

ORDINANCE # 960

AN ORDINANCE TO REPEAL ORDINANCE 795 IN ITS ENTIRETY AND TO ESTABLISH TITLE 5 CHAPTER 5 OF THE BROWNSVILLE MUNICIPAL CODE RELATIVE TO PURCHASING PROCEDURES FOR THE CITY OF BROWNSVILLE.

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

WHEREAS, the City of Brownsville needs to clarify and make changes to the purchasing policy that amends Ordinance #795; and

WHEREAS, the City of Brownsville has determined that it is in the best interest of the City of Brownsville to make these changes.

NOW THEREFORE, BE IT ORDAINED BY the Board of Mayor and Aldermen of the City of Brownsville that:

SECTION 1. Ordinance 795 is repealed in its entirety.

SECTION 2. The Brownsville Municipal Code is amended by establishing the following language as Title 5 Chapter 5 "Purchasing."

TITLE 5 CHAPTER 5

PURCHASING

SECTION

- 5-501. Purpose.
- 5-502. General Information.
- 5-503. Policy Guidelines.
- 5-504. Purchase order.
- 5-505. Purchase Authority
- 5-506. City Clerk's Responsibility.
- 5-507. Sealed Bid Process.
- 5-508. Other Aspects To Be Considered In Bid Awards.
- 5-509. Emergency Purchases.
- 5-510. Non-Performance Policy.
- 5-511. Delinquent Delivery.
- 5-512. Contractual Purchases.
- 5-513. Items Covered By Warranty or Guarantee.
- 5-514. Signatures.
- 5-515. Trade-Ins.
- 5-516. Sale of Surplus Property.
- 5-517. Inspection and Testing.
- 5-518. Definitions.
- 5-519. Public advertisement and competitive bidding.

5-501. Purpose. All purchasing decisions made on behalf of the city shall take into consideration such factors as price, quality, past performance and economy. The provisions set forth in this section are intended to ensure that such factors are considered.

Whenever bids are required under the provisions herein, the city shall reserve the right to reject any or all bids, to waive any informalities or irregularities in a bid received and to accept any bid which it determines to be for the best interest of the city.

This ordinance shall not be in conflict with any State or Federal laws, but it will be used as a supplement by providing further detailed policies and procedures for the operations of the City of Brownsville.

5-502. General Information. *Designee:* When a position such a City Clerk or department head is mentioned, their assistant or designees are acceptable substitutes if written permissions are given to do so.

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

Supplier Quotes: Quote correspondences from suppliers concerning prices, adjustments and defective material should be attached to the purchase order and submitted to the City Clerk.

Purchase Deliveries: No invoice for goods and services rendered shall be accepted for payment until all material has been received and inspected by the department head. The City Clerk shall prosecute all claims for shortages, breakages or to other complaints against the shipper or carrier.

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

5-503. Policy Guidelines. All purchases or transactions which financially obligate the City shall be preceded by the issuance of a purchase order. A requisition form must be used to request a purchase. This form is by signed by the department head or designee. Than submitted to the City Clerk for an assigned purchase order number. No purchase order is required when there is an executed contract or city utility bills.

5-504. Purchase order. The purchase order provides a means of encumbering funds, which reserves a portion of an appropriation until actual payment is made. Under the purchase order system, it is assumed that there will be a time lag between the time the order is placed and the time of delivery. In order to ensure that all terms and conditions of the purchase order are met by the vendor, payment is not made by the City until the services and supplies have been received as ordered and an invoice is received by the vendor. All purchase orders must be approved and signed by the City Clerk before the purchase is made.

5-505. Purchase Authority. There are three types of local purchase authority: (1) Small Purchases, (2) Informal Purchases and (3) Sealed Bids. The limitations, requirements and procedures for each are set forth below.

(1) *Small Purchases:*

City officials or employees may utilize a Small Purchase authority without soliciting quotes or proposals from multiple vendors when the total purchase will cost less than \$1,000.00 and up to \$4,999.00. Department head/designee shall perform due diligence to ensure that the City is procuring goods and services on terms, conditions, and pricing that is in the City's best interests. It is important to note that no procurement shall be divided or split in order to fall within such amounts approved by this policy. All small purchases must be approved by the City Clerk.

Exemptions of Small Purchases:

The items listed below do not require a Purchase Order or a contract if:

- (a) they are supported by an invoice from the vendor of the goods or services;
- (b) performance occurs in no more than ninety (90) days; and,
- (c) the purchase does not exceed ten thousand dollars (\$10,000):
 - Landfill charges
 - Deed registration fees
 - Court fees
 - Fees in connection with titles or title searches
 - Building permits
 - Meeting expenses, e.g., charges for reserving a meeting venue and expenses for refreshments served at meetings

(2) *Informal Purchases:*

City officials or employees may utilize their Informal Purchase authority by soliciting quotes from at least three (3) vendors when the total purchase will cost less \$5,000.00 and up to \$9,999. A current website, catalogue, price list, or price available at retail to the general public may count as a quote. All quotes shall be attached to the purchase order and made a part of the procurement file. Department head/ designee shall also perform due diligence to ensure that the City is procuring goods and services on terms, conditions, and pricing that is in the City's best interests. It is important to note that no procurement shall be divided or split in order to fall within such amounts approved by this policy. All informal purchases must be approved by the City Clerk.

Exemptions of Informal Purchases:

The items listed below do not require a purchase order or a contract if:

- (a) they are supported by an invoice from the vendor of the goods or services; and,
- (b) performance occurs in no more than ninety (90) days for the following:
 - Telephone bills
 - Utility bills, including connection fees
 - Postage charges in connection with use of postage meter machines owned or leased by the City
 - Title insurance

(3) Sealed Bids:

A formal solicitation process shall be used when the estimated total of the expense is \$10,000 or more, including renewal terms of multi-year awards. Bids must be advertised in a local newspaper of general circulation not less than five (5) days before bid opening. 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 T.C.A. 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.

5-506. City Clerk's Responsibility.

- (1) Prepare bid requests.
- (2) Establish date and time for bid opening. Select possible sources of supply.
- (3) Prepare specifications (unless of a technical nature, such as architectural, engineering, etc.) using department's input and assistance.
- (4) Mail bid requests and advertise as appropriate. If delivered by hand, a receipt of the bid request should be signed by the vendor.

- (5) Receive and open bids.
- (6) Evaluate bids using department's assistance.
- (7) Prepare bids and make a recommendation on award to the Board of Mayor and Aldermen for approval.
- (8) Process purchase order after the Board of Mayor and Aldermen approval.
- (9) Maintain all specifications and bid data files.
- (10) Prepare requisition to begin bid process. This should contain specific information about items needed. For example; quantity, size, brand preferred, performance requirements, etc.
- (11) Submit requisition to begin bid request to the purchasing department at least three weeks before the date bids are to be opened.
- (12) Assist in specification preparation if needed.
- (13) Assist in evaluation of bid results.

5-507. Sealed Bid Process. 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 will make bid request forms available to each bidder either by mail or electronically, 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. An electronic signature will be acceptable as required by TCA 47-10-107.
- (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. Bids and proposals are authorized to be received electronically.

- (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.

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.

- (14) **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 City website, verbally, mail, email, 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.

(15) **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.

- (f) "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.
- (g) 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 City 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.
- (h) These two methods of source selection differ in the following ways:
 - (a) 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 offeror whose proposal is most advantageous to the City.
 - (b) 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 offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.

5-508. Other Aspects To Be Considered In Bid Awards. In addition to price, the following points should be considered when awarding a bid:

- (1) 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.
- (2) The character, integrity, reputation, experience and efficiency of the bidder.
- (3) The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service.
- (4) The ability of the bidder to provide future maintenance and service for the use of the subject contract.
- (5) Compliance with specifications or request for proposal.

5-509. Emergency Purchases. Emergency purchases are costly and should be kept to a minimum. Avoiding emergency orders will save the city money.

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.

Emergency purchase process: After determination that a 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:

(a) 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...

(b) The sales ticket, delivery slips, invoices, and material receiving report confirming the purchase must be attached to the emergency requisition form.

(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.

5-510. 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:

- (1) Removal of a vendor from bid list for a period to be determined by the governing body.
- (2) Allowing the vendor to find the needed item for the city from another supplier at no additional cost to the city.
- (3) 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
- (4) Allowing monetary settlement.

5-511. 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.

5-512. 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.

5-513. 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.

5-514. 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.

5-515. 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.

5-516. 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.

5-517. 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.

5-518. Definitions:

- (1) 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.)
- (2) Like Items: Items that are similar and may be bought at the lowest common denominator, such as size, color, etc.
- (3) Lot: A single grouping of like items to be purchased at one time.
- (4) Single Source of Supply: When only one vendor is available for a product or service within a reasonable marketable distance of the city.
- (5) Proprietary Product: A brand-name product made and marketed by one having the exclusive right to manufacture and sell.
- (6) 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.
- (7) Performance and Bid Bonds: Performance and bid bonds as may be determined by the Board of Mayor and Aldermen.
- (8) Architect or Engineer Required: Plans, specifications and estimates for any public works project exceeding \$ 25,000.00 must be prepared by a registered architect or engineer as required by TCA 62-2-107.

5-519. Public advertisement and competitive bidding. 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 3. THIS ORDINANCE SHALL take effect from and after its final passage, the public welfare requiring it.

Passed First reading _____

Passed Second reading: _____

WILLIAM D. RAWLS, JR., Mayor

Attest:

SHERRY BATCHELOR, City Clerk