

ORDINANCE NO. 20220208-009

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ANGLETON, TEXAS AMENDING THE PURCHASING POLICIES AND PROCEDURES CONTAINED IN CHAPTER 2, ARTICLE V, DIVISION 2, SECTION 2-141 THROUGH 2-152 OF THE CODE OF ORDINANCES OF THE CITY OF ANGLETON, TEXAS; PROVIDING FOR REPEAL; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, City Council desires to update its Purchasing Policies and Procedures to better comport with the applicable laws of the State of Texas, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANGLETON, TEXAS:

SECTION 1. That the City Council of the City of Angleton, Texas amends the Code of Ordinances, City of Angleton, Texas, Chapter 2, Administration, Article V, Departments, Sec. 2-141 through Sec. 2-152, Purchasing Department, and it shall read as follows:

DIVISION 2: PURCHASING DEPARTMENT, POLICIES, AND PROCEDURES

Sec. 2-141. - Organization, Scope, and Objective of the Purchasing Department.

- a) The City may establish a purchasing department, the head of which shall be the City Manager or City Manager's Designee. In the absence of a formal purchasing department, purchases shall be the responsibility of each individual department, subject to the policies and procedures provided herein and coordinated by the City Manager or some such Designee.
- b) The City Administrator, as the City's Purchasing Agent, shall have the power as prescribed in City Charter Section 8.17, "Purchase Procedure," and it shall be his or her duty to coordinate purchases or contracts for all supplies, materials, equipment, and contractual services needed by any and all departments, institutions, boards, commissions, and other agencies which derive their support wholly or in part from City funds and which are hereafter referred to as the "Using Agencies." The terms "supplies," "materials," and "equipment," as used throughout this article, shall be construed to mean any and all articles or things which shall be furnished to or used by any Using Agency, including any and all printing, binding, or publication of stationery, forms, laws, journals, and reports. The term "contractual services" shall be construed to mean any and all telephone, gas, water, electric light, and power service; towel and cleaning service; insurance; leases for all grounds, buildings, offices, or other spaces required by the Using Agencies; and, the rental, repair, or maintenance of equipment, machinery, and other City-owned personal property.
- c) The function of the purchasing department and purpose of the ordinance herein shall be to establish guidelines for the acquisition of all City supplies, materials, equipment, and contractual services in the most efficient and economical manner possible.

Sec. 2-142. - Responsibilities of Using Agencies.

- a) All Using Agencies of the City shall file with the City Manager, as Purchasing Agent, or some such Designee, detailed estimates of that Using Agencies requirements in supplies, materials, equipment, and contractual services in such manner, at such times, and for such future periods as the City Manager shall prescribe. This shall include annual budgetary cost estimates that will be adequate to make necessary purchases throughout the year, taking into consideration inflation and other factors. This shall not prevent any Using Agency from filing with the City Manager or some such Designee, at any time, a requisition for any supplies, materials, equipment, or contractual services, the need for which was not foreseen when the detailed estimates were filed.
- b) All Using Agencies, acting through the head of such Using Agency or department, shall submit a requisition for any supplies, materials, equipment, or contractual service to the City Manager or some such Designee for approval prior to any purchase. These requisitions for expenditures shall adhere to budgeted amounts and shall be presented in a clear and legible form with all necessary information included.
- c) Except in cases of emergency, there shall not be any order issued for delivery on a contract or open market purchase until the City Manager or some such Designee shall have certified that there is, to the credit of each of the Using Agencies concerned, a sufficient unencumbered appropriation balance, in excess of all unpaid obligations, to defray the amount of such order. All Using Agencies, acting through the head of such agency or department, shall anticipate needs sufficiently in advance to allow time for delivery of goods and services as to avoid rush orders and emergency purchases.

Sec. 2-143. - Purchase Orders, Requisitions, and Authorized City Officials.

- a) Purchase orders, when approved by the City Manager or some such Designee, evidence official authorization to encumber City funds and obligate expenditures. Purchase orders are designed to establish controls on adherence to budgetary limitations and shall be submitted in writing to the City Manager or some such Designee to gain approval before the purchase of supplies, materials, equipment, or contractual services.
- b) Purchase orders shall be used for all purchases totaling \$3,000 or more which include assets that will be added to the City's official asset inventory. Purchases of less than \$3,000 or written contracts approved by the City Council or City Manager shall not require purchase orders.
- c) Purchase orders, when approved by the City Manager or his designated assistants, evidence official authorization to encumber City funds and obligate expenditures. Purchase orders are designed to establish controls on adherence to budgetary limitations and shall be submitted in writing to the City Manager or his designated assistants to gain approval before the purchase of supplies, materials, equipment, or contractual services.
- d) All agencies and departments of the City shall submit a purchase order to the City Manager or some such Designee for approval prior to any purchase exceeding the dollar amount set forth herein, and no contract or order shall be made unless and until it is certified by the City Manager or his designated assistants that there is, to the credit of such department or agency, a sufficient unencumbered appropriation to pay for said supplies, materials, equipment, or contractual services for which the contract or order is to be issued. Purchase orders for supplies, materials, equipment, or contractual services that are not specifically budgeted shall be referred to the City Manager or Finance Director for approval of the purchase of said items.

Sec. 2-144. - Formal Bidding Process.

- a) All purchases of, and contracts for, supplies, materials, equipment, and contractual services, and all sales of personal property which has become obsolete and unusable, where the monetary amount involved is more than that statutorily requiring competitive bidding or proposals, as prescribed by State law, as amended, shall be approved in advance by the City Council. Competitive bids shall be required in connection with contracts and purchases when required by State law, as amended, and the City shall engage in and conduct the competitive bidding process in accordance with such applicable law.
- b) Notices inviting sealed competitive bids shall be in compliance with applicable State law, as amended. Public notices shall be published at least once per week for two consecutive weeks in a local newspaper, with the date of the first publication being at least fourteen (14) days prior to bid opening. Such notices shall include a general description of the items to be purchased or sold, shall state where bid forms and specifications may be secured, the amount of any sureties and/or bid bonds required, and the time and place of bid opening. Specifications on which bids are based are designed to ensure that the equipment or product acquired will adequately perform the task expected. Specifications shall not be written in such manner as to restrict bids on any basis other than cost or quality of the bids, goods, or services.
- c) The City Manager or some such Designee may, in addition, solicit sealed bids from all responsible prospective suppliers or purchasers who have requested their names to be added to the bidders' list by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale.
- d) All bids shall be sealed and submitted to the City Secretary and, when deemed necessary, shall be accompanied by surety in the form of check, cash, or bond in such amount as shall be prescribed in the public notice inviting bids. The bids shall be opened in public at the time and place stated in the newspaper notice. A tabulation of all bids received shall be made available for public inspection. The City Council, or the City Manager, in such cases as they are authorized to contract, may reject any or all bids, or the bid for any one or more commodities or contractual services included in the proposed contract, when the public interest will be served thereby. If all bids received are for the same total amount of unit price, and if the public interest will not permit the delay or advertising for bids again, the City Manager shall have authority to award the contract to one of the tie bidders by drawing lots in public, or to purchase the commodities or contractual services in the open market, provided the price paid in the open market shall not exceed the lowest contract bid price submitted for the same commodity or contractual service. Otherwise, the contract shall be awarded to the lowest responsible bidder; quality offered, delivery terms, and service reputation of the vendor may be taken into consideration in determining the successful bidder. It shall be the duty of the City Manager to discourage uniform bidding and to endeavor to obtain as full and open competition as possible on all purchases and sales. Sales shall be made to the highest responsible bidder. However, the City reserves the right to give preference to local vendors as allowed by applicable law.
- e) Electronic bids may be submitted to the office of the City Secretary. Such bids shall include a contact name, address, and telephone number. It shall be the responsibility of the bidder to confirm that the bid was received by the City. Upon receipt, the City Secretary or his or her designated assistants shall immediately place said bid in a sealed envelope, where it shall remain until bids are publicly opened and read aloud. The City shall not be responsible for ensuring said bids are complete prior to the bid opening.
- f) In addition to the formal bidding process contained herein, the City also encourages and accepts the use of interlocal agreements and cooperative governmental purchasing agencies (also known as "BuyBoards"), as provided pursuant to applicable law, to assist the City's efforts to facilitate

compliance with statutory procurement requirements, to identify qualified vendors of goods and services, to relieve the burdens of the governmental purchasing function, and to realize the potential economies of scale for governmental entities which elect to participate in such agencies. An interlocal agreement, cooperative governmental purchasing agency, or BuyBoard may be utilized in lieu of the formal bidding requirements contained herein, so long as the use of such interlocal agreement, cooperative governmental purchasing agency, or BuyBoard meets the requirements of applicable law.

- g) Notwithstanding any provision hereof, the City Manager or his or her designated assistants shall continue to have general authority, as authorized by the Charter, to contract for expenditures without further approval of the Council for all budgeted items not exceeding that monetary amount statutorily requiring competitive bidding or proposals, as prescribed by State law, as amended.
- h) All contracts shall be approved as to form by the City Attorney. If the successful bidder shall not within thirty (30) days after the award enter into the contract, the successful bidder shall be deemed to have forfeited any surety which accompanied his or her bid. A copy of each contract shall be filed with the City Secretary.
- i) In case of an emergency which requires immediate purchase of supplies, materials, equipment, or contractual service, the City Council may authorize the City Manager to secure in the open market at the lowest obtainable price any supplies, materials, equipment, or contractual services regardless of the amount of the expenditure; provided, however, that a full explanation of the circumstances of such emergency shall be entered in the minutes of the City Council and shall be open to public inspection.

Sec. 2-145. - Informal Bidding Process, Simplified Acquisition, and Open Market Orders.

- a) All purchases of supplies, materials, equipment, or contractual services, and all sales of personal property which has become obsolete and unusable, of more than \$3,000 but less than \$50,000 in amount shall be made in the open market, without newspaper advertisement and without observing the procedure prescribed by section 2-144 for the award of contracts.
- b) All open market purchases shall wherever possible, be based on at least three competitive quotations, and shall be awarded to the lowest responsible quote. The City Manager or his or her designated assistant may solicit quotes from prospective vendors or buyers by direct mail request, telephone, public notice, or an equivalent source. However, the City reserves the right to give preference to local vendors as allowed by applicable law.
- c) As per Local Government Code 252.0215, any expenditure of more than \$3,000 not requiring a formal bidding process shall require bids from at least two (2) historically underutilized businesses on a rotating basis. If the list provided by the State Comptroller fails to identify a historically underutilized business in Brazoria County that provides the commodity or service, the purchase is exempt from this requirement.

Sec. 2-146. - Purchasing Levels.

- a) Purchases of \$500 or less shall be submitted to the Finance Department for payment as follows: A bill or invoice for the expense should accompany a check request form approved by a Department Supervisor. Formal bids need not be obtained for this level of purchasing. However, employees should take reasonable steps to ensure that prices are competitive. Purchasing from retailers that actively compete in an open market shall be considered a reasonable step.

- b) Purchases of more than \$500 but \$3,000 or less shall be submitted to the Finance Department for payment as follows: A bill or invoice for the expense should accompany a check request approved by the Department Head or Director. Formal bids need not be obtained for this level of purchasing. However, employees should take reasonable steps to ensure that prices are competitive. Purchasing from retailers that actively compete in an open market shall be considered a reasonable step.
- c) Purchases of more than \$3,000 but \$50,000 or less shall be submitted to the Finance Department for payment as follows: A bill or invoice for the expense should accompany a purchase order approved by the City Manager or some such Designee. All purchases in this category shall comply with Section 2-145 of the City's Code of Ordinances. Properly completed invoices resulting from a written contract already approved by City Council shall not require an approved purchase order or other, additional approval for payment.
- d) Purchases of more than \$50,000 shall be submitted to the Finance Department for payment as follows: A bill or invoice for the expense should accompany a purchase order approved by the City Manager or some such Designee. All purchases in this category shall comply with the City's formal bidding requirements prescribed in Section 2-144 of the City's Code of Ordinances and must be approved by City Council in advance. Properly completed invoices resulting from a written contract approved by City Council shall not require an approved purchase order or other, additional approval for payment.

Sec. 2-147. - Special Purchases.

- a) In case of actual emergency and with the consent of the City Manager or some such Designee, any Department Head or other authorized personnel of the City may purchase directly any supplies, materials, or equipment whose immediate procurement is essential to prevent delay in the work of the department for which such purchase is made which may vitally effect the life, health, safety, or convenience of City residents and citizens. The Department Head or other authorized personnel making such emergency purchases shall send to the City Manager or some such Designee a requisition and a copy of the delivery record together with a full written explanation of the circumstances of the emergency which shall be filed with the Finance Department as a permanent and public record of the purchase. The term "other authorized personnel" as used herein shall mean any employee of the City who is authorized to make a purchase by the City Manager or some such Designee pursuant to the provisions of this Section. Whenever possible, emergency purchases should follow policies involving purchasing levels and bidding processes prescribed herein.
- b) When supplies, materials, equipment, and contractual services can be supplied by only one source, a written explanation must accompany a purchase order. Explanations must include more than just the phrase, "Single source purchase," and must fully outline the steps taken to obtain other, competitive price listings, bids, or quotations whenever possible. Additionally, when making such a purchase, a sole-source justification letter may be obtained from the selected vendor or service provider in addition to the written explanation.
- c) In certain cases where frequent purchases are made from the same vendor, "open" or "blanket" purchase requisitions may be used with approval of the City Manager or his designated assistants.
- d) Expenses involving personal or professional services need not conform to bidding or purchasing requirements, except as required by applicable State law, as amended. Such services must be approved by the City Manager, if a fee will be due, or by City Council when the expense, prior to

the performance of any work, will exceed that monetary amount statutorily requiring competitive bidding or proposals, as prescribed by State law, as amended.

- e) Lease purchases, construction services, and repairs shall be subject to the same requirements as other purchases prescribed herein.
- f) Expenses resulting from maintenance contracts or other purchases not specifically described herein shall conform to the most applicable procedure as determined by the City Manager or his designated assistants.

Sec. 2-148. - Receiving and Storage.

- a) Any Using Agency or department of the City shall inspect, or supervise the inspection of, all deliveries of supplies, materials, equipment, or contractual services to determine their conformance with the specifications set forth in the order or contract and shall sign and submit a receiving ticket to the City Manager or some such Designee, indicating inspection and delivery of such supplies, materials, equipment, or contractual services. Prompt delivery to the Finance Department is encouraged to qualify for any payment discounts available.
- b) All using agencies shall submit to the City Manager, at such times and in such forms as they shall prescribe, reports showing stocks of all supplies, materials and equipment which are no longer used or which have become obsolete, worn out, or scrapped. The City Manager may transfer such stock to another agency (or, other agencies) which have need for and can use it. The City Manager shall also have power to sell all such supplies, materials, and equipment which have become unsuitable for public use or to exchange for or trade in the same on new supplies, materials, and equipment. Any such sale, exchange, or trade-in shall be based on competitive bids secured in accordance with Section 2-144 or 2-145, whichever is applicable.

Sec. 2-149. - Violations.

- a) The City purchasing process shall not be utilized in any manner for the personal use of any City employee.
- b) The splitting of a single purchase into two or more smaller purchases for the purpose of avoiding the bidding process is strictly prohibited. If any employee violates the provisions herein and a subsequent investigation determines that a purchase was available at a lesser cost, the offending employee may be required to personally pay the difference between the two prices.
- c) The splitting of a single purchase into two or more smaller purchases for the purpose of avoiding the bidding process is a Class B Misdemeanor violation, and any person violating that law will be prosecuted in accordance with State law, as amended.

Sec. 2-150. – Penalty.

- a) A violation is a Class C Misdemeanor and upon conviction, a person shall be fined an amount up to \$500.00 for each offense.
- b) No culpable mental state shall be required to support a conviction for a violation of this Ordinance.

Secs. 2-151 – 2-152. Reserved

SECTION 2. All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

SECTION 3. In the event any clause, phrase provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Angleton, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

SECTION 4. This Ordinance shall be effective and in full force immediately upon its adoption.

SECTION 5. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED THIS THE 8TH DAY OF FEBRUARY 2022.

CITY OF ANGLETON, TEXAS

Jason Perez
Mayor

ATTEST:

Frances Aguilar, TRMC, MMC
City Secretary