

RESOLUTION 2011-26

**A RESOLUTION ADOPTING A REVISED PURCHASING POLICY
FOR THE CITY OF FRANKLIN, TENNESSEE**

WHEREAS, in 2004, the Board of Mayor and Aldermen of the City of Franklin established methods to comply with the Municipal Purchasing Law of 1983, as amended, and to provide for a more formal process for the procurement of equipment, services, and materials for the operation of municipal government; and

WHEREAS, the Board of Mayor and Aldermen has since adopted revised thresholds for competitive bidding; and

WHEREAS, the Board of Mayor and Aldermen desires to implement a revised Purchasing Policy in order to reflect these changes and to otherwise update the City's policy.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, AS FOLLOWS:

Section 1. The Board of Mayor and Alderman adopted purchasing procedures on July 13, 2004. Those procedures, and all subsequent changes or revisions, are hereby repealed in their entirety. In their place, the Purchasing Policy attached hereto and made a part hereof is hereby adopted.

Section 2. The Purchasing Manager shall be responsible for the enforcement of the Policy hereby adopted.

Section 3. Changes or revisions to the Policy hereby adopted shall be made only by resolution of the Board of Mayor and Aldermen of the City of Franklin.

Section 4. The effective date of the Policy hereby adopted shall be July 1, 2011.

Adopted this ____ day of _____, 2011.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

BY: _____
ERIC S. STUCKEY
CITY ADMINISTRATOR/RECORDER

BY: _____
DR. KEN MOORE
MAYOR

APPROVED AS TO FORM BY:



Kristen L. Corn, Staff Attorney



HISTORIC
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ITEM #3
FINANCE
07-11-11

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MEMORANDUM

June 24, 2011

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator
Russell Truell, Assistant City Administrator for Finance & Administration
Brian Wilcox, Purchasing Manager

SUBJECT: Proposed revisions to the City's Purchasing Policy

Purpose

The purpose of proposing changes to the City's Purchasing Policy is to plan for the implementation, effective July 1, 2011, of Ordinance No. 2010-72, approved by the Board of Mayor and Aldermen last November, which increased from \$10,000 to \$25,000 the City's procurement threshold for sealed submittals pursuant to public advertisement, and consequently increased from \$2,500 to \$10,000 the City's procurement threshold for obtaining three quotes, if possible.

Background

The current purchasing policy was adopted by resolution of the Board of Mayor and Aldermen on July 13, 2004. Two documents are attached: one shows the Purchasing Policy with all proposed changes marked, and one shows how the Purchasing Policy would read if all the proposed changes are approved.

The following is a summary of the more significant changes being recommended at this time:

1. Procurement threshold: The proposed Purchasing Policy updates from \$10,000 to \$25,000 the City's procurement threshold for sealed submittals pursuant to public advertisement, per Ordinance No. 2010-72.
2. Document name: Instead of naming the document "Purchasing Procedures," the proposed Purchasing Policy is named "Purchasing Policy" to better reflect that it is as approved by the Board of Mayor and Aldermen. By contrast, procedures and practices (such as forms and instructions) that are in adherence to the policy approved by the board generally are developed by staff.
3. Option to obtain multiple quotes for small purchases: The proposed Purchasing Policy states as follows:

All foreseeable purchases, including those valued less than \$10,000, should not be made unless and until the Department Head or his or her authorized representative is satisfied that the value of the purchase is fairly priced and not more than what would be expected in the current market place. At the discretion of the Department Head or his or her authorized representative, for foreseeable purchases valued less than \$10,000, the Department should, whenever it is prudent to do so, obtain multiple competitive pricing quotations, said quotations to be either supplied in writing by the vendor or reduced to writing by the Department.



4. Communication with vendors during the procurement phase: The proposed Purchasing Policy states as follows:

Between the time a procurement solicitation for sealed submittals is issued by the City and the time an award is made, members of the Board of Mayor and Aldermen as well as employees of the City shall refrain from any form of communication with one or more vendors that may be competing for the award about any aspect of the procurement other than either in the context of a public meeting or by way of the Purchasing Office. The foregoing is not meant to preclude a representative of the City from answering questions from vendors if the question is already addressed in the solicitation documents, if the City representative is certain of the correct answer and if the Purchasing Office is informed of the communication. Otherwise, any inquiries from one or more vendors that may be competing for such an award shall be directed to the Purchasing Office which shall determine if an addendum to the solicitation should be prepared and issued to all vendors known or thought to be interested in the procurement opportunity. Vendors that may be competing for a procurement award shall be instructed that, until that award has been made, they shall not communicate about either the content of or the procurement process pertaining to this procurement solicitation with any official, employee or other representative of the City except through the City's Purchasing Office. The City reserves the right to disqualify any vendor that initiates unauthorized communication with the City during the procurement phase.

5. City Officer and Employee Business Dealings with the City: The proposed Purchasing Policy proposes:

- to delete a statement on the subject of "Purchasing from an Employee" (that read "It shall be the policy of the city that an employee shall not knowingly purchase or promote the purchase of any goods or services from any employee or from any employee's immediate family member (as defined in the City of Franklin Human Resources Manual, Rule II) without prior approval of the Board of Mayor and Aldermen"); and
- to replace that statement with a reference to Article XXII ("General Policies and Procedures"), Section E ("Business Dealings"), of the City of Franklin Human Resources Manual, which reads:

Except for the receipt of such compensation as may be lawfully provided for the performance of City duties, and except as noted below, no City officer or employee shall be privately interested in or profit, directly or indirectly, from business dealings with, of or by the City.

Regular full-time, regular part-time and temporary employees of the City may, subject to the approval of the City Administrator, contract to perform services for the City by meeting the following criteria: (1) the service performed must not be any service which the employee might provide in the normal scope of their regular duties; (2) the employee would be required to bid or submit a proposal in the same manner as any other prospective provider of service; and (3) the service performed must not present a conflict of interest nor a conflict of time with the employee's regular duties.

- and to make reference also to Title 1 ("General Administration"), Chapter 8 ("Ethics"), of the City of Franklin Municipal Code.



The statement in the current policy appears to contradict what is said in Article XXII, Section E, of the City of Franklin Human Resources Manual in at least the following ways:

- The Policy statement addresses both goods and services while the second paragraph of the HR Manual excerpt focuses on services only.
- The Policy statement addresses both the employee and the employee's immediate family while the HR Manual reference focuses only on the employee.
- The Policy statement forbids such purchases unless approved in advance by BOMA while the HR Manual excerpt lays out terms and conditions for an employee to do business with the City, subject to the approval of the City Administrator.

Staff recommends that the Purchasing Policy simply reference the HR Manual. Staff recommends BOMA direct staff as to whether the HR Manual provision accurately expresses the current wishes of the Board of Mayor and Aldermen on this matter.

6. Tie Bids and Tie Quotes: The proposed Purchasing Policy proposes the following criteria for considering tie bids and tie quotes:

In the event of tie bids or tie quotes (that is, when two or more responsible and responsive vendors offer products that meet all specifications, terms and conditions at identical total pricing for the minimum or estimated quantity indicated), then the tie bids or tie quotes shall be broken by means of one of the following methods, in descending order:

1. The award shall be made to the vendor who bid or quoted the soonest delivery of the product or completion of the service of all the vendors submitting the tie bids or tie quotes.
 2. The award shall be made to the vendor who offered the pricing for the longest period of time for potential future orders of all the vendors submitting the tie bids or tie quotes.
 3. If one or more of the vendors submitting the tie bids or tie quotes competed for the City's business the last time the City solicited bids or quotes for the same product or service, then the award shall be made to the vendor who offered the lowest pricing at that time of all the vendors submitting the tie bids or tie quotes.
 4. If one or more of the vendors submitting the tie bid or tie quote have done business with the City within the most recent 24 months, then the award shall be made to the vendor who has done the most business with the City (measured in dollars) in that time frame of all the vendors submitting the tie bids or tie quotes.
 5. The award shall be made by means of random selection, such method to be administered by the Purchasing Manager and to give equal opportunity to all the vendors submitting the tie bids or tie quotes.
7. Emergency purchases: In the context of emergency purchases, the proposed Purchasing Policy defines the word emergency as "impinging on public health, safety or welfare."



8. Sole-source purchases:

- a. The proposed Purchasing Policy clarifies that sole-source purchases valued at less than \$10,000 may be authorized by the end-user department, and that sole-source purchases valued at less than \$25,000 but not less than \$10,000 may be authorized by the Purchasing Manager upon being satisfied that it is not possible to obtain competitive pricing quotations from at least three (3) vendors.
 - b. The proposed Purchasing Policy proposes (in new Appendix B) criteria for considering the merits of a proposed sole-source purchase valued at or greater than \$10,000.
 - c. The proposed Purchasing Policy proposes the following three exceptions to the need for individual authorization of sole-source purchases by the Board of Mayor and Aldermen (but still requires that they be reported to the Board):
 - Repairs to, maintenance of, licenses for and/or maintenance agreements for products already in use by the City, so long as the product manufacturer representative has stated in writing that the vendor is the sole source available to the City of Franklin, and so long as the vendor has stated in writing that the quoted pricing is the lowest municipal unit pricing available at that time and in the foreseeable future for the quantity indicated. Examples: engine repairs made by the manufacturer or the manufacturer's representative for a vehicle; license and maintenance agreements for computer software.
 - Purchases of items necessary to maintain, expand or improve a manufacturer-specific system already in use by the City and that requires interconnectivity of and/or communication between the component parts, so long as the product manufacturer representative has stated in writing that the vendor is the sole source available to the City of Franklin, and so long as the vendor has stated in writing that the quoted pricing is the lowest municipal unit pricing available at that time and in the foreseeable future for the quantity indicated. Examples: water meters and related parts; traffic signal equipment and related parts; athletic field lighting (and related parts) connected to a centralized master control.
 - Purchases of items that have, for good and sufficient reason, previously been standardized by the City, so long as the product manufacturer representative has stated in writing that the vendor is the sole source available to the City of Franklin, and so long as the vendor has stated in writing that the quoted pricing is the lowest municipal unit pricing available at that time and in the foreseeable future for the quantity indicated. Examples: low-pressure wastewater collection grinder pumps and related parts.
9. Purchasing Card Program: The proposed Purchasing Policy lists important rules and procedures pertaining to the purchasing card program.
10. Vendor Protest Procedure: The proposed Purchasing Policy references the City's Vendor Protest Procedure for procurements not pertaining to new construction, as approved March 8, 2011 by Resolution No. 2011-10 of the Board of Mayor and Aldermen.



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11. Default method of payment: The proposed Purchasing Policy establishes that payment of vendors by electronic means (either direct deposit – such as “ACH” or “Electronic Funds Transfer” – or purchasing card) shall be the default method of payment.

Financial Impact

Staff is not aware that the revisions proposed above would have a negative financial impact on the City. As a rule, staff seeks to obtain the best pricing possible for all purchases.

Options

Options to the changes being recommended at this time could be explored and brought back for consideration.

Recommendation

Staff recommends the Board of Mayor and Aldermen adopt the proposed changes to the City of Franklin’s Purchasing Policy.