

RESOLUTION NO. 24-20

A RESOLUTION APPROVING A PURCHASING POLICY.

WHEREAS, the City of Andover, Kansas (the "City") is a vibrant community which is consistently purchasing equipment and services, constructing, improving and maintaining its public infrastructure, all so as to support the continued growth of the City and its environs; and

WHEREAS, the City desires to maintain public confidence in the procedures followed in public purchasing; and

WHEREAS, the City desires to ensure fair and equitable treatment of all persons who encounter the City's purchasing system and conduct all procurements to provide maximum open and free competition; and

WHEREAS, the City desires to provide safeguards for the maintenance of a purchasing system of quality and integrity; and

WHEREAS, the City regularly requests bids from contractors for the work of construction, improving and maintaining of public infrastructure, in addition to other purchases and services, even though the City is not necessarily required to bid such work; and

WHEREAS, the City desires that all contractors and vendors provide products and services for the City that meet certain minimum criteria and standards, along with demonstrated evidence that they have the financial means and experience necessary to timely perform the work or provide the product/service for which they are bidding and ultimately engaged; and

WHEREAS, the governing body of the City of Andover, Kansas finds it necessary to adopt a resolution approving a purchasing policy.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

SECTION 1. The City hereby repeals Policy Number 2-1 and adopts the following policy in its place:

1. **PURPOSE**

- a. It is the purpose of this policy to provide written procedures for the procurement of supplies and services that may be purchased with or without specific authorization from the governing body.
- b. It is the purpose of this policy to make all employees aware of the requirements of adequate written authorization necessary to make purchases or enter into contracts.

- c. It is the purpose of this policy to set the requirements for classification of a purchase as a capital asset.
- d. It is the purpose of this policy to set the requirements for the process of procuring professional services.
- e. It is the purpose of this policy to establish a code of conduct for City elected officials, staff or agents regarding procurement of supplies and services for the City.

2. DEFINITIONS

- a. Capital Asset – purchase in which the dollar amount is \$5,000 or greater and the item has a useful life of three (3) or more years.
- b. Change Order – a written order signed by the Mayor or City Administrator, or his/her designee, directing a contractor to make changes in a contract.
- c. Contract – all types of City agreements for the purchase or disposal of supplies, services or construction.
- d. Emergency Situation – situations in which department operations would be severely hampered and adversely impacted if a purchase was not made immediately.
- e. Gratuity – any item or service of value greater than \$25.00.
- f. Purchasing – buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction.
- g. Purchasing Program – purchasing cooperative available to various organizations due to their distinction as a government entity or through a professional association.
- h. Reoccurring Purchase – service or supply purchased more than once by a department during the course of a budget year. For example, the cost of salt is \$50 per ton, but over the course of the year the total purchasing is expected to exceed \$2,500.
- i. Service – the furnishing of labor, time and/or effort by a contractor not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance.
- j. Sole Source – items or services available only from a single supplier.

k. Substantial Interest –

- i. If an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less, the individual has a substantial interest in that business.
- ii. If an individual or an individual's spouse, either individually or collectively, has received during the preceding 12 months compensation which is or will be required to be included as taxable income on federal income tax returns of the individual and spouse in an aggregate amount of \$2,000 from any business or combination of businesses, the individual has a substantial interest in that business.
- iii. If an individual or an individual's spouse, either individually or collectively, has received in the preceding 12 months, without reasonable and valuable consideration, supplies or services having an aggregate value of \$500 or more from a business or combination of businesses, the individual has a substantial interest in that business.
- iv. If an individual or individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States Code, the individual has a substantial interest in that business irrespective of the amount of compensation received by the individual or individual's spouse.
- v. If an individual or an individual's spouse received compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual of the individual's spouse, either individually or collectively, received in aggregate of \$2,000 or more in the preceding calendar year.

l. Supply or Supplies – all property, including but not limited to, equipment, materials, printed materials, insurance, and leases of real property, excluding land or a permanent interest in land.

m. Vendor – seller of supplies and/or services, and includes any person representing the vendor.

3. PURCHASING AUTHORITY. The following governing body, officers, employees, and agents of the City shall have the authority to take the following actions:

- a. **Governing Body**
 - i. Adopt the annual operating budget to determine levels of expenditures by fund, department and/or program.
 - ii. Adopt a policy for the purchasing of all supplies and services.
 - iii. Review, adopt and approve all non-capital purchases over \$25,000.
 - iv. Review, adopt and approve all purchases of Capital Assets.
 - v. Approve all leases of equipment with annual payments exceeding \$25,000.
- b. **City Administrator or his/her designee**
 - i. Approve all non-capital purchases up to \$25,000.
 - ii. Present purchasing recommendations to the Governing Body for non-capital purchases over \$25,000.
 - iii. Weekly review of all purchases of supplies and services.
 - iv. Implement and enforce provisions of adopted policy for the purchasing of all supplies and services.
 - v. Exercise discretion and authority to override this policy in emergency situations in order to provide for the best interest of the City and inform the governing body of all such decisions.
- c. **Assistant City Administrator and Director of Finance**
 - i. Approve all non-capital purchases up to \$15,000.
 - ii. Monitor expenditures and advise the City Administrator of monthly expenditure rates.
 - iii. Ensure budgeted levels for each fund are not exceeded.
 - iv. Make recommendations to the City Administrator for updating purchasing policy and procedures.
 - v. Oversee competitive bid processes according to state statutes and local policy.
 - vi. Authorize appropriate personnel to make purchases.

- d. Senior Management and/or Department Directors and Managers
 - i. Approve all non-capital purchases up to \$7,500.
 - ii. Inform personnel of purchasing requirements and ensure adherence.
 - iii. Plan purchases to allow sufficient time to obtain proposals or quotations, determine best vendor, obtain any necessary approvals from staff and/or governing body, and issue orders or contracts with reasonable time for delivery.
- e. Employees
 - i. Employees, at the discretion of Senior Management and/or Department Directors, are approved to make purchases up to \$1,000.
- f. Conferences, seminars and workshops, not exceeding budgeted line item total, do not require authorization of the governing body. However, approval of Senior Management and/or Department Director must be obtained prior to enrolling in the conference, seminar or workshop. If such conference, seminar or workshop is out of state, the City Administrator or his/her designee shall be required to approve.
- g. School tuition subject to reimbursement by the City, not exceeding budgeted line item total, does not require authorization of the governing body. However, approval of Senior Management and/or Department Director and the City Administrator must be obtained prior to enrolling in any course or courses.

4. PROHIBITED PURCHASES

- a. The following purchases cannot be made from City funds:
 - i. The purchase of any illegal substance or services.
 - ii. Gambling-related purchases.
 - iii. Purchases made for personal benefit with no value to the City.

5. VENDOR SELECTION

- a. Vendor Participation
 - i. Vendors interested in receiving requests for bids and proposals should monitor the City's website at www.andoverks.com. In an effort to attract bids from local and knowledgeable vendors, the requesting department is encouraged to notify vendors known to have adequate expertise.

- ii. In order to be eligible to submit a bid to the City for the installing, improving or construction of any of the City's street paving, stormwater utility drainage, water line, sanitary sewer line and related work on public utilities and public works (to the extent the same are located or to be located within the public right-of-way), a bidding contractor must be listed with the Kansas Department of Transportation on its Pre-Qualified Contractor's List, as then published and in effect in the State of Kansas at and during the time bids are solicited by the City and due. The governing body reserves the right to waive such requirement in any specific case, and any approval by the governing body of a contract with any non-qualifying bidder or contractor shall be deemed absolute and intentional waiver of this pre-requisite.

b. Irresponsible Vendors

- i. Any vendor who fails to comply with the terms of an awarded bid, quote or required specifications may be declared an irresponsible vendor upon recommendation of a member of Senior Management and/or Department Director and approval of the City Administrator or his/her designee. Any vendor wishing to appeal this decision may request the City Administrator or his/her designee present the appeal to the governing body for review and final determination. An appeal shall be submitted in writing within five (5) working days after the aggrieved knows or should have known of the facts.

6. PROCUREMENT PROCEDURES

a. Competitive Bidding Procedures

- i. Invitation for Bids – An invitation to bid shall be posted on the City's website at least seven (7) days in advance of the due date for submission of bids. Notice shall be filed with the City Clerk or his/her designee, and shall be open to public inspection.
- ii. Bid Opening – Bids shall be opened in the presence of one or more witnesses. The amount of each bid and other relevant information shall be recorded along with the name of each bidder.
- iii. Bid Evaluation – Bids shall be evaluated based on requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability, such as inspection, testing, quality and suitability for a particular purpose. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid. Bids submitted after the due date advertised in the Invitation to Bid may be disqualified.
- iv. Award – The contract shall be awarded or rejected with reasonable promptness. Award shall be made to the responsible bidder who submits a bid which is most advantageous to the City.

b. Competitive Negotiations

- i. Competitive negotiations will be initiated by publishing a Request for Proposals (RFP) or a Request for Qualifications (RFQ).
 1. The RFP is used when price is a factor of selection.
 2. The RFQ is used when price is considered after selection.
 3. In both the RFP and RFQ processes, the services to be procured will be clearly defined, as will the factors to be used in evaluation and selection.
 4. Preparation and signing of a contract formalizing the scope of work and the terms of compensation is required.

c. Small Purchases - Purchases under \$25,000

- i. Purchases between \$7,501 and \$15,000 require at least three documented price quotes that will be maintained on file. The Assistant City Administrator and/or Director of Finance have final approval authority.
 - ii. Purchases between \$15,001 and \$25,000 require at least three documented price quotes that will be maintained on file. The City Administrator or his/her designee has final approval authority.
 - iii. Purchases under \$7,500 shall not require competitive quotes if the prices are considered reasonable, although informal quotes are encouraged.
 - iv. The user department shall solicit quotes in person, by telephone, electronic mail, from websites, or in writing from at least three (3) qualified vendors.
- d. Non-Competitive Negotiations – Non-Competitive Negotiations includes any method of purchasing or procuring supplies or services not included in Competitive Sealed Bidding, Competitive Negotiations, or Small Purchases.

7. TYPES OF PURCHASES; APPLICABLE PROCEDURES

a. Purchases over \$25,000 – Competitive Sealed Bidding

- i. Unless otherwise exempted pursuant to this policy or state law or the City Administrator or his/her designee determines this method is not practical, contracts exceeding \$25,000 shall be awarded by the governing body through Competitive Sealed Bidding.

- b. Purchases over \$25,000 – Competitive Negotiations.
 - i. When determined appropriate by the City Administrator or his/her designee, contracts exceeding \$25,000 shall be awarded by the governing body through Competitive Negotiation.
- c. Purchases under \$25,000 – Purchases under \$25,000 shall be made pursuant to the Small Purchases procedures.
- d. Reoccurring Purchases - For supplies or services required to be purchased more than once a year, the aggregate total of purchases during the budget year will be used to determine the purchasing procedures to be followed.
- e. Non-Competitive Negotiations
 - i. Purchases made under the following circumstances shall not require competitive sealed bidding or other competitive selection and may be made through Non-Competitive Negotiations:
 - 1. When the purchase is a response during an emergency situation.
 - 2. When the price or methods of acquisition is prescribed by law.
 - 3. When the supplier is the sole source of supply.
 - 4. When the supply/service is available from another government entity or purchasing program at a price deemed less than commercially available.
 - 5. Professional services.
 - 6. In the case of repairs for heavy equipment or vehicles when the extent of repair cannot be determined or when specifications cannot practically be prepared.
 - 7. Utility bills for water, sewer, electricity and natural gas.
 - ii. Purchases made through Non-Competitive Negotiations of \$25,000 or less may be approved by the appropriate City staff according to the Small Purchases procedures, provided any bidding requirements of such procedures are not required.
 - iii. Purchases made through Non-Competitive Negotiations of more than \$25,000 shall be approved by the governing body.
- f. Process for Obtaining Governing Body Approval – All Applicable Procedures

- i. All purchases or service contracts totaling more than \$25,000 but less than \$50,000 in which the item is in the approved budget and the low bid is recommended may be included in the consent agenda for approval by the governing body.
- ii. If the purchase or service contract is greater than \$25,000 but is not in the approved budget or the low bid is not recommended, a separate, regular agenda item is required.
- iii. Items over \$50,000 shall require a separate, regular agenda item.
- iv. Contracts for construction of infrastructure for which the governing body has already approved the resolution and the low bid is recommended may be placed on the consent agenda if the City-at-large cost is \$50,000 or less. Otherwise, a separate, regular agenda item is required.
- v. All purchases or services contracts shall be accompanied by a written recommendation from the City Administrator or his/her designee.

8. CHANGE ORDERS

- a. Change orders are issued to address changes in terms and conditions associated with unforeseen problems not addressed in the bid or contract document or changes/modifications recommended after a contract is awarded.
 - i. Change orders under \$25,000 may be approved by the City Administrator or his/her designee.
 - ii. Change orders over \$25,000 must be approved by the governing body.

9. CODE OF CONDUCT

- a. General Standards of Ethical Conduct
 - i. Any attempt to realize personal gain through City employment or public service by conduct inconsistent with the proper discharge of an employee's or public official's duties is a breach of public trust. Employees and public officials must comply with all conduct requirements as set forth in various policies and procedures.
 - ii. Any effort by non-employees to influence City employees and/or public officials to breach the standards set forth in this policy is also a breach of ethical standards.
- b. Employee Conflict of Interest

- i. No City employee or public official, in his or her capacity as such, shall make or participate in the making of a contract with any person or business by which he or she is employed or in which he or she has a substantial interest. A public official or employee does not make or participate in the making of a contract if he or she abstains from any action in regard to the contract. Supervisors should be notified of situations where a conflict of interest may exist prior to any purchasing activity.
- c. Employee Disclosure Requirements
 - i. An employee or public official who has a substantial interest in any business that has a contract with or has submitted a bid to the City shall report such benefit to their supervisor. Any employee or public official who knows or should have known of such benefit and fails to report such benefit is in breach of ethical standards.
- d. Gratuities and Kickbacks
 - i. No vendor shall offer or give any employee or public official a gratuity or an offer of employment in connection with a purchasing decision. It shall be a breach of ethical standards for any employee or public official to solicit or accept a gratuity or an offer of employment in connection with any City purchasing decision. Gratuities shall not include pens, calendars or other novelty items used for advertising purposes, or occasional meals.
 - ii. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor as an inducement for awards of a subcontract or order.
- e. Use of Confidential Information
 - i. It shall be a breach of ethical standards for any employee or public official to knowingly use confidential information for actual or anticipated personal gain.
- f. Remedies for Breach of Ethical Standards
 - i. Employees who violate the ethical guidelines during purchasing transactions will be subject to oral or written warnings/reprimands, suspensions with or without pay for specific periods of time, and/or termination of employment.
 - ii. Non-employees who violate the ethical guidelines during purchasing transactions with the City will be subject to written warnings, termination

of transactions and/or disbarment or suspension from contracting with the City.

- iii. The City reserves the right to pursue recovery of the value of anything transferred or received in breach of the ethical standards stated in this policy from both employees and non-employees.
- iv. To the extent that a violation of the ethical standards set forth in this policy also constitutes a violation of federal, state or City law, it shall be punishable as provided therein. Such sanctions shall be in addition to the remedies set forth in this policy.

10. POLICY REVIEW

- a. City staff shall bring this policy to the governing body for review every four years or as needed, based on economic conditions to ensure the expenditure amounts are appropriate and the policy is functioning as intended.

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PASSED, ADOPTED and APPROVED by the governing body of the City of Andover, Kansas this 28th day of May, 2024.

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CITY OF ANDOVER, KANSAS



Ronnie Price, Mayor

ATTEST:



Dana Engstrom, City Clerk