

**ORDINANCE NO. 2718**

**AN ORDINANCE OF THE CITY OF SALISBURY AMENDING CHAPTER 2.32 OF THE SALISBURY CITY CODE, ENTITLED “PURCHASES AND SALES,” TO INCREASE THE MAXIMUM DOLLAR AMOUNT FOR DIRECT PURCHASES AND THE MINIMUM DOLLAR AMOUNT FOR FORMAL COMPETITIVE BIDDING IN ORDER TO INCREASE PROCUREMENT EFFICIENCY IN A MARKET OF INCREASED COSTS.**

**WHEREAS**, the ongoing application, administration and enforcement of the City of Salisbury Municipal Code (the “**Salisbury City Code**”) demonstrates a need for its periodic review, evaluation and amendment, in order to comply with present community and market standards and promote the public safety, health and welfare of the citizens of the City of Salisbury (the “**City**”); and

**WHEREAS**, the Mayor and Council of the City of Salisbury (the “**Mayor and Council**”) are authorized by MD Code, Local Government, § 5-202 to adopt such ordinances, not contrary to the Constitution of Maryland, public general law or public local law, as the Mayor and Council deem necessary to, *inter alia*, assure the good government of the municipality and to protect the health, comfort and convenience of the citizens of the City; and

**WHEREAS**, pursuant to § SC16-1.B of the City Charter, the Council by ordinance shall fix, and from time to time may change, the maximum amount of any such direct purchase, provided that such maximum authorized amount shall in no event exceed the maximum direct purchase amount set by the Ordinance of the Council, from time to time; and

**WHEREAS**, the Councils find that the health, safety, convenience, and general welfare of the citizens of the City will be furthered by amending Chapter 2.32 of the Salisbury City Code to increase the maximum dollar amount for direct purchases and the minimum dollar amount for formal competitive bidding in order to increase procurement efficiency in a market of increased costs; and

**WHEREAS**, the Mayor and Council have determined that the amendments to Chapter 2.32 of the Salisbury City Code set forth below shall be adopted as set forth herein.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY COUNCIL OF THE CITY OF SALISBURY, MARYLAND**, that Chapter 2.32 of the Salisbury City Code is hereby amended as follows:

**Section 1.** Section 2.32 of the City Code shall be amended by adding the bolded and underlined language and deleting the strikethrough language below.

**2.32.040 Direct purchases.**

- A. Where immediate procurement is necessary to prevent delays in its work and resulting loss to the city, any using agency may be permitted by the director of procurement to purchase directly on the open market any minor items of non-recurring supplies, materials, equipment, or services ~~not in excess of two thousand dollars (\$2,000.00)~~ **less than five thousand dollars (\$5,000.00)**. Such purchases may be made without soliciting competitive quotations as long as the using agency determines the price to be reasonable. Each direct purchase shall be made in accordance with rules of procedure established by the director of procurement.
- B. The intent of this section is to permit direct purchases of minor items to prevent delays and loss and not as a substitute for advance planning of needs or as a regular method of recurring purchases of items. This section is not to be abused by unwarranted favoritism of one supplier or by division of one purchase into several small purchases, each less than ~~two thousand dollars (\$2,000.00)~~ **five thousand dollars (\$5,000.00)**. The director of procurement shall report to the council any violation or attempted violation of this section.

(Ord. 1992 (part), 2006: Ord. 1751 § 1 (part), 2001)  
( Ord. No. 2440, 10-9-2017 ; Ord. No. 2489, 6-25-2018 )

### **2.32.050 Procedure for competitive bidding.**

Whenever the estimated value of the purchase or contract is ~~twenty-five thousand dollars (\$25,000.00) or less~~ **less than fifty thousand dollars (\$50,000.00)**, the council authorizes informal bidding procedures in the case of any single contract, purchase, or sale. Whenever the estimated value of the purchase or contract is ~~in excess of twenty-five thousand dollars (\$25,000.00)~~ **fifty thousand dollars (\$50,000.00) or more**, the following procedures shall be followed:

- A. Determination of When Bidding Required. On receiving any requisition for any purchase or any request for the making of any contract or council approval of any sale of city property, the Director of Procurement shall estimate the value and shall determine whether the same appears to require competitive bidding and what form it should take. If in doubt, he/she may submit such question to the city solicitor, who shall render an opinion informally or in writing as may be required by the Director of Procurement.
- B. Fixing of Terms, Conditions and Specifications of Bidding. After consulting the head of the using agency, the Director of Procurement shall fix and determine all the detailed terms and conditions of bidding pursuant to Article XVI of the Charter and this section, including the form and content of source selection, notices to bidders, times and conditions for bidding, specifications, surety for bids and other details. Bids may be requested in whole or in parts and with one or more alternates as the Director of Procurement may determine. In every instance, the city shall reserve the right to reject any bids, waive any irregularities and make the award in the best interests of the city.

Council approval shall be required for all unbudgeted capital outlay items and all capital outlay which exceeds budgeted funds. For budgeted goods and services, council approval shall only be required for contracts in excess of one hundred thousand dollars (\$100,000.00).

- C. Methods of Source Selection. If the estimated value is ~~twenty-five thousand dollars (\$25,000.00)~~ **fifty thousand dollars (\$50,000.00)** or more, the Director of Procurement shall solicit bids using one of the following methods:
  1. Competitive Sealed Bidding.
    - a. A public notice inviting bids shall be advertised using print or electronic media allowing ample time for preparation of bids, but in no event less than seven calendar days before the date for submitting bids.
      - i. The notice shall be made available to persons listed on the city's list of prospective bidders.
      - ii. Other persons shall be notified by suitable means as the Director of Procurement may select, in his/her discretion, in order to discourage uniform bidding and to obtain as full and open competition as possible.
      - iii. The notice shall contain a description of the project or purchase being sought, the availability and location of specifications, where bids must be submitted, the deadline for submitting bids, the time and place of the bid opening, and a statement indicating that the city reserves the right to reject all bids submitted.
    - b. Sealed bids submitted to the Director of Procurement on time shall be opened in public at the time and place designated and shall be tabulated, which shall be open to public inspection.

- i. The Director of Procurement, on his/her own authority, may reject all bids or any part thereof, and re-advertise for bids when, in his/her judgment, the public interest will be served thereby.
          - ii. The director may select the successful bidder by lot if the best bids are identical and the public interest will not permit the delay of re-advertising.
    - c. The Director of Procurement shall award the contract to the responsible bidder who submits the responsive bid that is either the lowest bid price, or is the lowest evaluated bid price, or is the bid most favorable to the city.
    - d. If, after competitive sealed bids have been opened, the Director of Procurement determines that only one responsible bidder has submitted a responsive bid, the Director of Procurement may negotiate the procurement contract with that one bidder under the procedure for noncompetitive negotiation (sole source procurement).
    - e. After competitive sealed bids have been opened, the director may award a procurement contract on the basis of revised bids if:
      - i. All bids are rejected;
      - ii. All bid prices exceed the funds available for the procurement; or
      - iii. The director determines that all bids are unreasonable as to at least one requirement and the delay that would result from issuing a new invitation for bids with revised specifications or quantities would be fiscally disadvantageous or otherwise not in the best interests of the city;
      - iv. If there is more than one bidder, discussions about revised specifications or quantities shall be conducted with all responsible bidders who submitted responsive bids. The bidders shall be treated fairly and equally with respect to any discussions;
      - v. An invitation for revised bids shall state whether the award will be made without competitive negotiations; such invitation is not subject to the notice requirements in subsection (C)(1)(a);
      - vi. After revised bids have been submitted, negotiations with bidders may not be conducted unless the director determines that there is a compelling reason to negotiate. Award shall be made pursuant to subsection (C)(1).
2. Multi-Step Bidding.
    - a. May be used when the director determines that an initial preparation of specifications for price bids is impracticable;
    - b. Shall follow notice and invitation to bid requirements found in subsection (C)(1)(a);
    - c. Includes a request for unpriced technical offer or samples;
    - d. Directs bidders to submit sealed price bids separately either with the technical offers or after the technical offers are evaluated and they have been found acceptable under the criteria set forth in the invitation to bid;
    - e. Only those prices submitted by bidders whose technical offers have been found acceptable will be considered;
    - f. Sealed price bids may not be opened until after a complete evaluation of the technical offers has been made;

g. Award is made pursuant to requirements under competitive sealed bidding.

3. Competitive Sealed Proposals.

a. Competitive sealed proposals may be used when the Director of Procurement determines that specifications cannot be prepared that allow an award based on the lowest bid price, the lowest evaluated bid price, or the bid most favorable to the city; or when the use of competitive sealed bidding is not practicable or not advantageous to the city.

b. A request for proposals shall follow the notice and invitation to bid requirements found in subsection (C)(1)(a).

c. A request for proposals shall include a statement of the scope of the procurement and the factors including price, that will be used in evaluating proposals and the relative importance of each factor.

d. After receipt of proposals, but before award, the director may conduct discussions with an offeror to:

i. Obtain the best price for the city;

ii. Ensure full understanding of the city's requirements and the offeror's proposal.

e. If discussions are conducted, the director:

i. Shall provide an opportunity to participate to each responsible offeror who submits a proposal that, in the judgment of the director, is reasonably susceptible of being selected for award;

ii. Shall treat all of those responsible offerors fairly and equally;

iii. May allow all of those responsible offerors to revise their initial proposals by submitting best and final offers, if discussions indicate that it would be in the best interest of the city to do so;

iv. May conduct more than one series of discussions and requests for best and final offers; and

v. May not disclose to an offeror any information derived from a proposal of or discussion with a competing offeror.

f. Proposals are irrevocable for the period specified in the request. A best and final offer is irrevocable for the period specified in the request for best and final offers.

g. The director shall award the procurement contract to the responsible offeror who submits the proposal or best and final offer determined to be the most advantageous to the city considering the evaluation factors set forth in the request for proposals.

4. Competitive Negotiations.

a. To be used for certain professional, architectural, engineering, or other specialized services;

b. The director requests statements of qualifications and information including description of work, time estimate, past experiences, references, hourly rates, if applicable;

c. All responses are evaluated and discussions may be conducted with any bidder to clarify qualifications or discuss the approach to the work;

- d. Once evaluations and discussions are completed, the using department head and the director shall select, in order of qualification ranking, at least three acceptable suppliers. The best qualified supplier is then requested to submit cost or pricing data. A contract is then negotiated with that supplier;
  - e. If a contract cannot be negotiated, the reasons for failure are documented and the same process is followed with the next most qualified supplier.
5. Noncompetitive Negotiation-Sole Source Procurement.
- a. Noncompetitive negotiation can be utilized if at least two sources are available for the services but the absence of effective competition makes it unreasonable to expect bids or proposals from the available sources.
  - b. A request for general expressions of interest shall be published in the same manner as required for invitation for bids, shall state the general requirements for services, and shall request interested service providers to respond in writing with general expressions of interest.
  - c. The director may conduct discussions with any responsible service provider who has submitted an expression of interest; the director shall treat fairly and equally with respect to discussions all responsible service providers who have submitted expressions of interest.
  - d. The director may award a procurement contract to the provider offering the best price, conditions, and services and in the best interests of the city.
  - e. Sole source procurement exists whenever the director determines that there is only one available source for the subject of a procurement contract and he/she may award the contract without competition to that source.
6. Procedure for Informal Competitive Bidding.
- a. If the estimated value is ~~less than twenty five thousand dollars (\$25,000.00)~~ **five thousand dollars (\$5,000.00) but less than fifty thousand dollars (\$50,000.00)**, the Director of Procurement shall ~~solicit~~ **direct the solicitation of** informal competitive bids by giving notice by mail, telephone, fax, **email** or other means deemed effective by the director to such persons as he/she may select, at his/her discretion, in order to discourage uniform bidding and to obtain as full and open competition as possible.
  - b. At least **two written competitive bids shall be secured whenever possible, when the estimated value is between \$5,000 and \$24,999, and at least three written competitive bids shall be secured whenever possible, when the estimate value is between \$25,000 and \$49,999,** and an award shall be made by the director to the lowest and best bid in the case of purchases or the highest and best bid in the case of sales.
  - c. The director shall keep a record of all competitive bids submitted pursuant to this procedure, and such records shall be open in his/her office.
- D. Small Business Preference Program.
- 1. Applicability. The small business preference program applies to all competitive bidding conducted pursuant to this section by the city.
  - 2. Procedures.
    - a. The Director of Procurement shall screen all procurements potentially eligible for a small business preference and shall determine which of those procurements is

appropriate for preferences under these procedures. The Director of Procurement shall also determine which percentage preference is to be applied. The determination shall be based on the availability of qualified, certified small businesses and other appropriate factors.

- b. The proposed small business procurement preference may not exceed a base percentage preference of five percent of the total contract value. A two-percent preference may be added to the base percentage preference for veteran-owned small businesses and a three-percent preference may be added to the base percentage preference for disabled-veteran-owned small businesses.
  - c. Any solicitation for a procurement designated for a small business preference shall include a statement that the procurement has been so designated and shall indicate the price preference percentage to be applied to that procurement.
  - d. Small business preferences shall apply only to those businesses which meet the definition of a small business, veteran-owned small business, or disabled-veteran-owned small business under Maryland law and COMAR, and in the case of the city's small business preference program, any small business, veteran-owned small business or disabled-veteran-owned small business must also have its principal place of business within the city limits, Maryland or be at least fifty-one (51) percent owned and controlled by an individual domiciled in the city.
  - e. The Director of Procurement shall maintain a list of all small businesses, veteran-owned small businesses and disabled-veteran-owned small businesses qualified under both state law and this Code to be designated as such. It is the responsibility of the small business and not the Director of Procurement, to request that its name be included on the list. The director will, however, verify whether each small business is qualified for inclusion on the list and demand whatever proof is required. If any business is found not qualified, the Director of Procurement will notify the business and afford it an opportunity to appeal the director's decision to the city administrator. The decision of the city administrator is final.
3. Direct Solicitation. When soliciting bids for a procurement designated for a small business preference, the Director of Procurement shall make available a solicitation or notice of the solicitation to all certified small businesses on the list which are appropriate for the subject of the contract.
  4. Evaluation. When a procurement under this code section has been designated for a small business preference, the procurement officer shall accept the most favorable responsive bid from a responsible small business if the bid does not exceed the most favorable responsive bid price received from a responsible bidder that is not certified as a small business by:
    - a. More than five percent;
    - b. More than seven percent for a veteran-owned small business;
    - c. More than eight percent for a disabled-veteran-owned small business; or
    - d. The predetermined percentage preference.

(Ord. 1992 (part), 2006: Ord. 1751 § 1 (part), 2001)

(Ord. No. 2301, 9-22-2014; Ord. No. 2440, 10-9-2017 ; Ord. No. 2585, 3-9-2020 )

**2.32.080 Disposition of surplus supplies.**

All using agencies shall submit to the Director of Procurement, at such times and in such form as he/she may prescribe, a request to declare as surplus all supplies, materials, vehicles and equipment with a historical cost of ~~two thousand dollars (\$2,000.00)~~ five thousand dollars (\$5,000.00) or more, that are no longer used or which have become obsolete, worn out or scrapped. The director may transfer such stock to other agencies which have need for or can use it or, if not thus usable, may sell or otherwise dispose of same in accordance with the Charter. All supplies, materials, and equipment with a historical cost of less than ~~two thousand dollars (\$2,000.00)~~ five thousand dollars (\$5,000.00), which are no longer used or which have become obsolete, worn out or scrapped, may be disposed of as determined by the head of the department that is disposing of such property, but in all cases shall adhere to appropriate methods of disposition as established by the Director of Procurement. All surplus supplies dispositioned pursuant to this procedure shall be submitted to the Director of Procurement and such record shall be open in his/her office.

(Ord. 1992 (part), 2006: Ord. 1751 § 1 (part), 2001)

( Ord. No. 2440, 10-9-2017 ; Ord. No. 2489, 6-25-2018 ; Ord. No. 2585, 3-9-2020 )

**BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND,** as follows:

**Section 2.** It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Ordinance shall be deemed independent of all other provisions herein.

**Section 3.** It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

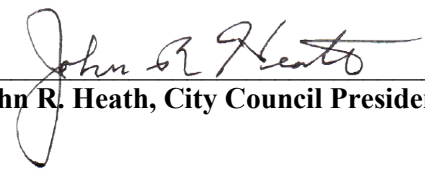
**Section 4.** The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 4.

**Section 5.** This Ordinance shall take effect from and after the date of its final passage.

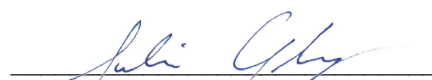
**THIS ORDINANCE** was introduced and read at a Meeting of the Mayor and Council of the City of Salisbury held on the 25<sup>th</sup> day of April, 2022 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the 9<sup>th</sup> day of May, 2022

**ATTEST:**

  
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**Kimberly R. Nichols, City Clerk**

  
\_\_\_\_\_  
**John R. Heath, City Council President**

Approved by me, this 12 day of May, 2022.

  
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Julia Glanz, City Administrator, for and at the direction of  
Jacob R. Day, Mayor



City of  
**Salisbury**  
Jacob R. Day, Mayor

**To:** City Council  
**From:** Jennifer Miller  
Director of Procurement  
**Date:** April 18, 2022  
**Subject:** Charter and Code of Ordinance changes requested

I am requesting a change to the following chapters of the Salisbury Code of Ordinances to increase the maximum dollar amount for direct purchases and the minimum dollar amount for formal competitive bidding. This change is intended to increase procurement efficiency in a market of rapidly rising costs. Please see the attached draft of each chapter.

- 2.32.040 Direct Purchases
  - \$0 - \$4,999: no quotes
- 2.32.050 Procedure for Competitive Bidding
  - Move formal bid threshold from \$25,000 to \$50,000
  - \$5,000 - \$24,999: two written quotes
  - \$25,000 - \$49,999: three written quotes
- 2.32.080 Disposition of Surplus Supplies
  - Include vehicles
  - Modify the historical threshold cost of “surplus” supplies from \$2,000 to \$5,000
  - Modify the informal surplus procedure (supplies with a historical cost less than \$5,000) to reference adherence to appropriate methods of transparent and fair disposition as established by the Director of Procurement and that such disposition is recorded and submitted to the Department of Procurement.

cc Julia Glanz  
Andy Kitzrow  
Ashley Bosche