

CITY OF BATAVIA

MEMO TO: Government Services Committee
FROM: Bill McGrath, City Administrator
DATE: June 25, 2010
SUBJECT: Update on Local Purchasing Preferences

Please note- We are going to be experimenting with different memo formats to see how they work. We will present some options for you to review after a while and you can let us know what works for you.

Summary: The topic of local purchasing preferences was raised at Government Services. The City cannot setup a formal local preference process. The extent to which geographical proximity is a material element to the goods or services being sought needs to be explored and specifically contained in specifications. The City should set up a vendor list and make sure it is advertised locally as fully as possible. In additions, the purchasing section of the Code should be redrafted to include deletion of the Purchasing Agent position which has not been filled since before my tenure, as well as recognition of the value of helping the local economy within legal limitations. No action is requested.

Background: The Committee has discussed a concern that the City's purchasing power has not been used to the extent desirable to help residents and/or the "local economy. References to instances where it appeared to some that the City is purchasing process may not have been mindful of these values. Various ways to do so in a formal manner were discussed and staff was asked to review the issue.

Options:

1. Define "local" and adopt a formal system for awarding preferences to "local" bidders
2. Create and maintain a formal vendors list and try to publicize its existence in the "locally"
3. Draft amendments to Municipal Code to eliminate Purchasing Agent position, conform code to current operations if advisable, and include statement re value of local bidding

Discussion:

1. Staff first went to investigate to see whether a formal local preference program could legally be initiated. It appears not. City Attorney Noble reviewed some Illinois Supreme Court cases, which in his opinion, clearly declare that the "lowest responsible bid" requirement is a bar to giving a preference based solely upon geographical considerations. This also includes attempts to award bids locally because of the conveniences of accessibility for maintenance, etc. As I understand it, the specifications under discussion in those cases did not contain terms valuing proximity of the vendor. Considerations of proximity as an important element were not raised until review of the bids, in a transparent attempt to "shop locally". Coincidentally, we also found a discussion about the same issue arising from a review of the issue by the DeKalb County

Board when Randy Recklaus was a Board member. Opinions by the DeKalb County State's Attorney also relied on the Supreme Court cases in arriving at the same conclusion.

The value of trying to aid "local" businesses is just one of the values to be considered, along with lowest price and best quality. All three are rather vague in some regards anyway. Whether a business is local because it is within the boundaries of Batavia, Kane County, Illinois, etc., because it is owned or staffed by Batavians, or has some other connection is dependent upon one's point of view. If proximity is indeed a material issue, it must appear in the specifications.

2. As discussed at committee, establishment of a vendor list and steps to ensure that "local" businesses are aware of opportunities would be helpful. This is altogether doable, especially in an electronic medium. I have asked for department and division lists and /or protocols for bidders (where they exist) and will work with staff to develop a formal program and area on the City web site, as well as a manner in which to publicize same. This may not necessarily aid in local business involvement, but it will evidence the City's concern about it.
3. I have begun reviewing the Purchasing Policies provision of the Municipal Code, including the Purchasing Agent provisions, with the goal of eliminating it, and inserting language regarding support for local business.

Follow-ups:

1. Creation of a vendor list process should take 60 days and I will place this item on the Gov. Services agenda for August 3 and for follow-up for completion on August 31.
2. Redrafting of the Purchasing provisions of the Code (Section 1-12) should follow the same timeline. I will have a draft by August 3 planning for an August 31 approval for Council. There is a relationship between the City Administrator's duties with regard to purchasing, so there will be reference to that position.

This matter will be on the June 30, 2010 Government Services meeting agenda.

Please give me a call if you have any questions. Thanks. Bill McGrath

C: Mayor & City Council
Department Heads

Batavia Municipal Provisions regarding Purchasing, including bidding, contracts and surplus property:

1-12-1: SHORT TITLE:

This Chapter shall be known as the *PURCHASING POLICIES AND GUIDELINES OF THE CITY OF BATAVIA*, as is created under the authority of 65 Illinois Compiled Statutes 5/8-10-1 et seq. (Ord. 88-45, 9-6-1988)

1-12-2: PURCHASING DEPARTMENT AND PURCHASING AGENT:

- A. Purchasing Division: There is hereby established in the Administrative Services Department of the City the Purchasing Department, and in said Department, the position of City Purchasing Agent.
- B. Purchasing Agent: The City Purchasing Agent shall be the head and have general supervision of the Purchasing Department. The Purchasing Agent shall have the powers and duties prescribed by this Chapter. The City Purchasing Agent shall report to the City Administrator. (Ord. 88-45, 9-6-1988)

1-12-3: POWERS AND DUTIES:

The City Purchasing Agent shall be responsible for ensuring that all purchases are made in accordance with policies and guidelines prescribed by this Chapter. The Purchasing Agent shall have the power and it shall be his duty:

- A. To purchase or contract for all supplies and contractual services needed by any City agency in accordance with purchasing procedures as prescribed by this Chapter.
- B. To act and procure for the City the highest quality in supplies and contractual services at the least expense to the City.
- C. To discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales.
- D. To adopt, promulgate and from time to time revise rules and regulations for the proper conduct of his office, subject to approval by the City Administrator.
- E. To open all sealed bids; be responsible for tabulating all bids and determining the lowest responsible bidder.
- F. To enforce written specifications describing the standards established in conformity with this Chapter.
- G. To transfer materials, supplies and equipment to or between the various requisitioning agencies and to trade in, sell or dispose of such materials, supplies or equipment as may become surplus, obsolete or unusable.
- H. To keep informed on current developments in the field of purchasing, prices, market conditions and new products, and secure for the City the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition, and by private businesses and organizations.
- I. To prescribe and maintain such forms as he shall find reasonably necessary to the operation of this Chapter.

- J. To prepare and adopt a standard purchasing nomenclature for using agencies and suppliers.
- K. To prepare, adopt and maintain a vendor's catalog file. Said catalog shall be filed according to materials and shall contain descriptions of vendor's commodities, prices and discounts.
- L. To explore the possibilities of buying "in bulk" so as to take full advantage of discounts.
- M. To assume such related activities as may be assigned to him from time to time by the City Administrator.
- N. To preserve the integrity of the purchasing system. (Ord. 88-45, 9-6-1988)

1-12-4: FORMAL CONTRACT PROCEDURES:

Except as otherwise provided by specific direction of the City Council, all purchase orders or contracts of whatever nature, for labor, services, or work, the purchase, lease or sale of personal property, materials, equipment or supplies, involving amounts in excess of the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1 shall be let, by free and open competitive bidding after advertisement, to the lowest responsible bidder, or in the sale of surplus, the highest responsible bidder; or any other bidder to whom the award would be determined by the City Council to be in the best interest of the City. It is the policy of the City that approval for the solicitation of bids for expenditures not previously included in the City budget shall require City Council action. Approval for solicitation of bids for expenditures which are included in a City budget may be given by the appropriate committee upon the following conditions: (Ord. 95-101, 12-4-1995)

- A. Bid specifications must be available to the appropriate committee with copies to the City Council at least two (2) days before the scheduled committee meeting, as well as specific indication as to whether or not the item is included in the current budget.
- B. The request for approval for the solicitation of bids must appear as an item on the committee's agenda. (Ord. 88-45, 9-6-1988; amd. Ord. 93-20, 3-15-1993)

1-12-4-1: BID SPECIFICATION INSTRUCTIONS:

- A. Content Of Bid Specifications: All bid specifications shall include the following information:

1. Intent Of Specifications: A general statement listing the purpose of the formal contract.
 2. Method Of Award: A list of items that will be considered in the evaluation of the bid proposals received.
 3. General Requirements And Instructions: List and explain how business transaction is to be carried out.
 4. Method Payment.
 5. Technical Specifications: Generic description of materials to be used and/or detailed explanation of services to be provided.
- B. General Instructions: The Purchasing Agent will be responsible for including all necessary general instructions, requirements and special provisions that apply to the formal contract.
- C. Technical Specifications: All department heads shall file with the Purchasing Agent a generic description of materials needed and/or a detailed explanation of the services to be provided and requisitions or estimates of their requirements in supplies, materials and contractual services in such manner, at such time and for such periods as the Purchasing Agent shall prescribe, subject to approval by the City Administrator.
- D. Standardization: The City Administrator may, at the request of the Purchasing Agent, call a committee of all heads of City departments and the Purchasing Agent to classify all supplies used by the City, to adopt standards specifying the minimum quality, size and variety of supplies required by the City, and to adopt written specifications for all such standard supplies. (Ord. 88-45, 9-6-1988)

1-12-4-2: NOTICE INVITING BIDS:

- A. Scope Of Notice: The notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured, and the time and place for opening bids. (Ord. 88-45, 9-6-1988)
- B. Publication Of Request For Bids:
1. Newspaper: A legal notice inviting vendors to submit bid proposals shall be published once in at least one official newspaper in the City at least ten (10) days prior to the bid opening date for all formal contracts in excess of the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1 except where otherwise provided for in this Chapter. (Ord. 95-101, 12-4-1995)
 2. Bidder's List: The Purchasing Agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to

the bidder's list which the Purchasing Agent shall maintain, by sending them a copy of the notice.

3. Bulletin Board: The Purchasing Agent shall also advertise all pending purchases or sales by a notice posted on the public bulletin board in City Hall.

C. Time Extension: No bids shall be opened at any time subsequent to the time indicated in the announcement. However, an extension of time may be granted for the opening of such bids upon publication in at least one official newspaper in the City stating that the bid opening date has been extended. The time of the bid extension opening shall not be less than seven (7) days after publication. Notice of the bid opening extension shall also be mailed to all bidders holding copies of the specifications. (Ord. 88-45, 9-6-1988)

1-12-4-3: BID DEPOSITS:

Cashier's check, a certified check or a bid bond from a recognized surety, not in excess of five percent (5%) of the contract amount, may be required by the Purchasing Agent of each bidder for formal contracts. Bid checks shall be returned to the unsuccessful bidders within sixty (60) days of bid opening or within seven (7) days of award whichever comes first. A successful bidder shall forfeit his bid deposit upon failure on his part to enter a contract within ten (10) days after the award. In its discretion, the City may return the bid deposit when it is determined that such successful bidder's failure to enter a contract did not cause any damage to the City. The City shall retain the right to hold such successful bidder liable for any excess damage or costs over and above the bid deposit retained by the City. (Ord. 88-45, 9-6-1988)

1-12-4-4: COLLUSION AMONG BIDDERS AND DISCLOSURES:

Any agreement or collusion among bidders or prospective bidders to bid a fixed price or to otherwise restrain freedom of competition by agreement, shall render the bids of such bidders void. Any disclosure to potential bidders of the terms of the bids submitted in response to an advertisement, made by the Purchasing Agent in advance of the opening of bids, shall render the proceedings void and shall require re-advertisement or re-award. (Ord. 88-45, 9-6-1988)

1-12-4-5: BID OPENING PROCEDURE:

All sealed bids shall be publicly opened by the Purchasing Agent of the City or his representative, at the time stated in the legal notice. All bid proposals shall be open to public inspection and a tabulation of all bids received shall be posted in the office of the Purchasing Agent. The Purchasing Agent shall be responsible for tabulating all bid proposals and will submit his recommendation to the City Administrator for City Council action. The Purchasing Agent shall at least consider the following factors in making his recommendation to select the lowest responsible bidder:

- A. The ability, capacity and skill of the bidder to perform the contract or provide the service required.
- B. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- C. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- D. The quality of performance of previous contracts or services.
- E. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- F. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- G. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- H. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- I. The number and scope of conditions attached to the bid.
- J. Bidder's record of experience in constructing improvements of the size and type required in the bid specifications.
- K. Lowest bids received.
- L. Bidder's record as to the percentage of work sublet on previous contracts. (Ord. 88-45, 9-6-1988)

1-12-4-6: REJECTION OF BID PROPOSALS:

- A. The Purchasing Agent, with the approval of the City Administrator, shall have the authority to reject the bid of contractor who is in default on the payment of taxes,

licenses or other monies due the City, or in default on a current contract with the City for services, equipment, supplies or labor. (Ord. 88-45, 9-6-1988)

- B. Other than as stated above, all rejections of bids on contracts in excess of the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1 shall be the exclusive responsibility of the City Council. Contracts shall be awarded to the lowest responsible bidder or to any other bidder the City Council determines will best serve the interest of the City. (Ord. 95-101, 12-4-1995)

1-12-4-7: PERFORMANCE AND PAYMENT BONDS:

Performance and payment bonds with sufficient sureties, not to exceed one hundred percent (100%) of the bid proposal amount may be required of the successful bidder for formal contracts, not only to ensure performance of the subsequent contract, but also to save, indemnify and keep harmless the City against all loss, damages, claims, liabilities, judgments, costs and expenses which may in any way result therefrom. (Ord. 88-45, 9-6-1988)

1-12-4-8: ASSIGNMENT OF CONTRACTS:

No contract shall be assignable or sublet by the successful bidder without the written consent of the City Administrator. No contract or any part thereof shall be assigned or sublet to a vendor who has been declared not to be a responsible bidder in consideration of bids submitted in response to the advertisement of that particular contract. (Ord. 88-45, 9-6-1988)

1-12-5: EXCLUSION TO COMPETITIVE BID REQUIREMENTS:

Contracts which by their nature are not adapted to award by competitive bidding, such as but not limited to, contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part, contracts for supplies, materials, parts or equipment which are available from only a single source, contracts for utility services such as water, electricity, gas, telephone or telegraphy, and contracts for the purchase of magazines, books, periodicals and similar articles of an educational or instructional nature shall not be subject to the competitive bidding requirements of this Chapter; provided, however, that such contracts in excess of the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1 shall be presented

to the City Council requesting permission to waive bids and approval to enter into a formal contract. This subsection, however, is further subject to the requirements of 65 Illinois Compiled Statutes 5/8-9-3, relating to the retention of architects, engineers and land surveyors. (Ord. 95-101, 12-4-1995)

1-12-5-2: PURCHASES OF ELECTRIC UTILITY MAJOR INVENTORY:

Because of the frequency of inventory turnover, high value items, and long lead times on electrical equipment, these items will be purchased in the following manner:

- A. Written specifications are made up for each inventory item.
- B. Vendor files are made up for each purchase item.
- C. Specifications are sent out to each vendor on the list.
- D. A minimum of five (5) vendors are requested to bid.
- E. Sealed bids are received and opened.
- F. Award is made to the lowest bidder. If the Purchasing Agent recommends to award to other than the lowest bidder, the matter will go before the City Council for action.
(Ord. 88-45, 9-6-1988)

1-12-6: EMERGENCY CONTRACTS:

In case of an emergency affecting the public health and safety, the City Administrator shall authorize a vendor to perform any and all work necessary to resolve such emergency. The need for immediate action and documentation in support thereof shall be presented to the City Administrator by the department head prior to such authorization if at all possible and be ratified by the City Council where the costs exceed the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1. Such documentation shall include a complete description of the materials and equipment required and the estimated costs to be incurred. In any event, a full report of the circumstances of the emergency purchase shall be filed with the City Council, shall be entered in the minutes of the Council and shall be open to public inspection. (Ord. 95-101, 12-4-1995)

1-12-7: LESSER PURCHASES:

All purchases for supplies and contractual services where the cost incurred by the City is less than the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1 shall be made in the open market, without newspaper advertisement and without following the procedure for formal contracts prescribed in Section [1-12-4](#) of this Chapter.

- A. All purchases with a cost less than the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1 shall, wherever possible, be based on at least three (3) competitive proposals by direct mail from vendors, by telephone or by public notice posted on the bulletin board of the City Hall or ascertained from vendor's price lists or other quote information in the Purchasing Department.
- B. All such purchases shall be awarded on the following basis:
1. Lowest quote received;
 2. Sole supplier;
 3. Delivery time;
 4. Design and durability of item.

Wherever practical, the factors used to determine the lowest responsible bidder stipulated in Section [1-12-4-5](#) of this Chapter may also be considered.

- C. All requests for purchases under the expense limitation set by 65 Illinois Compiled Statutes 5/8-9-1 must be approved by the appropriate department head or his designee and by the Director of Finance or his designee prior to the issuance of any purchase order. The Purchasing Agent, with ratification by the Director of Finance, shall approve all purchase orders.
- D. No items over one hundred dollars (\$100.00) may be purchased without the issuance of a purchase order except as specified elsewhere in this Chapter. (Ord. 88-45, 9-6-1988; amd. Ord. 95-101, 12-4-1995)

1-12-8: BUDGET APPROVAL:

Neither the Purchasing Agent nor the City Administrator shall approve any order for any goods or services unless the Director of Finance or his designee has certified that funds are available in excess of all unpaid obligations, to defray the amount of such order. (Ord. 88-45, 9-6-1988)

1-12-9: ENCUMBRANCE OF FUNDS:

The Purchasing Agent shall be responsible for ensuring that all financial obligations incurred by the issuance of a purchase order or formal contract for all City accounts shall be forwarded to the Financial Services Department for proper recording in the City's budget accounting system. (Ord. 88-45, 9-6-1988)

1-12-10: SURPLUS STOCK:

- A. All department heads shall submit to the Purchasing Agent and the City Administrator, in such form as may be prescribed by the Purchasing Agent, reports showing stocks of all supplies, materials or equipment which are no longer used or which have become obsolete, worn out or scrapped.
- B. The Purchasing Agent is authorized, upon approval by the City Administrator, to transfer the surplus materials to another department requesting such materials.
- C. If the surplus items are to be sold, then an ordinance declaring that property surplus will be passed by the City Council.
- D. The Purchasing Agent is authorized, upon approval by the City Administrator and the City Council to:
 - 1. Advertise for bids on surplus material to the general public for award to the highest responsible bidder following the formal contract procedures of Section [1-12-4](#) of this Chapter.
 - 2. Order a public auction for sale to the highest bidder. (Ord. 88-45, 9-6-1988)

1-12-11: JOINT PURCHASING:

The Purchasing Agent shall investigate all possibilities of cooperating in a joint purchasing program with other governmental units in order to obtain lower prices through bulk purchases. All purchases made in cooperation with any other governmental unit must be made within the rules and guidelines established by this Chapter. (Ord. 88-45, 9-6-1988)

1-12-12: PROHIBITED ACTS OR CONDITIONS:

- A. Any purchase order or contract within the purview of this Chapter in which the Purchasing Agent, or any employee of the City is financially interested, directly or indirectly, shall be void, except that before the execution of a purchase order or contract, the City Council shall have the authority to waive compliance with this subsection when it finds such action to be in the best interests of the City.

B. The Purchasing Agent and every employee of the City are expressly prohibited from accepting, directly or indirectly, from any person to which any purchase order or contract is, or might be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the City. The use of the Purchasing Department for personal gain shall be grounds for immediate dismissal of the employee so using it and for appropriate legal action against such parties. (Ord. 88-45, 9-6-1988)

1-12-13: VIOLATION BY CITY EMPLOYEES:

Any violation of this Chapter by the Purchasing Agent or other employee of the City shall be grounds for disciplinary action, including dismissal. (Ord. 88-45, 9-6-1988)

1-12-14: INCORPORATION OF STATE LAW AMENDMENTS:

Any future changes to 65 Illinois Compiled Statutes 5/8-9-1 et seq., shall be incorporated by reference into this Chapter. (Ord. 88-45, 9-6-1988)

