

ORDINANCE 13-O-38 amending the Murfreesboro City Code, Chapter 2, Administration, Section 2-10 by adopting a revised procurement code.

WHEREAS, Sections 42 and 98 of the City Charter were amended by Chapter 21 of the Private Acts of 2013 to allow the City to take advantage of T.C.A. 6-56-302(2); and,

WHEREAS, said state law allows cities procurement options including the ability to acquire goods and services through means other than publicly advertised competitive sealed bids for purchases of less than \$25,000; and,

WHEREAS, the City wishes to amend the procurement code adopted by Ordinance 12-O-29 to implement Chapter 21 of the Private Acts of 2013 and T.C.A. 6-56-302 by increasing the amount over which publicly advertised competitive sealed bids are required from \$10,000 to \$25,000 and by increasing the amount over which three competitive quotations in writing must be obtained from \$4,000 to \$7,500; and,

WHEREAS, many of Tennessee's public procurement statutes were amended and renumbered by passage of Chapter 403 of the Public Acts of 2013, effective July 1, 2013; and,

WHEREAS, the City's procurement code, adopted by Ordinance 12-O-29 and codified at Section 2-10 of the City Code, contains multiple references to State Code provisions which were amended by Chapter 403; and,

WHEREAS, adopting an amended procurement code is an appropriate way to make the changes implementing Chapter 21 of the Private Acts of 2013 and Chapter 403 of the Public Acts of 2013.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Section 2-10 of the Murfreesboro City Code is hereby amended by deleting the section in its entirety and substituting in lieu thereof the following:

SECTION 2-10 PROCUREMENT CODE.

(A) *Policy.* It is the policy of the City of Murfreesboro to obtain goods and services needed for the efficient operation of city government by using a variety of procurement methods in order to achieve purchases that meet quality, performance and delivery standards with fair and competitive pricing and value by using procedures that are consistent with the City's needs while complying with applicable federal and state laws. It is to achieve these policy goals that this procurement code is adopted.

(B) *Roles and Responsibilities.*

- (1) It is the role and responsibility of the City Council to fulfill the purchasing duties established by the city charter; to establish a budget; to approve all non-emergency procurements over twenty-five thousand dollars (\$25,000); to approve the use of the competitive sealed proposal procedure; and, to receive reports of all emergency procurements.
- (2) It is the role and responsibility of the City Manager to fulfill the purchasing duties established by the city charter; to recommend all procurements and procurement methods over a fixed dollar amount to the City Council; to approve all

- procurements and procurement methods which do not require City Council approval; and, to establish administrative procedures for procurements consistent with these obligations.
- (3) It is the role and responsibility of the City Recorder to fulfill the purchasing duties established for that office by the city charter and administrative procedures established by the City Manager. The City Recorder has the right to review all procurements for consistency with this procurement code and the administrative procedures established by the City Manager.
 - (4) It is the role and responsibility of the City Attorney to fulfill the purchasing duties established for that office by the city charter and the administrative procedures established by the City Manager and subject to review and approval all contracts of procurement.
 - (5) It is the role and responsibility of the purchasing agent to fulfill the duties established by this procurement code and the administrative procedures established by the City Manager. These duties shall include but are not limited to developing the specifications for the goods to be purchased or the scope of work for the services to be purchased; preparing the invitation to bid, request for competitive sealed proposals or request for proposals; arranging for adequate and appropriate public notice or advertisement; evaluating all responses; preparing a purchase recommendation for the City Council, City Manager or department head as appropriate; ensuring correct documentation and execution of the contract or purchase order; and, ensuring delivery and/or performance of the purchased goods or services and payment for same. Unless otherwise designated by the City Manager, on a continuing or an individual procurement basis, the purchasing agent for each department shall be the employee in the Finance Department primarily assigned to purchasing agent duties.
- (C) *Scope.* This procurement code shall be applicable to all purchases, leases, lease-purchases and rentals of goods and services; it shall not be applicable to interests in land.
- (D) *Methods of Procurement.* The primary methods of procurement to be used by the City are:
- (1) Purchases based on price competition, which includes competitive bidding;
 - (2) Purchases which are not based on price competition because of the existence of a single source or proprietary product;
 - (3) Purchases which are not based on price competition because of the existence of an emergency;
 - (4) Purchases based on competitive sealed proposals; and,
 - (5) Purchases of services from a professional based on recognized competence and integrity.
- (E) *Purchases based on price competition.* There are a variety of procurement methods based on price competition which the City may use consistent with applicable laws.
- (1) Price competition requires public advertisement and competitive sealed bids by the City for all contracts for more than twenty-five thousand dollars (\$25,000) unless there is an applicable exception.
 - (2) A purchase based on price competition which does not require public advertisement and acceptance of competitive sealed bids by the City, regardless of amount, includes a purchase where the competitive process has been undertaken by others. These exceptions include, but are not limited to:
 - (a) A purchase made under the provisions of contracts or price agreements entered into by the Tennessee central procurement office pursuant to T.C.A. §12-3-1201, generally referred to as purchasing off the state bid;
 - (b) A purchase made under the provisions of contracts or bids from the United States General Services Administration in accordance with applicable federal regulations pursuant to T.C.A. §12-3-1201;
 - (c) A purchase made from a local vendor of items available for purchase under the provisions of contracts or price agreements entered into by the Tennessee central procurement office if and only if the City is not permitted to purchase the item under said existing contract; the item equals or exceeds the specifications of the item on the State contract; and, the item is available at the same or lower cost than under the State contract, as specified in T.C.A. §12-3-1201(d);
 - (d) A purchase of supplies, equipment or services made through another local

- governmental unit of the State in accordance with T.C.A. §12-3-1203(a);
- (e) A purchase of supplies, goods, equipment or services under contracts entered into by another Tennessee local government in accordance with T.C.A. 12-3-1203(c) excluding motor vehicles (except those manufactured for a special purpose);
 - (f) A purchase made from any instrumentality created by two or more cooperating governments, including those established pursuant to the Interlocal Cooperation Act, T.C.A. §12-9-101 et.seq;
 - (g) A purchase made from a nonprofit corporation whose purpose, or one of whose purposes, is to provide goods and services specifically to municipalities specifically the Local Government Corporation in accordance with T.C.A. §6-56-302(6) ; and
 - (h) A purchase made through a cooperative purchasing agreement with other local governments within or without Tennessee, in accordance with T.C.A. §12-3-1205; said purchasing agreements shall be authorized by resolution.
- (3) A purchase based on price competition which does not require public advertisement and acceptance of competitive bids by the City, regardless of amount, includes the purchase of used or secondhand goods, equipment, materials, supplies or commodities. If the purchase is from a private individual or entity, purchasing of used or secondhand items is only permissible if the general range of values of the item can be established by a listing in a nationally recognized publication or through a licensed appraiser and the price is not more than five percent (5%) higher than the highest value of the documented range, in accordance with T.C.A. §12-3-1202.
 - (4) A purchase based on price competition which does not require public advertisement and acceptance of competitive bids by the City, regardless of amount, include the purchase of new or second hand goods, equipment, materials, supplies and commodities at a publicly advertised auction but only pursuant to written procedures established by resolution by the City Council in accordance with T.C.A. §12-3-1006.
 - (5) A purchase based on price competition which does not require public advertisement by the City include those where the value of the goods or services are twenty-five thousand dollars (\$25,000) or less. The approved methods of procurement will vary depending on the price or type of item. The City Manager will establish consistent procedures for such procurements. If the dollar amount is between seven thousand five hundred dollars (\$7,500) and twenty-five thousand dollars (\$25,000) three (3) competitive quotations, when possible, must be obtained in writing.
 - (6) A purchase based on price competition which does not require sealed bids is a purchase made by a reverse auction in accordance with T.C.A. §12-3-1208. The reverse auction process may be utilized only after the City's plan, policy and procedures have been filed with the comptroller of the treasury. The reverse auction process allows offerors to bid on specified goods or services electronically and to adjust their offer price during a specified time period.
 - (7) A purchase of perishable commodities made on the open market does not require public advertisement and competitive bids if a record is made by the person authorizing the purchase which specifies the amount paid, the items purchased and from whom the purchase was made in accordance with T.C.A. §6-56-304(7). Any such purchases shall be reported at least monthly to the City Council. If this method is used for fuel and fuel products, the purchase should be based, whenever possible, on three (3) competitive prices.
- (F) *Sole Source Purchases.* The purchase of a particular good or service does not require public advertisement and competitive bidding, regardless of amount, if there is a single or sole source of supply of the good or service needed by the City. The City Council shall be informed of all reasons making the proposed sole source procurement appropriate if the item costs more than twenty-five thousand dollars (\$25,000). If the item costs less than twenty-five thousand dollars (\$25,000), a record of such purchase specifying the amount paid, the item purchased and the vendor shall be made by the person authorizing the purchase.
- (G) *Emergency Purchases.*
- (1) The City Manager is authorized to make emergency purchases of supplies and materials in the open market for immediate delivery in actual emergencies arising

from unforeseen causes including delays by contractors, delays in transportation, unanticipated volume of work, the failure to receive competitive bids from prospective bidders and other similar emergencies.

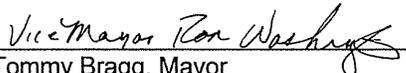
- (2) The City Manager shall attempt to receive competitive quotations from suppliers before making said emergency purchases. The City Manager may also use competitive sealed proposals for emergency purchases.
 - (3) A report of such emergency purchases in writing shall be made together with a record of the prices secured together with a full and complete account of the circumstances of such emergency. Such a report shall be made within two working days following the date of such purchase or purchase order and shall be kept on file in the office of the City Recorder and shall be open to public inspection. A copy of the report shall be presented to the Council at or before the next regular Council meeting.
 - (4) The limit for such emergency purchases shall be fifty thousand dollars (\$50,000) except for emergency purchases involving the health, safety or welfare of the City residents, such as but not limited to emergency purchases for the Water and Sewer Department, where repairs and parts cannot wait for the bidding process or Council approval at a regular meeting. In these cases, such emergency purchases shall not exceed two hundred thousand dollars (\$200,000) and shall require the approval of both the City Manager and Mayor, or Vice Mayor in the absence of the Mayor. For the purposes of this section, in the absence of the City Manager, the Assistant City Manager has authority to act for and on behalf of the City Manager.
- (H) *Competitive Sealed Proposal Purchases.*
- (1) The use of competitive bids may not be practical or advantageous to the City when qualifications, experience or competence are more important than price in making a purchase. In such events, the City Council may decide to use competitive sealed proposals. Competitive sealed proposals may be used without City Council approval only in the event of an actual emergency which emergency must be documented.
 - (2) Competitive sealed proposals may only be used if there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution or if there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one or more solutions.
 - (3) Competitive sealed proposals shall be used in accordance with the provisions of T.C.A. §12-3-1207.
 - (4) Adequate public notice of competitive sealed proposals must be given. The notice method(s) used shall be the same as for competitive bids for purchases of more than twenty-five thousand dollars (\$25,000).
 - (5) The request for competitive sealed proposals shall state the factors to be used to evaluate the proposals, including price, and shall state their relative importance in the evaluation. The request for competitive sealed proposals shall state that the evaluation shall determine whose proposal is the most advantageous to the City taking into consideration all of the stated factors. The request for competitive sealed proposals may state that price shall be separately submitted and included in the evaluation through a multi-step process. A multi-step process may include submission of pricing before or after the evaluation and any discussion of the proposals with the proposers.
 - (6) The competitive sealed proposals shall not be disclosed during the negotiation and evaluation process, which shall follow their submittal and opening, but they shall be made open for public inspection after the intent to award the contract to a particular proposer is announced.
 - (7) After the competitive sealed proposals are submitted, the City may but is not required to, conduct discussions to clarify and to assure full understanding of the proposal and its responsiveness to the City's requirements, provided that all responsible proposers whose proposals are reasonably capable of being selected are afforded fair and equal treatment. During these discussions, the City may not disclose to one proposer information derived from another proposal.
 - (8) As a result of these discussions, proposers may but are not required to be allowed to make revisions to their proposals so that the City may obtain the best and final offer from each proposer if said revisions are submitted and received

- before the City's intent to award to a particular proposer is announced.
- (9) In recommending a particular proposal for acceptance, the purchasing agent shall describe the basis on which the award is made.
 - (10) Each proposer shall be notified of the proposer selected for recommendation to the City Council before the proposed City Council action. A protest by an aggrieved proposer who is not selected will be heard by the City Council if filed with the City Council, through the City Recorder, within seven (7) days after the intended award is announced.
 - (11) Any issue raised by the protesting party after the seven day period shall not be considered as part of the protest. The City Council may stay an award due to a pending protest without financial or other obligation to the proposer recommended to the Council. The City Council may, by resolution, adopt rules and procedures applicable to protests.
- (I) *Purchases of services from a professional.*
- (1) Contracts for services to be performed by a lawyer, accountant, architect, engineer, fiscal agent, financial advisor, educational consultant, or a similar service to be performed by a professional person or group of professional persons shall not be based upon competitive bids but upon the basis of recognized competence and integrity in accordance with T.C.A. §12-3-1209 and other provisions of state law.
 - (2) In procuring professional services the City may, but is not required to, issue a request for qualifications ("RFQ") or/and a request for proposals ("RFP") or to help it identify individuals or firms with relevant qualifications and experiences.
 - (3) If the City is seeking architectural or engineering services and it does not choose to obtain them from an architectural or engineering service provider with whom it has a satisfactory existing working relationship or if the scope of needed services is outside the known technical competencies of the City's existing professional service providers, the City shall comply with T.C.A. §12-4-107.
 - (4) If the RFQ or/and RFP process is used for architectural or engineering services, the purchasing agent shall seek information from any firm licensed in Tennessee relevant to their qualifications and experience relative to the scope of the work, the complexity of the work, the professional disciplines required to satisfactorily perform the work and the estimated value of the services to be rendered. The purchasing agent, or a selection committee, as specified in the RFQ or/and RFP, may interview the firm regarding the furnishing of the required services. The purchasing agent or selection committee shall then select the firm deemed qualified and seek to negotiate a contract for the needed services for compensation determined to be fair and reasonable to the City. If these negotiations do not result in a satisfactory contract, negotiations may continue with other qualified individuals or firms until an agreement is reached.
 - (5) For fiscal agent, financial advisor or advisory services to be provided to the City, a written contract must be entered into prior to, or promptly upon, the inception of the relationship specifying the services to be rendered and the costs and expenses to be covered under the contract.
 - (6) Contracts for energy related services that include both engineering services and equipment and which have as their purpose the reduction of energy costs in public facilities shall be awarded on the same basis as contracts for professional services in accordance with T.C.A. §12-4-110.
- (J) *Water storage tank painting and maintenance.* The City, in accordance with T.C.A. §12-4-112, may use a request for proposal process for the painting and maintenance of water storage tanks and appurtenant facilities or may competitively bid such contracts.
- (K) *Terms and Conditions.*
- (1) Any and all notices, advertisements, invitations to bid or requests to propose, or other procurement method shall state that the City has and retains the power to reject any and all bids or proposals. This power shall exist whether or not expressly so reserved.
 - (2) In evaluating any bid or proposal, including those based on price competition and those using competitive sealed bids, the City may consider whether the bidder or proposer is responsible and disqualify from consideration any non-responsible bidder or proposal. A bid or proposal may be disqualified based on any of the following:

- (a) Ability to perform the contract or to provide the material or service required;
 - (b) Ability to provide the material or service within the time specified without delay or interference;
 - (c) The character, integrity, reputation, experience and efficiency of the bidder or proposer;
 - (d) The previous and existing compliance by the bidder or proposer with laws and regulations relating to the contract or service;
 - (e) The ability of the bidder or proposer to provide future maintenance and/or service;
 - (f) The terms and conditions stated in the bid or proposal; and,
 - (g) Past performance with the City by bidder or proposer.
- (3) The City may, but only to the extent the City Attorney deems allowed by federal and state law, give preference in competitive procurements to Tennessee goods and services.
- (4) The City shall use life cycle cost of commodities as developed and disseminated by the federal government in accordance with T.C.A. § 12-3-903.
- (5) The City shall if required, and may if authorized by federal or state law, use energy efficiency standards in its procurement process in accordance with T.C.A. §12-3-904 through 12-3-911 et seq.
- (6) The City shall include re-refined or recycled motor oil in its specifications for competitive bids for lubricating motor oil, if any, in accordance with T.C.A. §12-3-807 unless specialized equipment or circumstances require specialized treatment.
- (7) The City shall not be obligated to award any contract or to make any purchase if:
- (a) The contract or purchase would violate conflict of interest laws or the City's ethical standards policy;
 - (b) The vendor does not provide or complete all requirements for a valid City contract including but not limited to: non-collusion affidavits; illegal immigrant affidavits; payment and performance bonds; proof of insurance; retainage agreements; grants assurance certifications; drug free workplace policy certifications; proof of corporate existence and good standing; and, proof of required licenses or permits.
- (8) Bid specifications for the purchase of chemical products shall require that the manufacturer create and maintain a material safety data sheet in accordance with T.C.A. §6-56-307.
- (L) *Rejection of Bids and Proposals.* The City Manager shall have the right to reject all submittals for a particular procurement (whether submitted as quotations, bids, proposals, or in some other format) and to authorize the reissuance (with or without revision) of the procurement. Any such rejection and reissuance may be timely appealed to the City Council in accordance with subsection (M), Protests.
- (M) *Protests.* A participant in a City procurement may protest any such procurement. If the City Council is required to approve the procurement award, the decision on the protest shall be made by the City Council. If the procurement does not require City Council approval in advance of the award, the decision on the protest shall be made by the City Manager. Protests of competitive sealed proposals shall be made in accordance with subsection (H) and any resolution related thereto. Protests of procurements made by other methods shall be made in accordance with such rules and procedures as the Council made adopt by resolution.

SECTION 2. That this Ordinance shall take effect immediately after its passage upon third and final reading as an emergency exists, and the public welfare and the welfare of the City require its adoption as an emergency ordinance.

Passed:

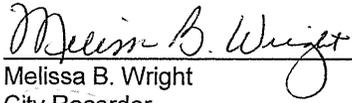

Tommy Bragg, Mayor

1st reading August 22, 2013

2nd reading September 12, 2013

3rd reading September 26, 2013

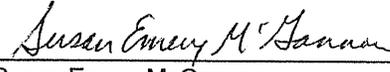
ATTEST:



Melissa B. Wright
City Recorder



APPROVED AS TO FORM:



Susan Emery McGannon
City Attorney