commission~~]] >>contracting agency<< of the city shall make purchasing decisions that maximize the purchase of vehicles which have the capacity to operate with an ethanol content of at least 85%.

Part 25. Section 310-18.3-3 to 5 of the code is amended to read:

**310-18.3. Purchase of American-Made Vehicles.**

3. AMERICAN-MADE VEHICLES. [[The]] >>For vehicle purchases subject to formal competitive bidding, the<< city purchasing director and any other [[~~officer, agent, agency, committee, board or commission~~]] >>contracting agency<< of the city, unless contrary to federal, state or local law or regulations, [[~~are directed to~~]] >>shall<< purchase only American-made vehicles.

4. AFFIDAVITS. No contracts for items referenced in sub. 3 shall be entered into by contracting [[~~departments~~]] >>agencies<< unless the lowest responsible bidders first submit to the purchasing director sworn reports or affidavits which include a statement by the bidder that the vehicles to be supplied are American-made vehicles as defined in sub. 2-a.

5. MONITORING AND ENFORCEMENT. The [[~~business operations division—procurement services section—department of administration~~]] >>contracting agency<< shall [[~~be responsible for monitoring~~]] >>monitor<< contracts for compliance with this section.

Part 26. Section 310-18.3-6 of the code is repealed and created to read:

6. WAIVER. The requirements of this section may be waived in writing by the purchasing director if all bidders to a contract are deemed ineligible under this section.

Part 27. Section 310-18.3-7 of the code is amended to read:

7. SANCTIONS. Any contractor engaged in a contract who has been found by the [[~~business operations division—department of administration~~]] >>contracting agency<< to have submitted any false, misleading or fraudulent information or who has failed to comply with the provisions of this section may be subject to the sanctions [[~~referenced~~]] >>provided<< in s. 310- 17-3-f.

Part 28. Section 310-18.5 of the code is amended to read:

**310-18.5. Purchase of Neighborhood Electric Vehicles.** To the greatest extent practicable, the city purchasing director and any other [[~~officer, agent, agency, committee, board or commission~~]] >>contracting agency<< of the city shall make purchasing decisions that maximize the purchase and use of neighborhood electric vehicles.

Part 29. Section 310-18.7-3 of the code is amended to read:

**310-18.7. Electronic Waste Recycling.**

3. ELECTRONIC WASTE. Every [[~~city department, agency, committee, board or commission~~]] >>contracting agency<< shall collect the electronic waste it creates and ensure the proper disposal and

recycling of such electronic waste by contacting the department of administration for direction on the proper method of disposal.

Part 30. Section 310-18.9-2 to 6 of the code is amended to read:

- 310-18.9. Purchase of Milwaukee-Made, Milwaukee County-Made and American-Made Goods.**
- 2. MILWAUKEE-MADE GOODS.** The city purchasing director and any ~~[[other officer, agent, agency, committee, board or commission]]~~ >>contracting agency<< of the city shall, unless contrary to federal, state or local law, trade agreement or other regulations, purchase Milwaukee-made goods for purchases ~~[[over \$30,000]]~~ >>subject to formal competitive bidding<<, except for vehicles purchased under s. 310-18.3. Contracts shall be awarded to the lowest responsible bidder proposing to supply Milwaukee-made goods provided that the bid does not exceed the lowest bid by more than 12%.
- 3. MILWAUKEE COUNTY-MADE GOODS.** If a Milwaukee-made good is not available, the city purchasing director and any other ~~[[officer, agent, agency, committee, board or commission]]~~ >>contracting agency<< of the city shall, unless contrary to federal, state or local law, trade agreement or other regulations, purchase Milwaukee county-made goods for purchases ~~[[over \$30,000]]~~ >>subject to formal competitive bidding<<, except for vehicles purchased under s. 310-18.3. Contracts shall be awarded to the lowest responsible bidder proposing to supply Milwaukee county-made goods provided that the bid does not exceed the lowest bid by more than 12%.
- 4. AMERICAN-MADE GOODS.** If a Milwaukee-made or Milwaukee county-made good is not available, the city purchasing director and any other ~~[[officer, agent, agency, committee, board or commission]]~~ >>contracting agency<< of the city shall, unless contrary to federal, state or local law, trade agreement or other regulations, purchase American-made goods for purchases ~~[[over \$30,000]]~~ >>subject to formal competitive bidding<<, except for vehicles purchased under s. 310-18.3. Contracts shall be awarded to the lowest responsible bidder proposing to supply American-made goods provided that the bid does not exceed the lowest bid by more than 12%.
- 5. AFFIDAVITS.** No contracts for items specified in ~~[[sub. 2 or 3]]~~ >>sub. 2, 3 or 4<< shall be entered into by contracting ~~[[departments]]~~ >>agencies<< unless the lowest responsible bidders first submit to the purchasing director sworn reports or affidavits which include a statement by the bidder that the goods to be supplied are Milwaukee-made, Milwaukee county-made or American-made goods.
- 6. MONITORING AND COMPLIANCE.**
- a. The ~~[[business operations division – procurement services section – department of administration]]~~ >>contracting agency<< shall be responsible for monitoring compliance with this section.
- b. The ~~[[business operations division – procurement services section – department of administration]]~~ >>contracting agency<< shall, prior to contract execution and final payment of a contract, obtain an estimate from the successful bidder of the impact of the contract on job creation and retainment.

Part 31. Section 310-18.9-7 of the code is repealed and created to read:

- 7. WAIVER.** The requirements of this section may be waived in writing by the purchasing director if the good is not produced in the United States in a sufficient and reasonable available quantity and of a satisfactory quality.

Part 32. Section 310-18.9-9 to 11 of the code is amended to read:

- 9. RELATION TO OTHER LAWS.** No provision of this section shall relieve any bidder from compliance with other bid specifications or code provisions. Any bidder proposing to supply ~~[[an]]~~ >>

a Milwaukee-made, Milwaukee county-made or << American-made good with a bid considered for a contract award as defined in ~~[[sub. 2 or 3]]~~ >> sub. 2, 3 or 4 << shall not also receive the benefit of the bid award provided in s. 365-7-1.

**10. REPORTING.** The ~~[[business operations division – procurement services section – department of administration]]~~ >> purchasing director << shall report >> by April 1 << annually to the common council on purchases made under this section.

**11. SANCTIONS.** Any person, firm or corporation who has been found by the ~~[[business operations division – department of administration]]~~ >> contracting agency << to have submitted any false, misleading or fraudulent information or who has failed to comply with the provisions of this section may be subject to the sanctions provided in s. 310-17-3-f.

Part 33. Section 310-19-1 of the code is repealed and created to read:

### **310-19. Purchasing Appeals Process.**

**1. DEFINITIONS.** In this section:

- a. "Board" means the purchasing appeals board.
- b. "Recommendation" means a recommendation of the purchasing director as to the apparent low bidder which is made after a bid opening or a reverse auction but prior to the award of a contract.

Part 34. Section 310-19-2 to 3-b of the code is amended to read:

### **310-19. Purchasing Appeals Process.**

**2. APPLICABILITY.** This section applies only to appeals of specifications ~~[[and recommendations involving procurement of items of apparel under s. 310-17]]~~ and proposed city purchases ~~[[that exceed \$30,000 in cost]]~~ >> subject to formal competitive bidding <<.

**3. SPECIFICATION APPEALS.**

a. Any potential bidder, common council member or city ~~[[department]]~~ >> agency << which objects to the original or revised specifications ~~[[on a bid]]~~ may appeal the specifications by filing a written appeal with the purchasing director no later than 5 working days prior to bid opening ~~[[or the beginning of a reverse auction]]~~. Appeals made by a potential bidder shall be filed with the fee specified in s. 81-102.3. No appeal received later than 5 working days prior to bid opening ~~[[or the beginning of a reverse auction]]~~ may be considered. Appeals shall be written, state specific objections to the specifications, be supported by technical data, test results and other information, and suggest alternate specifications.

b. Bids shall not be opened >> or a reverse action conducted << while an appeal is pending.

Part 35. Section 310-21 to 27 is repealed.

Part 36. Section 310-29 of the code is renumbered 310-7.

Part 37. Section 310-31 of the code is repealed.

Part 38. Section 365-3-1 of the code is amended to read:

### **365-3. Definitions.**

**1. CONTRACTING** ~~[[DEPARTMENT]]~~ >> AGENCY << means any city department, agency, board, commission or ~~[[other]]~~ officer that has contracting ~~[[responsibilities]]~~ >> authority <<.

Part 39. Section 365-3-3 of the code is created to read:

3. PURCHASING DIRECTOR means the city purchasing director granted the authority to purchase in s. 16-05-1-a of the charter.

Part 40. Section 365-5 of the code is amended to read:

**365-5. Administration.** The local business enterprise contracting program shall be administered by the [[city]] purchasing director. The director shall develop appropriate rules, procedures and regulations for assuring compliance with the purpose and intent of this chapter, and supervise, coordinate, monitor and enforce the implementation of the local business enterprise contracting program goals in accordance with those rules, procedures and regulations.

1. DOCUMENTATION. Rules and procedures shall be made available to the public and distributed to [[city]] >>contracting<< agencies. In addition, the city purchasing director shall establish reporting requirements for all [[city-departments]] >>contracting agencies<< to document the dollar amount of contracts that have been awarded to local business enterprises.

2. ANNUAL REPORT. The [[city]] purchasing director shall review >>the activities of<< the local business enterprise [[activities-of-the-contracting]] program annually and submit an annual report to the mayor and the common council.

Part 41. Section 365-7-1-a and b of the code is amended to read:

**365-7. Obligations of Contracting Departments.**

**1. CONTRACT AWARD.**

a. A contracting [[department]] >>agency<<, shall, unless contrary to federal, state or local law or regulation, apply an award standard in all >>formal competitive<< bids so that an otherwise responsive and responsible bidder which is a local business enterprise shall be awarded the contract, provided that its bid does not exceed the lowest bid by more than 5%.

b. A contracting [[department]] >>agency<< shall, unless contrary to federal, state or local law or regulation, apply an award standard in the composition of scales used to evaluate proposals submitted in response to formal requests for proposals to procure goods or services. An additional number of points, equal to 5% of the maximum number of points used in the evaluation, shall be applied to increase the total score attained by a local business enterprise.

Part 42. Section 365-7-2 of the code is amended to read:

**2. DUTIES OF CONTRACTING [[DEPARTMENT]] >>AGENCY<<.** Each contracting [[department-is directed-to]] >>agency shall<<:

a. Obtain affidavits from local business enterprises with their bids >>or proposals<< verifying their status.

b. Cooperate with the [[city]] purchasing director in the implementation of this chapter.

c. Provide quarterly reports to the [[city]] purchasing director not later than 30 calendar days after the end of the previous quarter specifying with respect to contracts:

c-1. Provide the dollar amount of those contracts awarded to local business enterprises.

c-2. Provide other information as may be requested by the >>purchasing<< director.

Part 43. Section 365-11-0 of the code is amended to read:

**365-11.** Sanctions. Every ~~[[city]]~~ contract awarded under this chapter shall contain language indicating that if any document submitted ~~[[to the city]]~~ by a contractor ~~[[under this chapter for the purpose of participating in any city contract]]~~ contains false, misleading or fraudulent information, the contracting ~~[[department]]~~ >>agency<< or the ~~[[city]]~~ purchasing director, as the case may be, may direct the imposition of any of the following sanctions on the offending contractor:

Part 44. Section 370-1-8 of the code is amended to read:

**370-1. Definitions.**

**8.** CONTRACTING ~~[[DEPARTMENT]]~~ >>AGENCY<< means any city department, agency, board ~~[[or ]]~~ >>\_<< commission >>or officer<< that has contracting ~~[[responsibilities]]~~ >>authority<<.

Part 45. Section 370-3-0 of the code is amended to read:

**370-3. Administration.** There is created an office of small business development in the department of administration which shall be responsible for the administration, coordination and implementation of the city's small business enterprise program. Under the direction of the department of administration, the office of small business development shall be administered by ~~[[a small business development]]~~ >>the<< manager. The manager shall be appointed by the mayor and confirmed by the common council and shall serve concurrently with the term of the mayor. The manager shall:

Part 46. Section 370-3-10 of the code is amended to read:

10. Establish reporting requirements for all ~~[[city]]~~ >>contracting<< departments to document the percentage of contracts which have been awarded to small business enterprises.

Part 47. Section 370-3-12 of the code is amended to read:

12. Conduct hearings on requests by contracting ~~[[departments]]~~ >>agencies<< for waivers from the requirements of the program. Upon a denial of a request for a waiver, the affected ~~[[department]]~~ >>agency<< may apply for a waiver to the appropriate standing committee of the common council. The committee shall have the authority to waive any requirements of this chapter upon showing of good cause.

Part 48. Section 370-5-1-0 of the code is amended to read:

**370-5. Goals of Contracting Departments.**

**1.** GOALS. The following requirements are adopted by the city for increasing the level of small business enterprise participation in city contracts. It shall be the responsibility of each contracting ~~[[department]]~~ >>agency<< to attain such goals in accordance with the criteria specified in this section. Each contracting ~~[[department, and all other operating departments when contracting based upon authority therefrom,]]~~ >>agency<< shall, unless contrary to federal, state or local law, utilize small business enterprises for the following percentage of the total dollars, through prime contracts or subcontracts, annually expended on:

Part 49. Section 370-5-4-0 of the code is amended to read:

**4.** DUTIES OF ~~[[DEPARTMENTS]]~~ >>CONTRACTING AGENCIES<<. Each contracting ~~[[~~

~~department]] >>agency<<~~ is directed to:

Part 50. Section 370-5-4-d of the code is amended to read:

d. Appoint a member of the contracting ~~[[department or division]] >>agency<<~~ to serve as a liaison between the contracting ~~[[department]] >>agency<<~~ and the office of small business development.

Part 51. Section 370-5-5 of the code is amended to read:

**5. PERFORMANCE ASSURANCE PROCEDURE.** Each contracting ~~[[department]] >>agency<<~~ shall develop and implement procedures, unless inappropriate, to assure that suppliers, employees, agents or other persons providing goods or services to small business enterprises participating in city contracts shall be paid in full in a timely manner. The procedures shall include joint check payments, bonding requirements and other financial safeguards. Nothing contained in this subsection shall require the city to make payments in excess of the contract price.

Part 52. Section 370-9 of the code is amended to read:

**370-9. Sanctions.** Every ~~[[city]]~~ contract awarded under this chapter shall contain language indicating that if any document submitted to the office of small business development by a contractor, subcontractor, bidder or individual to be certified as a small business enterprise for participating in any city contract contains false, misleading or fraudulent information, the office of small business development may direct the imposition of any of the following sanctions on the offending contractor, subcontractor, bidder or individual:

APPROVED AS TO FORM

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Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

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Office of the City Attorney

Date: \_\_\_\_\_

LRB146502-2  
Mary E. Turk  
5/5/2014