

ORDINANCE # 795

AN ORDINANCE TO INCREASE PURCHASING LIMITS

An Ordinance Establishing a Maximum Amount for Purchases without Public Advertisement and Competitive Bidding

WHEREAS, the City of Brownsville is subject to the provisions of the Municipal Purchasing Law of 1983, and

WHEREAS, this law has been amended by Chapter No. 269, Public Acts of 1999 permitting municipalities to increase the dollar amount of purchases requiring public advertisement and competitive bidding, and,

WHEREAS, the City of Brownsville has determined that it is in the best interest of the City of Brownsville to increase said amount, now therefore

BE IT ORDAINED BY THE CITY OF BROWNSVILLE, THAT

Requisition forms must be used for all purchases which repair expenditures of City funds. Requisition forms must be signed by the Department head or his designated agent. The Clerk at the City Shop located at 1420 East College is authorized to make all purchases which cost less than \$ 1000.00. Competitive bids or quotations for the purchase of items which cost less than \$ 1000.00 are desirable but not mandatory. Awards shall be made to the lowest responsible bidder.

Items over \$ 1000.00 require competitive bids and must be signed by the City Clerk after determination that adequate funds are budgeted and available for the purchase. This will include all items up to \$ 9999.00.

Sealed bids are required on purchases of \$ 10,000.00 or more. Bids must be advertised in a local newspaper of general circulation not less than five (5) days before bid opening date. Bids will be approved by the City Board and entered in the minutes of the City of Brownsville. Bids over \$ 10,000.00 will be handled by the City Clerk.

Purchases amounting to ten thousand dollars (\$10,000.00) or more, which do not require public advertising and sealed bids or proposals, may be allowed only under the following circumstances and, except as otherwise provided herein, when such purchases are approved by the Board of Mayor and Aldermen.

- (1) Sole source of supply or proprietary products as determined after complete search by the City Clerk, with the approval of the Board of Mayor and Aldermen.
- (2) Emergency expenditures with subsequent approval of the Board of Mayor and Aldermen.
- (3) Investments in or purchases from the pooled investment Fund established pursuant to TCA 9-17-105 (State Investment Pool).
- (4) Purchases from instrumentalities created by two (2) or more Cooperating governments.
- (5) Purchases from non-profit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.
- (6) Purchases, leases, or lease-purchases of real property.
- (7) Purchases, leases, or lease-purchase, from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.
- (8) Purchases through other units of governments as authorized by the Municipal Purchasing law of 1983.
- (9) Purchases directed through or in conjunction with the State Department of General Services.
- (10) Purchases from Tennessee State Industries.
- (11) Professional Service Contracts as provided in TCA 29-20-407.
- (12) Tort Liability Insurance as provided in TCA 12-4-407.
- (13) Purchases of fuels. Fuel products, or perishable commodities.

EMERGENCY PURCHASES

Purpose

Emergency purchases are to be made by departments only when normal functions and operations of the department would be hampered by submitting a requisition in the regular manner, or where property, equipment, or life are endangered through unexpected circumstances and materials, services, etc., and are needed immediately.

Who Makes Them?

Emergency purchases, either verbal or written, may be made directly by the using department without competitive bids, provided sufficient appropriations are available and necessary approvals have been secured.

Who Authorizes?

The City Clerk or Mayor may authorize an emergency purchase.

How to Make

After determination true emergency exists, the following procedure should be used:

- (1) Notify the City Clerk or Mayor of the need and the nature of the emergency. The City Clerk or Mayor will give verbal approval and issue a purchase order number. This number will be put on the requisition referred to in Number 4 below.
- (2) Using department must use sound judgment when making emergency purchases of materials and supplies and labor on equipment. Orders should be placed with vendors who have a good track record with the department.
- (3) Suppliers shall furnish sales tickets, delivery slips, invoices, etc., for the supplies or services rendered. Terms of the transactions, indicating price and other data, shall be shown.
- (4) As soon as the buy is complete, on the same or following business day, the using department must:
 - * Give the City Clerk a complete requisition with a description of the emergency and approval by the department head. "Confirming Emergency Purchase" must be marked plainly on the requisition, along with the purchase order number...
 - * The sales ticket, delivery slips, invoices, and material receiving report confirming the purchase must be attached to the emergency requisition form.
 - * The City Clerk will issue the vendor a purchase order marked "Confirmation."
- (5) If an emergency should occur during a time when the City Hall is normally closed, the using department will follow the above procedure with the exception of the first step. The evidence of purchase, such as sales slip, counter receipt, delivery slip, invoice, etc., which the supplier normally furnished, shall be attached to the completed and approved requisition form and be forwarded to the City Clerk, along with a material receiving report.

- (6) As soon as possible, the person authorizing the emergency purchase must prepare a report to the City Clerk, specifying the amount paid, the item(s) purchased, from whom the purchase(s) was made, and the nature of the emergency.

General Information

Emergency purchases are costly and should be kept to a minimum. Avoiding emergency orders will save the city money.

SEALED BIDS OR PROPOSALS

Sealed bids are required on purchases of \$ 10,000.00 or more. Bids must be advertised in a local newspaper of general circulation not less than five days before bid opening date.

City Clerk's Responsibility

- ** Prepare bid requests.
- ** Establish date and time for bid opening.
- ** Select possible sources of supply.
- ** Prepare specifications (unless of a technical nature, such as architectural, engineering, etc.) using department's input and assistance.
- ** Mail bid requests and advertise as appropriate. If delivered by hand, a receipt of the bid request should be signed by the vendor.
- ** Receive and open bids.
- ** Evaluate bids using department's assistance.
- ** Prepare bids and make a recommendation on award to the Board of Mayor and Aldermen. for approval.
- ** Process purchase order after the Board of Mayor and Aldermen approval.
- ** Maintain all specifications and bid data files.
- ** Prepare requisition to begin bid process. This should contain specific information about items needed. For example, quantity, size, brand preferred, performance requirements, etc.
- ** Submit requisition to begin bid request to the purchasing department at least three weeks before the date bids are to be opened.
- ** Assist in specification preparation if needed.
- ** Assist in evaluation of bid results.

General Information

The following policies shall apply to sealed bids:

1. Bid or Proposal opening: Bids will be opened at the time and date

specified on the bid request. All bids are opened publicly and read aloud, with a tabulation provided to all vendors participating. Proposals for extensive systems, complicated equipment, or construction projects, with prior approval of the Board of Mayor and Aldermen, may be opened privately in cases where the disclosure of the contents of the proposal could not be readily evaluated and would have a negative impact on both the vendor and the city.

2. Late Bids: No bids received after the closing time will be accepted. All late bids will be returned unopened to the vendor. Bids postmarked on the bid opening date but received after the specified time will be considered late and will be returned unopened.
3. Bid Opening Schedule: The City Clerk is responsible for setting bid opening dates and times.
4. Telephone Bids: The City Clerk won't accept any bid by telephone.
5. Bid Form: The City Clerk sends duplicate copies of bid request forms to each bidder, thereby enabling the bidder to return one and maintain a file copy. Bids won't be accepted on any vendor letterhead, vendor bid form, or other substitutions unless special permission is given by the City Clerk.
6. Unsigned Bids: Failure of a vendor representative to sign a bid proposal removes that bid from consideration. A typed official's name won't be acceptable without that person's written signature.
7. Acceptance of Bids: The city reserves the right to reject any or all bids, to waive any irregularities in a bid, to make awards to more than one bidder, to accept any part or all of a bid, or to accept that bid (bids) which in the judgment of the Board of Mayor and Aldermen is in the best interest of the city.
8. Shipping Charges: Bids are to include all shipping charges to the point of delivery. Bids will only be considered on the basis of delivered price, except as otherwise authorized by the governing body.
9. Sample Product Policy: The City Clerk may request a sample product as part of a bid. If this is stated on the bid proposal form, the vendor is required to comply with this request or have the bid removed from consideration.
10. Approved Equal Policy: Specifications in the request for bid are

Intended to establish a desired quality or performance level or other minimum requirements which will provide the city with the best product available at the lowest possible price.

When a brand name and/or model is designated, it signifies the minimum quality acceptable. If an alternate is offered, the bidder must include the brand name or model to be furnished, along with complete specifications and descriptive literature and, if requested, a sample for testing.

Brands and/or models other than those designated as "equal to" products shall receive equal consideration.

11. Alternate Bids: Should it be found, after bids have been opened, that a product has been offered with an alternative specification and that this product would be better for the city to use, all bids for that item may be rejected and specifications redrawn to allow all bidders an equal opportunity to submit bids on the alternate item.
12. Vendor Identification: Potential suppliers are selected from existing vendor files, using department's suggestions, and any and all sources available to locate vendors related to a specific product or service. New suppliers are added to the bid list as they are found.
13. Tie Bids: A tie bid is one in which two or more vendors bid identical items at the same unit cost. Tie bids may be determined by one of the following factors:
 - (a) discount allowed,
 - (b) delivery schedule,
 - (c) previous vendor performance,
 - (d) vendor location, or
 - (e) trade-in value offered.
14. Cancellation of Invitation for Bid Request for Proposal: An invitation to bid, a request for proposal, or other solicitations may be cancelled, or any or all bids or proposals may be rejected in part as may be specified in the solicitation when it is in the best interest of the city. The reasons shall be made a part of the bid or proposal file.
15. Public Advertisement: In addition to publication in a newspaper of general circulation as required by law, the City Clerk may make any other efforts to let all prospective bidders know about the invitation to bid. This may be accomplished by delivery, verbally, mail, or by posting the invitation to bid in a public place. It's not required that

specifications be included in the invitation to bid. However, this notice should state clearly the purchase to be made.

16. Sealed Bids and Sealed Proposals: The following is taken for *The Model Procurement Code for State and Local Governments*. American Bar Association, February, 1979. Pages 21-22.

- (a) "Competitive sealed bidding, as defined in this code, is the preferred method of procurement. Although the formal sealed bid process should remain a standard in public purchasing, there is a place for competitive negotiation" (State and Local Government Purchasing. The Council of State Governments (1975) at 2.2). The competitive sealed proposal method (similar to competitive negotiation) is available for use when competitive sealed bidding is either not practicable or not advantageous.
- (b) Both methods assure price and product competition. The use of functional or performance specifications is allowed under both methods to facilitate consideration of alternative means of meeting [state] needs (with evaluation and where appropriate) on the basis of total or life cycle costs. The criteria to be used in the evaluation process under either method must be fully disclosed in the solicitation. Only criteria disclosed in the solicitation may be used to evaluate the items bid or proposed.
- (c) These two methods of source selection differ in the following ways:

**Under competitive sealed bidding, judgmental factors may be used only to determine if the supply, service, or construction item bid meets the purchase description. Under competitive sealed proposals, judgmental factors may be used to determine not only if the items being offered meet the purchase description, but may also be used to evaluate competing proposals. The effect of this different use of judgmental evaluation is that under competitive sealed bidding, once the judgmental evaluation is completed, award is made on a purely objective basis to the lowest responsive and responsible bidder. Under competitive sealed proposals, the quality of competing products or services may be compared and trade-offs made between price and quality of the products or services offered (all as set forth in the solicitation). Award under competitive sealed proposals is

then made to the responsible offerer whose proposal is most advantageous to the [state].

****Competitive sealed bidding and competitive sealed proposals also differ in that, under competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances. The competitive sealed proposal method, on the other hand, permits discussion after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offerer fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerers.**

OTHER ASPECTS TO BE CONSIDERED IN BID AWARDS

In addition to price, the following points should be considered when awarding a bid:

****The ability of the bidder to perform the contract or provide the material or service promptly or within the time specified, without delay or interference.**

****The character, integrity, reputation, experience and efficiency of the bidder.**

****The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service.**

****The ability of the bidder to provide future maintenance and service for the use of the subject contract.**

****Terms and conditions stated in bid.**

****Compliance with specifications or request for proposal.**

NON-PERFORMANCE POLICY

Failure of a bidder to complete a contract, bid, or purchase order in the specified time agreed on, or failure to provide the service, materials, or supplies required by such contract, bid, or purchase order, or failure to honor a quoted price on services, materials, or supplies on a contract, bid, or purchase order may result in one or more of the following actions:

****Removal of a vendor from bid list for a period to be determined by the governing body.**

****Allowing the vendor to find the needed item for the city from another supplier at no additional cost to the city.**

****Allowing the city to purchase the needed services, materials, or supplies from another source and charge the vendor for any difference in cost resulting from this purchase**

****Allowing monetary settlement.**

DELINQUENT DELIVERY

Once the Purchasing Department has issued a purchase order, no follow-up work should be done unless the using department says the items haven't been received. If this happens the City Clerk will initiate action, either written or verbal as time allows, to investigate the delay. The using department will be advised of any further problems or a revised delivery date.

CONTRACTUAL PURCHASES

Such materials, supplies, or services which are constantly needed for city operations will be taken on a formal bid and will be awarded by the Board of Mayor and Aldermen for a contract period determined to be in the best interest of the city. This procedure shall be used in cases where the amount of the purchase of said materials, supplies, or services will be \$ 10,000.00 or more within the fiscal year. For amounts below \$ 10,000. the award will be made by the City Clerk.

ITEMS COVERED BY WARRANTY OR GUARANTEE

The city buys many items which have a warranty or guarantee for a certain length of time, such as tires, batteries, water heaters, roofs, and equipment. Before these items are repaired or replaced, the City Clerk should be consulted to see if the item is covered by such warranty or guarantee.

The City Clerk shall maintain an active current file with complete information on such warranties or guarantees. All warranties must be remitted to the city Clerk with the invoice indicating date of receipt.

SIGNATURES

Contracts, applications for title, tax exemption certificates, agreements, and contracts for utilities shall not be signed by any city employee unless authorized in writing by the City Clerk or that action of the governing body.

TRADE-INS

List of equipment to be used as trade-on shall accompany the request and specifications. The list includes the model, year, serial and city tag numbers, and other pertinent data.

SALE OF SURPLUS PROPERTY

When a department head decides there is surplus equipment or material in the department, he or she shall notify the City Clerk in writing. The City Clerk will figure out the best way to dispose of these items with an estimated value of less than \$ 100.00 and let the department head know. Items with an estimated value of more than \$ 100.00 shall be advertised for bidding, which will begin after the City Clerk has received approval from the Board of Mayor and Aldermen. Such equipment or materials will be sold to the highest bidder.

However, the City Clerk may transfer surplus equipment or material from one department to another. With the approval of the Board of Mayor and Aldermen, equipment or material may also be sold at public auction.

INSPECTION AND TESTING

When necessary, the City Clerk may have all deliveries of supplies, materials, equipment or contractual services inspected to be sure their performance is meeting specifications made in an order or contract.

The City Clerk may also require chemical and physical tests of materials submitted with bids and delivery samples, or after products have been delivered. These tests may be necessary to be sure the quality of materials is up to the desired standards. When performing such tests, the City Clerk may use lab facilities of any outside lab.

GENERAL INFORMATION

Preference to Local dealers: When buying supplies, materials, equipment, and services for the city's requirements, preference shall be given dealers who have stores or warehouses within the city, price, quality, delivery and service being equal.

Federal Excise Tax: The city is exempt from the payment of excise taxes imposed by the federal government, and suppliers should be requested to deduct the amount of such taxes from their bids, quotations, and invoices.

Standardization Requirements: Standardizing supplies and materials that can be bought in large quantities can save a great deal of money. Thus, department heads should adopt as standards the minimum number of quantities, sizes, and

varieties of commodities consistent with successful operation. Where practical, materials and supplies should be bought on the basis of requirements for a six-month period.

Inspection of Deliveries: No invoices for supplies, materials, or equipment shall be accepted for payment until such supplies, materials, etc., have been received and inspected by the department head.

Correspondence with Suppliers: Copies of any correspondence with suppliers concerning prices, adjustments, and defective merchandise shall be forwarded to the City Clerk. All invoices, bills of lading, delivery tickets, and other papers relating to purchases shall be sent to the City Clerk.

Claims: The City Clerk shall prosecute all claims for shortages, breakages, or other complaints against either the shipper or carrier in connection with shipments.

Public Inspection of Records: The City Clerk shall keep a complete record of all quotations, bids, and purchase orders. Such records shall be open to public inspection.

Designee: When a position such as City Clerk, finance officer, or department head is mentioned, their assistants or designees are acceptable substitutes if they have written permission to do so.

Definitions:

**** Customarily Purchased:** Items that are regularly purchased under specific circumstances considered reasonable and appropriate. (Example: After two consecutive years; then, not required after two consecutive years of not attaining the total amount of \$ 10,000.00.

****Like Items:** Items that are similar and may be bought at the lowest common denominator, such as size, color, etc.

**** Lot:** A single grouping of like items to be purchased at one time.

****Single Source of Supply:** When only one vendor is available for a product or service within a reasonable marketable distance of the city.

**** Proprietary Product:** A brand-name product made and marketed by one having the exclusive right to manufacture and sell.

**** Within the Limits of the Approved Budget:** Purchases must stay within appropriation limits in funds requiring budgets either by law, regulation, or policy. Appropriation limits don't apply to nonexpendable funds not

requiring budgets such as enterprise funds, intergovernmental service funds, and nonexpendable trust funds.

**** Performance and Bid Bonds:** Performance and bid bonds as may be determined by the Board of Mayor and Aldermen.

**** Architect or Engineer Required:** Plans, specifications, and estimates for any public works project exceeding \$ 25,000. must be prepared by a registered architect or engineer as required by TCA 62-2-107.

Section 1. Public advertisement and competitive bidding shall be required for the purchase of all goods and services exceeding an amount of ten thousand dollars (\$10,000) except for those purchases specifically exempted from advertisement and bidding by the Municipal Purchasing Act of 1983.

Section 2. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

Passed 1st Reading Nov 11-03

Passed 2nd Reading Dec 9-03

Walt F. Banks
Mayor

Wm Jerry Taylor
City Clerk