

ORDINANCE NO. _____

**AN ORDINANCE TO ESTABLISH A PURCHASING POLICY FOR THE CITY OF RUTHERFORD,
TENNESSEE**

WHEREAS, the Board of Mayor and Aldermen of Rutherford, Tennessee wishes to establish policies and procedures for the procurement of equipment, services, materials, and supplies for the operation of municipal government.

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

Section 1. Definitions. For the purpose of implementing this ordinance, the following definitions shall apply.

Accept. To receive with approval or satisfaction.

Acknowledgment. Written confirmation from the vendor to the purchaser of an order implying obligation or incurring responsibility.

Agreement. A coming together in opinion or determination; understanding and agreement between two or more parties.

All or none. In procurement, the City reserves the right to award each item individually or to award all items on an all or none® basis.

Annual. Recurring, done, or performed every year.

Appropriations. Public funds set aside for a specific purpose or purposes.

Approved. To be satisfied with; admit the propriety or excellence of; to be pleased with; to confirm or ratify.

Approved equal. Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount or rights.

Attest. To certify to the verity of a public document formally by signature; to affirm to be true or genuine.

Award. The presentation of a contract to a vendor; to grant; to enter into with all required legal formalities.

Awarded bidder. Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the city.

Back order. The portion of a customer-s order undelivered due to temporary unavailability of a particular product or material.

Bid. A vendor-s response to an Invitation for Bids or Request for Proposal; the information concerning the price or cost of materials or services offered by a vendor.

Bidder. Any individual, company, firm, corporation, partnership or other organization or entity bidding on solicitations issued by the city and offering to enter into contracts with the city.

Bid Bond. An insurance agreement in which a third party agrees to be liable to pay a certain amount

of money should a specific vendor's bid be accepted and the vendor fails to sign the contract as bid.

Bid file. A folder containing all of the documentation concerning a particular bid. This documentation includes the names of all vendors to whom the invitation to bid was mailed, the responses of the vendors, the bid tabulation forms and any other information as may be necessary.

Bid opening. The opening and reading of the bids, conducted at the time and place specified in the invitation for bids and in the presence of anyone who wishes to attend.

Bid solicitation. Invitations for bids.

Blanket bid order. A type of bid used by buyers to purchase repetitive products. The city establishes its need for a product for a specified period of time. The vendor is then informed of the city's expected usage during the duration of the proposed contract. The city may then order small quantities of these items from the vendor, at the bid price, over the term of the contract.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or legal entity through which business is conducted.

Cancel. To revoke a contract or bid.

Capital items. Equipment which has a life expectancy of one year longer and a value in excess of \$1,000. Additionally, real estate shall be considered a capital item.

Cash discount. A discount from the purchase price allowed to the purchaser if payment is made within a specified period of time.

Caveat emptor. Let the buyer beware; used in proposals or contracts to caution a buyer to avoid misrepresentation.

Certify. To testify in writing; to make known or establish as a fact.

City. The City of Rutherford, Tennessee.

Competitive Bidding. Bidding on the same undertaking or material items by more than one vendor.

Conspicuously. To be prominent or obvious; located, positioned, or designed to be noticed.

Construction. The building, alteration, demolition, or repair of public buildings, structures, highways and other improvements or additions to real property.

Contract. An agreement, grant, or order for the procurement, use, or disposal of supplies, services, construction, insurance, real property or any other item.

Date. Recorded information, regardless of form or characteristic.

Delivery schedule. The required or agreed upon rate of delivery of goods or services.

Discount for prompt payment. A predetermined discount offered by a vendor for prompt payment.

Encumber. To reserve funds against a budgeted line item; to charge against an account.

Evaluation of bid. The process of examining a bid to determine a bidder's responsibility, responsiveness to requirements, qualifications, or other characteristics of the bid that determine the eventual selection of a winning bid.

Fiscal year. An accounting period of 12 months, July 1 through June 30.

F.O.B. destination. An abbreviation for *Free on board*® that refers to the point of delivery of goods. The seller absorbs the transportation charges and retains title to and responsibility for the goods until the City of Rutherford, Tennessee has received and signed for the goods.

Goods. All materials, equipment, supplies, and printing.

Invitation for bid. All documents utilized for soliciting bids.

Invoice. A written account of merchandise and process, delivered to the purchaser; a bill.

Lead time. The period of time from the date of ordering to the date of delivery which the buyer must reasonably allow the vendor to prepare goods for shipment.

Life cycle costing. A procurement technique that considers the total cost of purchasing, maintaining, operating, and disposal of a piece of equipment when determining the low bid.

Local bidder. A bidder who has and maintains a business office located within the corporate city limits of Rutherford, Tennessee.

Material receiving report. A form used by the department head or supervisor to inform others of the receipt of good purchased.

Performance bond. A bond given to the purchaser by a vendor or contractor guaranteeing the performance of certain services or delivery of goods within a specified period of time. The purpose is to protect the purchaser against a cash loss which might result if the vendor did not deliver as promised.

Pre-bid conference. A meeting held with potential vendors a few days after an invitation for bids has been issued to promote uniform interpretation of work statements and specifications by all prospective contractors.

Procurement or purchasing. Buying, renting, leasing, or otherwise obtaining supplies, services, construction, insurance or any other item. It also includes functions that pertain to the acquisition of such supplies, services, construction, insurance and other items, including descriptions of requirements, selection and solicitation of sources, preparation and award of contracts, contract administration, and all phases of warehousing and disposal.

Public. Open to all.

Public purchasing unit. Means the State of Tennessee, any county, city, town, governmental entity and other subdivision of the State of Tennessee, or any public agency, or any other public authority.

Purchasing order. A legal document used to authorize a purchase from a vendor. A purchase order, when given to a vendor, should contain statements about the quantity, description, and price of goods or services ordered, agreed terms of payment, discounts, date of performance, transportation terms, and all other agreements pertinent to the purchase and its execution by the vendor.

Reject. Refuse to accept, recognize, or make use of; repudiate, to refuse to consider or grant.

Responsive bidder. One who has submitted a bid which conforms in all material respects to the invitation for bids.

Sealed. Secured in any manner so as to be closed against the inspection of contents.

Sole source procurement. An award for a commodity which can only be purchased from one

supplier, usually because of its technological, specialized, or unique character.

Specifications. Any description of the physical or functional characteristics of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

Standardization. The making, causing, or adapting of items to conform to recognized qualifications.

Telephone bids. Contacting at least two vendors to obtain verbal quotes for items of a value of less than \$500.00.

Using Department. The City Department seeking to purchase goods and services or which will be the ultimate user of the purchased goods and services.

Vendor. The person who transfers property, goods, or services by sale.

Section 2. Purchasing Agent. The City Recorder shall be the purchasing agent for the municipality. Except as otherwise provided in this policy, all supplies, materials, equipment, and services of any nature shall be approved and acquired by the purchasing agent or his/her representative.

Section 3. General Procedures. The following procedures shall be followed by all City employees when purchasing goods or services on behalf of the City.

1) *Items Expected to Cost More than \$5,000.00*

- (1) The department head of the using department shall deliver to the Purchasing Agent a written purchase request for the item(s) to be purchased. Such request shall include a brief description of the item(s) to be purchased, specifications for the item being purchased, the estimated cost of the items, and shall indicate whether the item(s) have been approved in the annual budget.
- (2) The Purchasing Agent shall review the purchase request for completeness and accuracy. The request shall then be forwarded to the Board of Mayor and Aldermen for final review and approval. The Board shall have the authority to adjust or eliminate various specifications for goods and services, or may disapprove the purchase request, to comply with city policy, the annual budget, or for any other reason it deems in the public interest.
- (3) All approved purchase requests shall be signed by the Mayor and returned to the Purchasing Agent who shall proceed with procurement in compliance with this ordinance.

2) *Items Expected to Cost \$500 to \$5,000*

- (1) The department head of the using department shall deliver to the Purchasing Agent a written purchase request for the item(s) to be purchased. Such request shall include a brief description of the item(s) to be purchased,

specifications for the item(s) being purchased, the estimated cost of the item(s), and shall indicate whether the item(s) have been approved in the annual budget.

- (2) The Purchasing Agent shall review the purchase request for completeness and accuracy. The request shall then be forwarded to the Mayor for final review and approval. The Mayor shall not approve the purchase of any item not approved in the annual budget or for which there are not sufficient funds in the City treasury. The Mayor shall have the authority to adjust or eliminate various specifications for goods or services to comply with city policy, the annual budget, or to avoid depletion of the city treasury.
- (3) All approved purchase requests shall be signed by the Mayor and returned to the Purchasing Agent who shall proceed with procurement in compliance with this ordinance.

Section 4. Rejection of Bids. The Purchasing Agent shall have the authority to reject any and all bids, parts of bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. The Purchasing Agent shall not accept the bid of a vendor or contractor who is in default on the payment of taxes, licenses, fees or other monies of whatever nature that may be due the city by said vendor or contractor.

Section 5. Conflict of Interest. All employees who participate in any phase of the purchasing function are to be free of interests or relationships which are actually or potentially hostile or detrimental to the best interests of the City of Rutherford and shall not engage in or participate in any commercial transaction involving the city, in which they have a significant interest.

Section 6. Purchasing From Employee. It shall be the policy of the city not to purchase any goods or services from any employee or close relative of any city employee without the prior approval of the Board of Mayor and Aldermen.

Section 7. Sealed Bid Requirements B \$5,000.00 or Greater.

- (1) On all purchases and contracts estimated to be in excess of five thousand dollars (\$5,000.00), except as otherwise provided in this ordinance, formal sealed bids shall be submitted at a specified time and place to the Purchasing Agent. The Purchasing Agent shall submit all such bids for award by the Board of Mayor and Aldermen at the next regularly scheduled Board meeting or special-called meeting together with the recommendation as to the lowest responsive bidder.
- (2) Notice inviting bids shall be published at least once in a newspaper of general circulation in Gibson County, and at least five days preceding the last day to receive bids. The newspaper notice shall contain a general description of the article(s) to be secured, and the date, time, and place for opening bids.

- (3) In addition to publication in a newspaper, the Purchasing Agent may take other actions deemed appropriate to notify all prospective bidders of the invitation to bid, including, but not limited to, advertisement in community bulletin boards, metropolitan newspapers, professional journals, and electronic media.

Section 8. Competitive Bidding B \$500.00 to \$5,000.00.

- 1) All purchases of supplies, equipment, services, and contracts estimated to be in excess of five hundred dollars (\$500.00) but less than five thousand dollars (\$5,000.00), shall be by competitive bidding and may be awarded to the lowest responsive bidder.
- 2) A written record shall be required and available for public inspection showing that competitive bids were obtained by one of the following methods:
 - (1) Direct mail advertisement.
 - (2) Telephone bids.
 - (3) Public Notice.
- 3) The Purchasing Agent shall verify account balances , prior to issuing approval to purchase, for all purchases over one thousand dollars (\$1,000.00).
- 4) In the Purchasing Agent-s absence, the Mayor shall designate a suitable substitute to perform the Purchasing Agent-s duties.

Section 9. Purchases and Contracts Costing Less Than \$500.00. The Purchasing Agent is expected to obtain the best prices and services available for purchases and contracts estimated to be less than \$500.00, but is exempted from the formal bid requirements specified in Sections 7 and 8 of this ordinance.

Section 10. Bid Deposit. When deemed necessary, bid deposits may be prescribed and noted in the public notices inviting bids. The deposit shall be in such amount as the purchasing agent shall determine and unsuccessful bidders shall be entitled to a return of such deposits within ten (10) calendar days of the bid opening. A successful bidder shall forfeit any required deposit upon failure on his/her part to enter a contract within ten (10) days after the award.

Section 11. Performance Bond. The Purchasing Agent may require a performance bond before entering into a contract, in such amount as he/she shall find reasonably necessary to protect the best interests of the city and furnishers of labor and materials in the penalty of not less than the amount provided by Tennessee Code Annotated.

Section 12. Record of Bids. The Purchasing Agent shall keep a record of all open market orders and bids submitted in competition thereon, including a list of the bidders, the amount bid by each, and the method of solicitation and bidding, and such records shall be open to public inspection and maintained in the City Recorder-s office. As a minimum, the bid file shall

contain the following information:

- 1) Request to start bid procedures.
- 2) A copy of the bid advertisement.
- 3) A copy of the bid specifications.
- 4) A list of bidders and their responses.
- 5) A copy of the purchase order.
- 6) A copy of the invoice.

Section 13. Considerations in Determining Bid Awards. The following criteria shall be considered in determining all bid awards:

- 1) The ability of the bidder to perform the contract or provide the material or service required.
- 2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- 3) The character, integrity, reputation, judgement, experience, and efficiency of the bidder.
- 4) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- 5) The quality of performance of previous contracts or services, including the quality of such contracts or services in other municipalities, or performed for private sector contractors.
- 6) The sufficiency of financial resources and the ability of the bidder to perform the contract or provide the service.
- 7) The ability of the bidder to provide future maintenance and service for the use of the supplies or contractual service contracted.
- 8) Compliance with all specifications in the solicitation for bids.
- 9) The ability to deliver and maintain any requisite bid bonds or performance bonds.
- 10) Total cost of the bid, including life expectancy of the commodity, maintenance costs, and performance.

Section 14. Award Splitting. If total savings generated is less than \$200.00, bids awards shall not be split among two or more bidders.

Section 15. Statement When Award Not Given to Low Bidder. When the award for purchases an contracts in excess of \$500.00 is not given to the lowest bidder, a full and complete

statement of the reasons for placing the order elsewhere shall be prepared by the Purchasing Agent or Department Head and filed with all the other papers relating to the transaction.

Section 16. Award in Case of Tie Bids. When two or more vendors have submitted the low bid, the following criteria shall be used to award the bid:

- 1) If all bids received are for the same amount, quality of service being equal, the purchase contract shall be awarded to the local bidder.
- 2) If two or more local bidders have submitted the low bid, quality of service being equal, the purchase contract shall be awarded by a coin toss or drawing lots.
- 3) If no local bids are received and two or more out-of-town bidders have submitted the low bid, quality of service being equal, the purchase contract shall be awarded by a coin toss or drawing lots.
- 4) When the award is to be decided by coin toss or drawing lots, representatives of the bidders shall be invited to observe. In no event shall such coin toss or drawing lots be performed with less than three witnesses.

Section 17. Back Orders. All orders must be completed, whether through complete fulfillment of the purchase order or through closing the purchase order with items not received. The non-delivered items shall be cancelled from the purchase order and the check will be issued to the equal amount of the amended purchase order.

Section 18. Emergency Purchases. When in the judgement of the Purchasing Agent an emergency exists, the provisions of this ordinance may be waived; provided, however, the Purchasing Agent shall report the purchases and/or contracts to the Board of Mayor and Aldermen at the next regular Board meeting stating the item(s) purchased, the amount(s) paid, from whom the purchase(s) was made, and the nature of the emergency.

Section 19. Waiver of the Competitive Bidding Process. Upon the recommendation of the Mayor, and the subsequent approval of the Board of Mayor and Aldermen, that it is clearly to the advantage of the City not to contract by competitive bidding, the requirements of competitive bidding may be waived provided that the following criteria are met and documented in a written report to the Board of Mayor and Aldermen:

- 5) *Single Source of Supply.* The availability of only one vendor of a product or service within a reasonable distance of the city as determined after a complete and thorough search by the using department and the Purchasing Agent.
- 6) *State Department of General Services.* A thorough effort was made to purchase the product or service through or in conjunction with the State Department of General Services or via a State contract, such effort being unsuccessful.
- 7) *Purchase from Other Governmental Entities.* A thorough effort was made to purchase the product or service through or in conjunction with other municipalities

or from any federal or state agency. These purchases may be made without competitive bidding and public advertisement. .

- 8) *Purchases from Non-Profit Organizations.* A thorough effort was made to purchase the goods or services from any non-profit organization whose sole purpose is to provide goods and services specifically to municipalities.
- 9) *Purchases from Tennessee State Industries.* A thorough effort was made to purchase the goods or services from Tennessee State Industries (prison industries).
- 10) *Purchases from Instrumentalities Created by Two or More Co-operating Governments.* An effort was made to purchase the goods or services from a co-op or group of governments which was formed to purchase goods and services for their members.

Section 20. Goods and Services Exempt from Competitive Bidding. The following goods and services need not be awarded on the basis of competitive bidding; provided, however, that the Purchasing Agent and/or the Department Head shall make a reasonable effort to assure that such purchases are made efficiently and in the best interest of the City:

- 1) *Certain Insurance.* The City may purchase tort liability insurance, without competitive bidding, from the Tennessee Municipal League or any other plan offered by a governmental entity representing cities and counties. All other insurance plans, however, are to be awarded on the basis of competitive bidding.
- 2) *Certain Investments.* The City may make investments of municipal funds in, or purchases from, the pooled investment fund established pursuant to *Tennessee Code Annotated 9-17-105.*
- 3) *Motor Fuel, Fuel Products, or Perishable Commodities.* Such commodities may be purchased without competitive bidding.
- 4) *Professional Service Contracts.* Any services of a professional person or firm, including attorneys, accountants, physicians, architects, engineers, and other consultants required by the City, whose fee is less than \$500.00, may be hired without competitive bidding. In those instances where such professional service fees are expected to exceed \$500.00, a written contract shall be developed and approved by the Board of Mayor and Aldermen prior to the provision of any goods or services. Contracts for professional services shall not be awarded on the basis of competitive bidding; rather, professional service contracts shall be awarded on the basis of recognized competence and integrity.

Section 21. Procedures Upon Taking Delivery of Purchased Items. Before accepting delivery of purchased equipment, supplies, materials and other tangible goods, the department head of the using department shall:

- 1) Inspect the goods to verify that they are in acceptable condition.

- 2) Verify that all operating manuals and warranty cards are included in the delivery of the goods, if applicable.
- 3) Verify that the number of items purchased have been delivered, making special note when part or all of a particular purchase has been back ordered.
- 4) Record serial numbers for all capital items, notifying the City Recorder of same.
- 5) Complete and return to the Purchasing Agent a Material Receiving Report form.

Section 22. Property Control. A physical inventory of the City's fixed assets shall be taken annually. The goals of the annual inventory shall be as follows:

- 1) To identify unneeded and duplicate assets.
- 2) To provide a basis for insurance claims, if necessary.
- 3) To deter the incidence of theft and negligence.
- 4) To aid in the establishment of replacement schedules for equipment.
- 5) To note transfers of surplus property.

To be classified as a fixed asset, an item must be tangible, have an expected life longer than the current fiscal year, and have a value of at least \$100.00. Any property or equipment that meets this criteria shall be assigned an asset number (affixed with a property sticker), have a completed property card, and be inventoried annually. Such records shall be controlled and maintained by the City Recorder.

Section 23. Disposal of Surplus Property. The Purchasing Agent shall be in charge of the disposal of surplus property and make a full report to the Board of Mayor and Aldermen after the items are disposed of. When a department head determines there is surplus equipment or materials within the department, he/she shall notify the Purchasing Agent in writing of any such equipment. The Purchasing Agent may transfer surplus equipment or materials from one department to another.

Section 24. Employee Participation in Disposal of Surplus Property. No City employee shall be permitted to bid on surplus property; nor shall any surplus property be sold or given to a city employee by the Board of Mayor and Aldermen, the Purchasing Agent or any city department head. For the purposes of this ordinance, members of the Board of Mayor and Aldermen shall be considered city employees.

Section 25. Surplus Property: Items Consumed in the Course of Work Thought to be Worthless. City property which may be consumed in the course of normal city business and items

thought to be worthless shall be disposed of in a like manner as any other refuse. For accounting purposes, such items shall be charged off as a routine cost of doing business.

Section 26. Surplus Property: Items Estimated to Have Monetary Value. When disposing of surplus property estimated to have monetary value, the Purchasing Agent shall comply with the following procedures:

- 1) Obtain from the Board of Mayor and Aldermen a resolution declaring said items to be surplus property and fixing the date, time and location for the Purchasing Agent to receive bids.
- 2) A copy of the resolution shall be posted in at least three locations in the community.
- 3) Such equipment or materials shall be sold to the highest bidder. In the event the highest bidder is unable to pay within twenty-four (24) hours, the item shall be awarded to the second highest bidder.
- 4) All pertinent information concerning the sale shall be noted in the fixed asset records of the City.
- 5) The advertisement, bids, and property cards shall be retained for a minimum period of five (5) years.

Section 27. Surplus Property: City Identification Removed Prior to Sale. No surplus city property shall be sold unless and until all decals, emblems, lettering, or coloring which identifies the item as belonging to the City of Rutherford have been removed or repainted.

Section 28. Liability for Excess Purchases. This ordinance shall authorize only the purchase of materials and supplies and the procurement of contracts for which funds have been appropriated and are within the limits of the funds estimated for each department in the annual budget or which have been authorized and lawfully funded by the Board of Mayor and Aldermen. The City shall have no liability for any purchase made in violation of this ordinance.

Section 29. Additional Forms and Procedures. The Purchasing Agent is hereby authorized and directed to develop such forms and procedures as are necessary to comply with this ordinance.

Section 30. Effective Date. This ordinance shall be in full force and effect from and after its date of passage by the Board of Mayor and Aldermen.

Section 31. Severability. Should any section, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or circumstance be declared unconstitutional or invalid for any reason, or should any portion of this ordinance be pre-empted by State or Federal law or regulation, such decision or legislation shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 32. Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

PASSED AND APPROVED THIS _____ DAY OF _____, 2001 BY ROLL CALL VOTE OF THE RUTHERFORD, TENNESSEE BOARD OF MAYOR AND ALDERMEN.

Date of 1st Reading: _____

Date of 2nd Reading: _____

MAYOR

ATTEST: _____
City Recorder