

## Draft

### City of Harrogate Purchasing Procedures

April 5, 2002

As designated in Ordinance No. \_\_\_\_\_, the Mayor shall act as purchasing agent for the city, with power, except as set out in these procedures, to purchase materials, supplies, equipment, and services; secure leases and lease-purchases; and dispose of and transfer surplus property for the proper conduct of the city's business. All contracts, leases, and lease-purchase agreements extended beyond the end of any fiscal year must have prior approval of the governing body.

The purchasing agent shall have the authority to make purchases, leases, and lease-purchases of more than \$1,000 and less than \$2,500 singly or in the aggregate during any fiscal year and, except as otherwise provided herein, shall require three competitive bids or quotations, either verbal or written whenever possible prior to each purchase. Competitive bids or quotations for the purchase of items which cost less than \$1,000 are desirable but not mandatory. All competitive bids or quotations received shall be recorded and maintained in the office of the city recorder for a minimum of two years after audit. Awards shall be made to the lowest responsible bidder.

A description of all projects or purchases, except as herein provided, which require the expenditure of city funds of \$2,500 or more singly or in the aggregate during any fiscal year shall be prepared by the purchasing agent and submitted to the governing body for authorization to call for bids or proposals. After the determination that adequate funds are budgeted and available for a purchase, the governing body may authorize the purchasing agent to advertise for bids or proposals. The award of purchases, leases, or lease-purchases of \$2,500 or more shall be made by the governing body to the lowest responsible bidder.

Purchases amounting to \$2,500 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 governing body:

- Sole source of supply or proprietary products as determined after complete search by the purchasing agent, with governing body approval.
- Emergency expenditures with subsequent approval of the governing body.
- Purchases from instrumentalities created by two or more cooperating governments.
- Purchases from non-profit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.
- Purchases, leases, or lease-purchases of real property.
- Purchases, leases, or lease-purchases, from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.
- Purchases through other units of governments as authorized by the Municipal Purchasing Law of 1983.
- Purchases directed through or in conjunction with the state Department of General

Services.

- Purchases from Tennessee state industries.
- Professional service contracts as provided in Tennessee Code Annotated 29-20-407.
- Tort Liability Insurance as provided in TCA 12-4-407.
- Purchases of perishable commodities.
- Professional services shall not be bid.

The purchasing agent shall be responsible for following these procedures and the Municipal Purchasing Law of 1983, as amended, including keeping and filing required records and reports, as if they were set out herein and made a part hereof and within definitions of words and phrases from the law as herein defined.

The purchasing agent may use a city purchase order to outline the terms and conditions for a purchase. A sample purchase order is attached.

A Receiving Report, copy attached, must be matched to each purchase order prior to payment.

If the purchase is over the dollar limit, under no circumstances may multiple forms be used in an effort to avoid competitive bidding. Any variations in the purchase order and invoiced amount for purchases exceeding \$2,500 shall be approved by the Board of Mayor and Aldermen.

**Emergency purchases** are to be made only when normal functions and operations of the city would be hampered by purchasing in the regular manner, or where property, equipment, or life are endangered through unexpected circumstances and materials, services, etc., and are needed immediately. If a tool breaks and the repair is needed immediately an emergency purchase may be necessary. If a city waits until the last minute to purchase a police vehicle, and needs it for tomorrow evenings shift, it may be poor management instead of an emergency.

**A Summary of Bids Form** should be used to record all bids. The form should be included in the information presented to the governing body for consideration of award of the bid. All bids should be opened in public at a specified time. Late bids should not be accepted or opened. A copy of the Bid Summary Form is attached.

### **Petty Cash Fund**

To buy items that cost less than \$100\* from businesses that do not issue invoices or have charge accounts, a petty cash fund must be set up by the finance officer. The finance officer is solely responsible for any withdrawals from this account. Any receipts or requests for monies from this fund must contain the expense code and be signed by the person receiving the cash for payment. This fund should be used only if other purchasing methods are not applicable.

\*Amount to be established by the governing body.

### **Sealed Bids or Proposals**

Sealed bids are required on purchases of \$2,500 or more. Bids must be advertised in a local newspaper of general circulation not less than five days before bid opening date.

### **Purchasing Agent'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.
- 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 staff or professional assistance.
- Make recommendations on award to governing body for approval.
- Process purchase order after governing body approval.
- Maintain all specification and bid data files.

## 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, may be evaluated privately with a public recommendation to the governing board after evaluation and study.
2. **Late Bids:** No bids received after 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. It is important that the integrity of the bidding process be maintained.
3. **Bid Opening Schedule:** The purchasing agent is responsible for setting bid opening dates and times.
4. **Telephone Bids:** The purchasing agent will not accept any bid by telephone. He may accept telephone quotes for amounts less than \$2,500.
5. **Bid Form:** When the purchasing agent sends duplicate copies of bid request forms to each bidder, thereby enabling the bidder to return one and maintain a file copy. Bids will not be accepted on any vendor letterhead, vendor bid form or other substitutions unless special permission is given by the purchasing agent.
6. **Unsigned Bids:** Failure of a vendor representative to sign a bid proposal removes that bid from consideration. A typed official's name will not 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 (or bids) which in the judgment of the governing body 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. In many instances, the amount of shipping charges will be the deciding factor in making a purchase.

9. **Sample Produce Policy:** The purchasing agent 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 bids 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. **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.

If the tie cannot be resolved in this manner to the satisfaction of the governing body, the decision shall be based upon a coin toss as directed by the governing body.

13. **Cancellation of Invitation for Bid or Request for Proposal:** An invitation to bid, a request for proposal, or other solicitations may be canceled, 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 bylaw, the purchasing agent 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 is not required that specifications be included in the invitation to bid. However, the notice should state clearly the purchase to be made.

15. **Other Aspects To Be Considered in Bid Awards:**

- The ability of the bidder to perform the contract or provide the material or service required.
- Whether the bidder can 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 the bid.
- Compliance and 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 a 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 Agent has issued a purchase order, no follow-up work should be done unless the item has not been received. If this happens, the purchasing agent may initiate action, either written or verbal as time allows, to investigate the delay.

### **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 governing body 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 \$2,500 or more within the fiscal year. For amounts below \$2,500, the award will be made by the purchasing agent.

### **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 purchasing agent should be consulted to see if the item is covered by such warranty or guarantee. The city recorder shall maintain an active current file with complete information on such warranties or guarantees. All warranties must be remitted to the purchasing agent 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 purchasing agent or

by action of the governing body.

### **Trade-Ins**

List of equipment to be used as trade-in 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 the Purchasing Agent decides there is surplus equipment or material in the city, he shall figure out the best way to dispose of those items with an estimated value of less than \$100 and dispose of them with a report to the governing board. Items with an estimated value of more than \$100 shall be advertised for bidding, which will begin after the purchasing agent has received approval from the governing body. Such equipment or materials will be sold to the highest bidder.

### **Professional Service Contracts (Tennessee Code Annotated 12-4-106)**

Professional services include legal services, fiscal agent, financial adviser or advisory services, educational consultant services, and similar services by professional people or groups with "high ethical standards." Only contracts for services performed within the professional's field of expertise are to be considered professional service contracts. Leasing office space from an attorney or purchasing computer services from an accountant, for example, are not professional services and will require competitive bids.

Contracts for professional services will be awarded on the basis of recognized competence and integrity, rather than on competitive bids. This does not stop a city from requesting proposals from eligible service providers, then deciding about the capabilities of each. Although cost may be considered in choosing the service provider, it must not be the sole factor.

### **Certain Insurance (TCA 29-20-407)**

Cities may purchase tort liability insurance, without competitive bidding, from the Tennessee Municipal League, or any other plan authorized by any organization of governmental entities representing cities and counties.

### **Purchases Through State-General Services (TCA 12-3-1001)**

Cities may take advantage of so called "state prices" regardless of any charter or general law requirements. Not all prices quoted to the state are available to local governments. The items, price, and vendor information are available from the purchasing division of the Department of General Services.

### **"Buy America" Act (TCA 54-5-135)**

Cities must not buy any materials used for highway or roadway construction, resurfacing, or maintenance from any foreign government, any company wholly owned or controlled by a foreign government, or any agency of such foreign government or company. Materials include, but are not limited to asphalt cement, asphalt emulsion, rock, aggregate, liquid and solid additives, sealers, and oils. This legislation will not apply if materials made by American companies are of unsatisfactory condition, are not of sufficient quantity, or increase the overall

project cost by 5 percent more than the overall project costs using materials produced by foreign companies.

#### **Purchases of Confiscated Property from the State (TCA 12-2-201)**

A city may buy a motor vehicle that has been confiscated by the state by any city officer, employee, or their agent when the purchase is for municipal use.

#### **Interest of Officer in Municipal Contracts (TCA 6-54-107)**

No one holding a city office, elected or appointed, shall contract with the city for any work. Nor shall such person hold or have any direct interest in such a contract. Direct interest is defined as any business in which the official is the sole proprietor, a partner, or the person who has the controlling interest. Controlling interest means the person with the ownership or control of the largest number of outstanding shares owned by any individual or corporation.

No city officer shall be indirectly interested in any contract with the municipality unless the officer publicly acknowledges his interest. Indirectly interested is defined as any contract in which the officer is interested, but not directly, but includes contracts where the officer is directly interested, but is the sole supplier in the municipality.

#### **Personal Interest of Officers Prohibited (TCA 12-4-101)**

It is unlawful for any person whose duty is to vote for or to supervise any contract with a city to be directly interested in such a contract. No city officer or other person whose duty is to superintend any contract with a city shall be indirectly interested in any such contract, unless the officer or person publicly acknowledges his interest.

#### **Other 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 required to deduct the amount of such taxes from their bids, quotations, and invoices. The City is not required to pay sales tax on purchases.

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

**Designee:** The Purchasing Agent may designate the City Recorder to serve as purchasing officer under his supervision and direction.

**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 do not apply to nonexpendable funds not requiring budgets, such as enterprise funds, intragovernmental service funds, and nonexpendable trust funds.

**Performance and Bid Bonds:** Performance and bid bonds as may be determined by the

purchasing agent or the governing body.

**Payment Bond:** A payment bond is required for all contracts of \$25,000 or more to insure that all materials are paid for by the contractor. This is a requirement of Tennessee Law.

**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.