

August 1, 2005

Mayor Ginny Nixon  
Town of Pleasant Hill  
P.O. Box 99  
Pleasant Hill, TN 38578

Re: Contract requirements

Dear Mayor Nixon:

You have requested the University of Tennessee Municipal Technical Advisory Service (MTAS) to research and recommend other municipal requirements relating to the administration of contracts for public works or improvements. You have specifically inquired about contractual elements such as insurance and bonding requirements. As a result, we have provided you the attached recommended charter change, ordinance and various sample public works ' contracts administered in Tennessee. As you know, your charter was amended earlier this year regarding contracts over \$1,000. Article IV, Section 3 states that " Be it further enacted, That all purchases for more than \$5,000 shall be awarded to the lowest responsible bidder meeting specifications, after publication, advertisement, and competition, as may be prescribed by ordinance; *but no contract for any public work or improvement costing over \$5,000 shall be awarded except on condition that the contractor give bond with some bonding company authorized to do business in the State of Tennessee as surety, in sum equal to the contract price "*.

The intent of this charter change was to change the competitive bidding procedures to keep up with current costs and trends. We can understand your dilemma when addressing public works or other service contracts under \$5,000 since at present there are no surety requirements for contracts under \$5,000. Often, during a notice of bid, municipalities will require liability, worker ' s compensation insurance, performance and payment bonds. We believe that amending your charter by decreasing the above \$5,000 threshold to \$1,000 for surety requirements in contracts will address your dilemma of adequate bond security for contracts. This change would not affect the \$5,000 competitive bidding process contained in your charter.

Also in our review of your charter, we discovered that Article II, Section 7 contains language that requires an adoption of an ordinance relating to contracts over \$500. We believe that this is too cumbersome and have prepared a recommended amendment. These charter changes then would facilitate the passage of a separate ordinance which meets the threshold of \$1,000 established in your charter amendment. In addition, T.C.A. 12-4-201 et seq., public construction contracts in Tennessee require the general contractor to post a payment bond (25% of the contract amount) to secure payment of subcontractors and suppliers in contracts in excess of \$100,000.

There are no provisions in any Tennessee insurance law, or regulations related thereto, that prohibit a municipality from requiring a contractor that is bidding on a public project to use an insurer that is authorized to do insurance business in Tennessee. Workers Compensation is required for companies with at least 5 employees. For any contract that the town administers, we recommend that you require a minimum \$1,000,000 coverage in liability. This issue is covered in our recommended ordinance which should be adopted after the implementation of the charter change..

Finally, we have provided you with some sample public contracts and bond documents. The contract between the City of Knoxville and East Tennessee Sod is very well formatted and should serve as a useful guide in future contracts. We commend you for taking the initiative to ensure that the town has proper safeguards such as bonding, liability insurance and worker ' s compensation in the administration of your contracts.

Sincerely,

Warren Nevad  
Municipal Management Consultant  
University of Tennessee Municipal Technical Advisory Service

WPN:bms

attachment

Recommendations

1) Passage of below resolution requesting charter change

RESOLUTION 05-10

WHEREAS, the town of Pleasant Hill, Tennessee incorporated by Chapter 140 of the Private Acts of Tennessee for 1963, as amended, of the General Assembly of the State of Tennessee; and

WHEREAS, the interest of the town of Pleasant Hill, Tennessee will be served if the charter of the city is amended; and now, therefore;

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF PLEASANT HILL, TENNESSEE THAT:

The Honorable \_\_\_\_\_ and Honorable Charlotte Burks are hereby requested to introduce the following act to the General Assembly of the State of Tennessee:

AN ACT to amend the charter of the town of Pleasant Hill, Tennessee, being Chapter 140 of the Private Acts of Tennessee for 1963, as amended;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Section 1 ARTICLE II, TOWN COUNCIL SECTION 7 is amended

Section 2 The current text “ (a) Any action of the Council having a regulatory or penal effect, relating to taxation, or the appropriation of over \$500, awarding franchises or contracts over \$500, or authorizing the borrowing of money shall be done only by ordinance ” is hereby changed to the following text in section 3 of this resolution.

Section 3. The new text “ (a) Any action of the Council having a regulatory or penal effect, relating to taxation, or the awarding of franchises, or authorizing the borrowing of money shall be done only by ordinance ”

Section 4. ARTICLE IV, FISCAL ADMINISTRATION, SECTION (5). Contracts over \$5,000 is amended.

Section 5. The current text ” Be it further enacted, That all purchases for more than \$5,000 shall be awarded to the lowest responsible bidder meeting specifications, after

publication, advertisement, and competition, as may be prescribed by ordinance; but no contract for any public work or improvement costing over \$5,000 shall be awarded except on condition that the contractor give bond with some bonding company authorized to do business in the State of Tennessee as surety, in sum equal to the contract price " is hereby changed to the following text contained in Section 6 of this resolution:

Section 6. The new text " Be it further enacted, That all purchases for more than \$5,000 shall be awarded to the lowest responsible bidder meeting specifications, after publication, advertisement, and competition, as may be prescribed by ordinance; but no contract for any public work or improvement costing over \$1,000 shall be awarded except on condition that the contractor give bond with some bonding company authorized to do business in the State of Tennessee as surety, in sum equal to the contract price "

Section 7. This act shall become effective when it has been approved by the Board of Mayor and Aldermen of the Town of Pleasant Hill by a vote of not less than two-thirds of the entire membership of the board. The approval or nonapproval of the act by the Board of Mayor and Aldermen of the Town of Pleasant Hill shall be certified by the Mayor of the Town of Pleasant Hill to the Tennessee Secretary of State

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2005

Signed: \_\_\_\_\_

Attest: \_\_\_\_\_

Recommendation #2 After adoption of charter amendment - approve the below ordinance

Ordinance 06-01

**AN ORDINANCE CREATING CONTRACTOR REQUIREMENTS IN MUNICIPAL CONTRACTS.**

Section 1. Contract required. A written contract between the city and a contractor or service provider is required for any public works, municipal improvement, professional services or other type services which exceed one thousand (\$1,000). Said contract shall be reviewed and approved subject to the conditions specified in section 2 of this ordinance by the board of Mayor and Aldermen.

Section 2. Bond and Insurance Requirements. The written contract shall contain requirements that the contractor give bond with some bonding company authorized to do business in the State of Tennessee as surety, in sum equal to the contract price and the contractor has \$ 1,000, 000 liability insurance and appropriate workers compensation coverage. The contract must contain language that the contractor will defend, indemnify and hold the town, its agents and employees harmless from any and all liability to the

Contractor, its agents and employees or any third party for claims, personal injuries, property damage, loss of life or loss of property resulting from, or in any way connected with, or alleged to have arisen from the performance of an action or an omission pursuant to this agreement.

Section 3. Contracts that exceed the contracted price. No extra work shall be authorized or paid for in connection with any service contract unless approved by the Mayor and Council.

Section 4. Penalty Clause. Each violation of this ordinance is punishable by a \$50 fine.

Section 5. Date of effect. This ordinance shall take effect from and after its final passage, the public welfare requiring it, and the municipal code, including all the codes and ordinances therein adopted

Passed 1<sup>st</sup> reading: \_\_\_\_\_, 2006

Passed 2<sup>nd</sup> reading: \_\_\_\_\_, 2006