

ORDINANCE NO. 2021-465

AN ORDINANCE OF THE CITY OF BERRY HILL, AMENDING BERRY HILL MUNICIPAL CODE TITLE 5, DELETING SECTION 5-104, TITLED "PURCHASING", AND ADOPTING A NEW CHAPTER 3, TITLED "PURCHASING"

WHEREAS, the Board of Commissioners desires to exercise the power and authority granted to municipalities to adopt a procurement code governing purchases, including use of competitive sealed proposals;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BERRY HILL, TENNESSEE, that Berry Hill Municipal Code Title 5, is hereby amended by deleting Section 5-104, titled "Purchasing" and adopting a new Title 5, Chapter 4, titled "Purchasing", containing the provisions set forth hereinafter.

All prior Ordinances and Resolutions inconsistent with this Ordinance are repealed to the extent of any inconsistency.

THIS ORDINANCE SHALL TAKE EFFECT ON THE EARLIEST DATE ALLOWED BY LAW

Passed First Reading: _____

Passed Second Reading: _____

MAYOR

Attest:

RECORDER

Approved as to legality and form:

CITY ATTORNEY

CHAPTER 4

PURCHASING

5-401. Policy. 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. The objective of the bid process shall be to select the overall lowest and best bid.

The term "purchase," as used in this section, shall include leases and lease-purchase arrangements. The term "bid," as used in this section, shall include proposals. This section shall not be applicable to interests in land.

5-402. Methods of procurement.

(1) The primary methods of procurement to be used by the city are:

- (a) Purchases based on price competition, which includes competitive bidding;
- (b) Purchases which are not based on price competition because of the existence of a single source or proprietary product;
- (c) Purchases which are not based on price competition because of the existence of an emergency;
- (d) Purchases based on competitive sealed proposals; and
- (e) Purchases of services from a professional based on recognized competence and integrity.

(2) The primary types of solicitations used for procurements are requests for qualifications, requests for information, requests for quotes, invitations to bid and requests for competitive sealed proposals.

5-403. Purchases based on price competition. There are a variety of procurement methods based on price competition which the city may use consistent with applicable laws.

(1) All transactions involving expenditures of \$10,000.00 or more (including recurring purchases of like items or services in which the aggregate amount exceeds \$10,000.00 in any fiscal year) shall require the approval of the Board of Commissioners. Furthermore, public advertisement and competitive bidding shall be required for all such transactions involving expenditures of \$10,000.00 or more, except as otherwise provided in this section.

(2) All transactions involving expenditures between \$4,000.00 and \$10,000.00 (including recurring purchases of like items or services in which the aggregate amount falls between \$4,000.00 and \$10,000.00 in any fiscal year) shall be approved by the City Manager. Furthermore, competitive bidding without public advertisement shall be required for such transactions involving expenditures between \$4,000.00 and \$10,000.00, except as otherwise provided in this section.

(3) For recurring purchases of like items or services in an aggregate amount exceeding \$4,000.00 during any fiscal year, competitive bids shall not be required for each such purchase but shall be obtained periodically. For such recurring purchases of like items or services in which the aggregate amount exceeds \$10,000.00 during any fiscal year, public advertisement shall also be required before competitive bids are received. Bids for purchases of like items or services may be received for extended periods, provided that:

(a) If bidders guarantee the bid prices for such an extended period, bids may be obtained for periods of up to five years, or for longer if the City Manager determines the contract is in the best interest of the city.

(b) A bid covering an extended time period may include automatic cost adjustments, if the timing and method for determining the adjustments are clearly described in the bid.

(c) The city may re-bid the items or services at any time at the city's option, unless precluded from doing so by the terms of a duly approved and executed contract.

(4) For all transactions for which competitive bidding is required under this section, at least three competitive bids shall be obtained whenever possible. For transactions involving expenditures between \$4,000.00 and \$10,000.00, the requirement to obtain competitive bids may be met by obtaining pricing from catalogs, electronic data bases or other published materials, if such sources generally offer the best pricing available for local government purchases, or by such other informal solicitation method as may be established by the City Manager. Otherwise, all competitive bids shall be submitted by bidders electronically or as otherwise provided by the City Manager in accordance with state law by such method that ensures that bids remain sealed until the predetermined time for opening.

(5) For all transactions for which public advertisement is required under this section, an announcement that bids are to be received shall be publicly advertised in either a newspaper of general distribution within the city, on television, on the city's website, or on any other media type with widespread usage in the city.

(6) A purchase based on price competition which does not require public advertisement and acceptance of competitive sealed bids by the city, regardless of amount, includes a purchase where the competitive process has been undertaken by others. These exceptions include, but are not limited to:

(a) A purchase made under the provisions of contracts or price agreements entered into by the Tennessee central procurement office pursuant to T.C.A. § 12-3-1201, generally referred to as purchasing off the statewide bid;

(b) A purchase made under the provisions of contracts or bids from the United States General Services Administration in accordance with applicable federal regulations pursuant to T.C.A. § 12-3-1201;

(c) A purchase made from a local vendor of items available for purchase under the provisions of contracts or price agreements entered into by the Tennessee central procurement office if and only if the city is not permitted to purchase the item under said existing contract; the item equals or exceeds the specifications of the item on the state contract; and, the item is available at the same or lower cost than under the state contract, as specified in T.C.A. § 12-3-1201(d);

(d) A purchase of supplies, equipment or services made through another local governmental unit of the state in accordance with T.C.A. § 12-3-1203(a);

(e) A purchase of supplies, goods, equipment or services under contracts entered into by another Tennessee local government in accordance with T.C.A. § 12-3-1203(c) excluding motor vehicles (except those manufactured for a special purpose);

(f) A purchase made from any instrumentality created by two or more cooperating governments, including those established pursuant to the Interlocal Cooperation Act, T.C.A. § 12-9-101 et seq.;

(g) A purchase made from a nonprofit corporation whose purpose, or one of whose purposes, is to provide goods and services specifically to municipalities specifically the Local Government Corporation in accordance with T.C.A. § 6-56-302(6); and

(h) A purchase made through a cooperative purchasing agreement with other local governments within or without Tennessee, in accordance with T.C.A. § 12-3-1205; said purchasing agreements shall be authorized by resolution.

(7) A purchase based on price competition which does not require public advertisement and acceptance of competitive bids by the city, regardless of amount, includes the purchase of used or

secondhand goods, equipment, materials, supplies or commodities. If the purchase is from a private individual or entity, purchasing of used or secondhand items is only permissible if the general range of values of the item can be established by a listing in a nationally recognized publication or through a licensed appraiser and the price is not more than five percent higher than the highest value of the documented range, in accordance with T.C.A. § 12-3-1202.

(8) A purchase based on price competition which does not require sealed bids is a purchase made by a reverse auction in accordance with T.C.A. § 12-3-1208. The reverse auction process may be utilized only after the city's plan, policy and procedures have been filed with the comptroller of the treasury. The reverse auction process allows offerors to bid on specified goods or services electronically and to adjust their offer price during a specified time period.

(9) A purchase of perishable commodities made on the open market does not require public advertisement and competitive bids if a record is made by the person authorizing the purchase which specifies the amount paid, the items purchased and from whom the purchase was made in accordance with T.C.A. § 6-56-304(7). Any such purchases shall be reported at least monthly to the Board of Commissioners. If this method is used for fuel and fuel products, the purchase should be based, whenever possible, on three competitive prices. Purchases of fuel and fuel products need not be reported to the Board of Commissioners.

5-404. Sole source purchases. The purchase of a particular good or service does not require public advertisement and competitive bidding, regardless of amount, if there is a single or sole source of supply of the good or service needed by the city. The Board of Commissioners shall be informed by the City Manager of all reasons making the proposed sole source procurement appropriate if the purchase costs more than \$10,000.00. If the purchase costs less than \$10,000.00, a record of such purchase specifying the amount paid, the item purchased and the vendor shall be made by the department head to the City Manager.

5-405. Emergency purchases.

(1) The City Manager is authorized to make emergency purchases of supplies and materials in the open market for immediate delivery in actual emergencies where there exists a threat to public health, welfare, or safety. Emergencies may include those arising from unforeseen causes including delays by contractors, delays in transportation, unanticipated volume of work, the failure to receive competitive bids from prospective bidders and other similar emergencies.

(2) A purchase order and report of any emergency purchase in an amount exceeding \$4,000.00 shall be made by the department head of the department for which such purchase was made and shall specify the amount paid, the items purchased, from whom the purchase was made and the nature of the emergency. The purchase order and report shall be submitted as soon as practicable to the City Manager and the finance director or their designee. If the amount paid is \$10,000.00 or greater, the report shall also be submitted to the Board of Commissioners.

5-406. Competitive sealed proposal purchases.

(1) The city may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids when the Board, acting under the restrictions and requirements of Tennessee Code Annotated Title 12, Chapter 3, Part 12, as same may hereinafter be amended, and the procurement code adopted by this section, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the city. The Board must make the aforesaid determination with regard to each use of competitive sealed proposals rather than competitive sealed bids, except that in actual emergencies caused by unforeseen circumstances such as natural or human-made disasters, delays by contractors, delays in transportation, or unanticipated volume of work, purchases through competitive sealed proposals may be made without specific authorizing action of the Board. A record of any emergency purchase shall be made by the person authorizing the emergency purchase, specifying the amount paid, the items and services purchased, from whom the purchase was made, and the nature of the emergency. A report of the emergency purchase purchased through competitive sealed proposals containing all relevant information shall be made as soon as possible by the person authorizing the purchase to the Board.

(2) Criteria and Procedure. The following shall constitute the criteria and procedures for purchasing through competitive sealed proposals:

(a) Conditions for Use.

(i) Competitive sealed proposals may be used only after the municipality has documented the reasons why competitive sealed bids are not practicable or not advantageous to the municipality, and

(ii) Competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase and:

(A) When there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or

(B) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one or more solutions.

(b) Public Notice. Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided by applicable law for competitive sealed bids.

(c) Request/Evaluation Factors. The request for competitive sealed proposals shall state the relative importance of price and other evaluation factors. Among other things, the request shall include the desired specifications (which may be expressed in the context of the result sought to be obtained); the qualifications of each proposer; warranties, time frame for performance, the contract; and, if applicable, the bond or other security that the successful proposer will be required to furnish.

(d) Opening of Proposals. Competitive sealed proposals shall be opened in a manner that avoids disclosure of contents to competing proposers during the negotiation. The proposals shall be open for public inspection after, but not before, the intent to award the contract to a particular proposer is announced.

(e) Discussions with Responsive Proposers and Revisions to Proposals. The request for competitive sealed proposals shall provide that after receipt by the city of a proposal, discussions may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with responsible proposers who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. These proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and for revision of proposals, both as to the particular goods or services to be furnished and the price thereof. In order to permit the city to obtain the best offers of proposers, revisions may be permitted after submission and before the intent to award to a particular proposer is announced. In conducting discussions, the purchasing agent and other municipal personnel may make no disclosure to any proposer of any information derived from proposals submitted by competing proposers. Nothing contained herein shall preclude the city from conducting conferences or otherwise communicating with all parties who may be interested in responding to a proposal prior to the time that proposals are to be received.

(f) Best and final offers. If discussions are conducted, the purchasing agent shall issue a written request for best and final offers. The request shall set forth the date, time; and place for submission of best and final offers. Best and final offers shall be requested only once, unless the purchasing agent makes a written determination that it is advantageous to the city to conduct further discussion or clarify the city's requirements. The request for best and final offers shall inform proposers that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer. Nothing contained herein shall preclude the Board from rejecting all proposals and thereafter requesting new proposals.

(g) Award. The award shall be made to the responsible proposer whose proposal the Board determines is the most advantageous to the city, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals. No other factor may be used in the

evaluation. The purchasing agent shall place in the contract file a statement containing the basis on which the award was made.

(h) Protest. In the event that any proposer to a request for competitive sealed proposals is aggrieved by the decision of the city, such aggrieved proposer may protest the intended award to another proposer if the protest is filed within seven (7) days after the intended award is announced. The protest must be filed with the Board in care of the City Administrator of the city and shall be promptly decided by the Board.

(i) No Conflict with Other Laws. Nothing contained herein is intended to change the authority of the city with respect to contracting for professional services in accordance with the applicable laws of the state of Tennessee.

5-407. Purchases of services from a professional.

(1) Contracts for services to be performed by a lawyer, accountant, architect, engineer, fiscal agent, financial advisor, educational consultant, or a similar service to be performed by a professional person or group of professional persons shall not be based upon competitive bids but upon the basis of recognized competence and integrity in accordance with T.C.A. § 12-3-1209 and other provisions of state law.

(2) In procuring professional services the city may, but is not required to, issue a request for qualifications ("RFQ") or/and a request for proposals ("RFP") or to help it identify individuals or firms with relevant qualifications and experiences.

(3) If the city is seeking architectural or engineering services and it does not choose to obtain them from an architectural or engineering service provider with whom it has a satisfactory existing working relationship or if the scope of needed services is outside the known technical competencies of the city's existing professional service providers, the city shall comply with T.C.A. § 12-4-107.

(4) If the RFQ or/and RFP process is used for architectural or engineering services, the department head shall seek information from any firm licensed in Tennessee relevant to their qualifications and experience relative to the scope of the work, the complexity of the work, the professional disciplines required to satisfactorily perform the work and the estimated value of the services to be rendered. The department head, or a selection committee, as specified in the RFQ or/and RFP, may interview the firm regarding the furnishing of the required services. The department head or selection committee shall then select the firm deemed qualified and seek to negotiate a contract for the needed services for compensation determined to be fair and reasonable to the city. If these negotiations do not result in a satisfactory contract, negotiations may continue with other qualified individuals or firms until an agreement is reached.

(5) For fiscal agent, financial advisor or advisory services to be provided to the city, a written contract must be entered into prior to, or promptly upon, the inception of the relationship specifying the services to be rendered and the costs and expenses to be covered under the contract.

(6) Contracts for energy related services that include both engineering services and equipment and which have as their purpose the reduction of energy costs in public facilities shall be awarded on the same basis as contracts for professional services in accordance with T.C.A. § 12-4-110.

5-408. Exceptions. All other applicable exceptions included in state law shall apply to all purchases made on behalf of the city. All transactions which are exempted from competitive bidding requirements shall comply with all other requirements of state law and this section.

5-409. Rejection of bids and proposals. The City Manager shall have the right to reject all submittals for a particular procurement (whether submitted as quotations, bids, proposals, or in some other format) and to authorize the reissuance (with or without revision) of the procurement. The City Manager may reject a submittal due to unreasonably high prices; error in the solicitation; cessation of need; unavailability of funds; or any other reason determined to be in the best interest of the city. Any such rejection and reissuance may be timely appealed pursuant to the city's adopted bid protest policy.

5-410. General provisions.

(1) All expenditures shall be reviewed and approved by the department head of the department for which the expenditure is incurred and, except as otherwise provided in this section, purchase orders shall be submitted to the City Manager or their designee if such expenditures are expected to exceed \$100.00. Except as otherwise provided in this section, no expenditure exceeding \$100.00 shall be incurred by any department until the expenditure has been approved by the City Manager and the authorizing purchase order has been issued by the City Manager or their designee.

(2) Purchase orders shall not be required for utility services, including electric, gas, water, sewer and telephone services, and other recurring service charges which are billed on a monthly basis after initial authorization has been received for provision of such services.

(3) An actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a bid or contract may submit a written protest to the city.