

ORDINANCE 2013-02

ORDINANCE ESTABLISHING CHAPTER 5 OF THE CITY CODE FOR PURCHASING POLICIES AND AMENDING OTHER CODE SECTIONS FOR CONSISTENCY

WHEREAS, Section 9.12 of the City Charter authorizes the Board of Mayor and Aldermen to establish policies regarding purchasing and dollar limits on requirements for obtaining quotes or bids; and

WHEREAS, the Tennessee Code Annotated provides general and specific guidelines and/or restrictions to purchasing by local governments, which have been considered in drafting of this Ordinance; and

WHEREAS, Section 5.02 (b) of the City Charter provides that the City Manager, or an employee designated by him, shall act as the City purchasing agent and this Ordinance is drafted in such a manner as to be applicable to the individual serving as the City purchasing agent; and

WHEREAS, The Board has determined that it is in the best interest of the city to establish general purchasing policies and to allow the City Manager and/or city purchasing agent to establish procedures within these policies; and

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF MILLINGTON BOARD OF MAYOR AND ALDERMEN, That the City Code is amended to establish Chapter 5 of Title 1 as Purchasing.

BE IT FURTHER ORDAINED, That Title 1, Chapter 5 is adopted as:

CHAPTER 5

PURCHASING

SECTION

- 5-101. Purchasing agent.
- 5-102. Duties of purchasing agent.
- 5-103. Method of obtaining pricing.
- 5-104. General purchasing policies.
- 5-105. Sole source providers.
- 5-106. Availability of funds.
- 5-107. Emergency purchases.
- 5-108. Purchase orders.
- 5-109. Payment for proper purchases.
- 5-110. Supplies, materials and equipment needed.
- 5-111. Unqualified bidders.
- 5-112. Authority to enter contracts.
- 5-113. Exceptions to bidding requirements.

5-101. Purchasing agent. The City Manager shall serve as the City purchasing agent. The City Manager may designate a city employee to serve as the City purchasing agent. The City Manager shall notify the Board of Mayor and Aldermen at their next meeting in the event an employee is designated to serve as the City purchasing agent.

5-102. Duties of the purchasing agent. The city purchasing agent shall:

- 1) Contract for and purchase all supplies, material, equipment, building and contractual services required by any office of the city, or which is supported by, or under control of, the city government and which expends or encumbers

any of the city funds. No other official or office of the city may make such purchases or contracts, except as the city purchasing agent, delegates this authority,

- 2) Arrange the rental of machinery, buildings and equipment when the rents are to be paid out of funds belonging to the city or any of its offices.
- 3) Transfer materials, supplies and equipment to or among city officials and offices as needed for the proper and efficient administration of the city government.
- 4) Dispose of obsolete or unusable property, excluding real property, in accordance.
- 5) The city purchasing agent, shall adopt and promulgate, and may from time to time amend, rules and regulations not inconsistent with the provisions of this ordinance, governing the purchase or rental of supplies, materials, equipment, buildings, and contractual services as follows:
 - a) Authorizing in writing any city official or office to make purchases in the open market for immediate delivery in emergencies, defining emergencies, and describing the manner in which emergency purchases shall be made and promptly reported to the city purchasing agent.
 - b) Prescribing the manner in which supplies, materials and equipment shall be requisitioned, purchased, delivered, stored and distributed.
 - c) Prescribing the dates for submitting requisitions and estimates, the future period they are to cover, the form in which they are to be submitted, and the manner of their authentication.
 - d) Prescribing the manner of inspecting all deliveries of supplies, materials and equipment, and of making or procuring chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications.
 - e) Requiring periodic and special reports by city officials and officers of surplus, unusable and obsolete supplies and equipment on hand, and prescribing the form of such reports.
 - f) Providing for the transfer to or among city officials and offices of supplies, materials and equipment on hand, which are surplus to one office or official but are needed by another.
 - g) Providing for the disposal as scrap or sale, after receipt of competitive bids, supplies, materials and equipment which are obsolete or unusable.
 - h) Determining whether or not a deposit, bond or letter of credit is to be submitted with a bid on a purchase contract or sale, and if required, prescribing the amount and form thereof, and providing that the surety may be forfeited if the successful bidder refuses to enter into a contract within ten days after the award.
 - i) Prescribing the manner in which invoices for supplies, materials, equipment and contractual services delivered to any city official or office shall be submitted, examined and approved.
 - j) Providing for all other matters as may be necessary to give effect to the foregoing rules and to the provisions of this ordinance.

5-103. Method of obtaining pricing. The following applies to all purchases of goods or services by the city:

- 1) All purchases of and contracts for purchases of supplies, materials, equipment, buildings and contractual services, shall be based whenever possible on competitive pricing. Bids need not be required for services for which the rate or price is fixed by a public authority authorized by law to fix such rates or prices. Specific requirements of this part include:
 - a) If the amount of the expenditure or sale is estimated to exceed \$10,000.00, sealed bids shall be solicited. The city purchasing agent shall solicit sealed bids by public notice inserted in a newspaper serving the city, allowing sufficient time for bids to be submitted. In addition, he may also, when he deems it necessary or desirable, solicit sealed bids by sending requests for bids by mail or electronic solicitation to prospective bidders. All notices for bids shall include a general description of the materials, supplies, equipment or contractual services to be purchased or property to be sold and shall state where bid forms and specifications may be obtained and the time and place of opening bids.
 - b) If the amount of the expenditure or sale is estimated to be more than \$5,000.00 but less than \$10,000.00, written quotes shall be solicited, without a requirement for a newspaper notice, and shall be based upon at least three competitive quotes when possible. Requisitions shall not be subdivided in order to circumvent the requirement for bidding in paragraph c or written quotes in this paragraph. All sales shall be made for cash to the highest bidder.
 - c) If the amount of the expenditure or sale is estimated to be more than \$1,000.00 but less than \$5,000.00, quotes shall be solicited, without a requirement for a newspaper notice, and shall be based upon at least three competitive quotes when possible. Requisitions shall not be subdivided in order to circumvent the dollar range requirement provided for. All sales shall be made for cash to the highest bidder.
 - d) All purchases or sales of less than \$1,000.00 in amount may be made in the open market without newspaper notice. Requisitions shall not be subdivided in order to circumvent the requirement for public newspaper notice herein provided for. All sales shall be made for cash to the highest bidder.
- 2) The city may purchase, sell or exchange materials, supplies, commodities, equipment and real estate from, to or with any federal, state or local government or office without conforming with the competitive bidding requirements of this section, provided the sale, purchase or exchange is based upon the fair market value of such sales to, purchases from or exchanges with other such governmental entities.
- 3) Contracts for legal services and similar services by professional persons shall not be based upon competitive bids, but shall be awarded on the basis of recognized competence and integrity at customary rates of compensation and may be procured through requests for proposals.

5-104. General purchasing policies. Purchases shall in all cases be based on the standards adopted and promulgated by the city purchasing agent and approved by the City Manager and shall meet the following requirements:

- 1) All open market orders or contracts shall be awarded to the most responsive bidder who is financially responsible, taking into consideration the qualities of the articles to be supplied, their conformity to specifications, their suitability to

the requirements of the city government, and the delivery terms. Any or all bids may be rejected for good cause.

- 2) All bids taken under the requirements of this section shall be preserved by the city clerk for a period of five years. All purchase orders and related payment documents shall be retained by the city finance department for a period of five years.
- 3) If two or more bids received on a pending contract are the same unit price or total amount, the city purchasing agent may reject all bids or may purchase the required supplies, materials, equipment or contractual services from any of the most responsive bidders, provided the price paid does not exceed the original bid price.
- 4) All sealed bids received shall be opened publicly at the time and place fixed in the advertisement. Each bid shall be entered on a record and the name of the successful bidder indicated thereon; and this record shall, after the award of the contract or order, be open to public inspection.
- 5) All contracts shall be approved as to form and legality by the city attorney, and the original copy of each contract shall be filed with the City Clerk.
- 6) Purchases shall be made and purchase orders and contracts of purchase shall be issued only in consequence of a written requisition for the supplies, materials, equipment or contractual services required, which requisitions shall be signed by the head of the city office requiring the articles or services, or their designee. Original copies of all requisitions shall be kept on file in the city finance department.
- 7) The city purchasing agent may purchase and contract to purchase materials, supplies, equipment and contractual services on a fiscal year basis, but no commitment, except as provided for herein, shall be made which extends beyond the end of the current fiscal year for which appropriations have been made by the Board of Mayor and Aldermen except after commitments as have been approved by resolution of the Board. In the determination of the city's annual needs of certain articles and services, the city purchasing agent may request the city officials and offices to estimate their needs for the remainder of the current fiscal year and to issue requisitions based upon these estimates.
- 8) Commitments may extend beyond the end of the current fiscal year, if approved by resolution or ordinance and are for the purchase of goods or services which may be classified as a fixed asset or which have a useful life of more than three years and a total cost in excess of \$5,000.00

5-105. Sole source providers. Purchase of supplies, materials and equipment from a sole/single source without bids or quotes, regardless of other provisions of this Chapter, may be used as follows:

- 1) The purchasing agent has determined that the items are available from only one source and
 - a) The purchasing agent obtains written proof of only one source;
 - b) The purchasing agent certifies that the specifications for a purchase were not specifically designed to create a sole/single source supplier.
 - c) The purchasing agent certifies items a) and b) to the City Manager;
- 2) The City Manager may authorize the purchasing agent to negotiate pricing with the sole source provider.

5-106. Availability of funds. Except in emergencies, no order for delivery on a contract or open market order for supplies, equipment or contractual services for any city official or office shall be made unless the availability of funds for the payment therefore has been first certified by the finance director.

5-107. Emergency purchases. The city purchasing agent, may authorize any city official or office to purchase in the open market, without filing requisition or estimate, any supplies, materials, equipment and/or services for immediate delivery in actual emergencies arising from unforeseen causes, including, but not limited to, natural disasters, delays by contractors, delays in transportation and unanticipated volume of work; but the term "emergency," as used in this section, does not include conditions arising from neglect or indifference in anticipating normal needs. Emergency purchases may be made by other city officials or offices only when the office of the city purchasing agent is closed. At all other times, only the city purchasing agent, with the approval of the City Manager, may make emergency purchases. A report of all emergency purchases, together with a full and complete account of the circumstances of the emergency, made by other city officials or offices, shall be made in writing by the official or offices that make the purchase to the city purchasing agent before the close of the next working day following the date of the purchases. This report shall be kept on file in the office of the city purchasing agent and shall be open to public inspection.

5-108. Purchase orders. Each purchase order or contract issued or executed pursuant to the provisions of this article shall be evidenced by a pre-numbered, written order, signed by the city purchasing agent or his designee, setting forth all significant details respecting the order or contract. A copy of the order shall be furnished to the vendor and a copy retained by the city finance department.

5-109. Payment for proper purchases. The city is liable for the payment of all purchases of supplies, materials, equipment and contractual services, made in accordance with the provisions of this Ordinance, but is not liable for the payment of such purchases made contrary to the provisions of this Ordinance.

5-110. Supplies, materials and equipment needed. The city purchasing agent shall classify the requirements of the city government for supplies, materials and equipment; shall adopt as standards the smallest number of quantities, sizes and varieties of such supplies, materials and equipment consistent with the successful operation of the city government, and shall prepare, adopt and promulgate written specifications describing these standards. In the preparation and revision of these standards, the city purchasing agent shall seek the advice, assistance and cooperation of the city officials and offices concerned to ascertain their precise requirements. Each specification adopted for any article shall, insofar as possible, satisfy the requirements of the city officials and offices which use that article.

5-111. Unqualified bidders. Individuals and entities not allowed to do business with the city shall include:

- 1) Neither the city purchasing agent nor any other city official, nor any member of the Board of Mayor and Aldermen shall be financially interested or have any personal beneficial interest, directly or indirectly, in any lease, construction contract or other contract entered into by the city, its officials or officers, or in any property used by or furnished to the city, its officials or officers; nor shall any of such persons accept or receive, by rebate, gifts, or otherwise from any person to whom any contract or purchase order may be awarded, any money or things of value whatsoever, or any promise, obligation or contract for future reward or compensation.
- 2) Any individual or company that has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving governmental sales or purchases, including, but not limited to, rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and contracting, shall not be considered a qualified bidder and shall not enter into

a bid, contract, or purchase order with the city for a period of 36 months from the date of conviction thereof.

5-112. Authority to enter into contracts. The City Manager shall have the power and authority to enter into contracts on behalf of the city, subject to budgetary limitations, as authorized by and in accordance with the City Charter and actions of the Board of Mayor and Aldermen as follows:

- 1) Contracts and purchases on behalf of the city government shall be entered into as follows:
 - a) Up to \$10,000.00 by the City Manager.
 - b) Over \$10,000.00 by the City Manager with the approval of the Board of Mayor and Alderman.
 - c) Contract with the City Manager by the City Mayor with the approval of the Board of Mayor and Alderman.
- 2) No sale of real property, or any interest therein, shall be valid unless approved by the Board, as authorized by and in accordance with the City Charter.
- 3) To the extent that any state or federal law or regulation requires the Mayor to authorize a contract, his signature shall also be added to the contract documents.

5-113. Exceptions to bidding requirements. Notwithstanding any provisions of this code, the city purchasing agent may purchase without bids in the following situations:

- 1) Used or second hand articles consisting of goods, equipment, materials, supplies or commodities from any individual or entity without public advertisement as long as the city documents that the purchased item's value fall's within ten percent (10%) of the documented value in a nationally recognized publication or through a licensed appraisal or the item is acquired from any governmental entity.
- 2) Repairs of vehicles or equipment when the nature or cost of repairs cannot be determined until tested or torn down by the potential repair vendor.

BE IT FURTHER ORDAINED, That Title 1, Chapter 2, Section 1-202 is amended By deleting its present wording and replacing it with:

1-202. Executes city's contracts. The Mayor shall execute contracts in accordance with the provisions of Title 1, Chapter 5, Section 5-112 and for the hiring of the City Manager..

BE IT FURTHER ORDAINED, That Title 1, Chapter 2, Section 1-204 is repealed.

This Ordinance shall become effective upon its third and final reading, the public welfare requiring it.