
**APPALACHIAN REGIONAL COMMISSION
OFFICE OF INSPECTOR GENERAL
AUDIT OF GRANT AWARD**

**City of Pikeville
Pikeville, Tennessee**

**Final Report Number: 15-07
Project Number: TN-16710
February 2015**

**Prepared by:
Leon Snead & Company, P.C.**



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February 20, 2015

Appalachian Regional Commission
Office of Inspector General
1666 Connecticut Avenue, N.W.
Washington, D.C. 20009

Leon Snead & Company, P.C. has completed an audit of grant number TN-16710 awarded by the Appalachian Regional Commission (ARC) to the City of Pikeville, Tennessee (Pikeville). The audit was performed to assist the Office of Inspector General in carrying out its oversight of ARC grant activities.

The primary objectives of the audit were to determine whether: (1) program funds were managed in accordance with the ARC and Federal grant requirements; (2) grant funds were expended as provided for in the approved grant budget; (3) internal grant guidelines and best practices, including program (internal) controls, were appropriate and operating effectively; (4) accounting and reporting requirements were implemented in accordance with generally accepted accounting principles (or other applicable accounting and reporting requirements); and (5) the matching requirements and the goals and objectives of the grant were met.

Overall, the grantee's financial management and administrative procedures and related internal controls were adequate to manage the funds provided under the ARC grant reviewed. However, we questioned \$49,700 charged to the grant due to lack of supporting documentation. We found that Pikeville had an adequate process in place for obtaining and recording data related to the goals and objectives of the grant. In addition, the records and reports indicated that the tasks required by the grant agreement were being accomplished. The overall grant performance measures, with respect to anticipated outputs and outcomes, were adequately met for grant number TN-16710, which was completed on June 30, 2013.

The issue relating to unsupported costs noted during the audit and our recommended corrective actions are discussed in detail in the Finding and Recommendations section of the report. A draft report was provided to Pikeville on January 14, 2015, for comments. Pikeville provided a response to the report on February 11, 2015. Their comments are included in their entirety in Appendix I.

Leon Snead & Company appreciates the cooperation and assistance received from Pikeville and ARC staff during the audit.

Sincerely,


Leon Snead & Company, P.C.

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Background

Leon Snead & Company, P.C. completed an audit of Basic Agency grant number TN-16710 awarded by the Appalachian Regional Commission (ARC) to the City of Pikeville, Tennessee (Pikeville). The audit was conducted at the request of the ARC, Office of Inspector General, to assist the office in its oversight of ARC grant funds.

On March 3, 2011, United States Department of Agriculture (USDA) Rural Development and Pikeville entered into an agreement whereby USDA Rural Development would administer the grant subject to the applicable regulations of USDA Rural Development and subject to other program guidelines. The Southeast Tennessee Development District also assisted in the administration of the grant.

The grant was awarded to provide funding for the grantee to purchase the vacant Dura Automotive building in Pikeville and remove and replace its roof. The project was designed to support the development of small and emerging private business enterprises in rural areas.

Basic Agency grant TN-16710 was awarded to cover the period August 18, 2010 through June 30, 2013. The grant provided \$484,387 in ARC funds and required \$500,000 in non-ARC matching funds. The project activities were completed and the grant was closed at the time of the audit. The total project cost reported under the grant was \$984,387.

Objectives, Scope, and Methodology

The audit objectives were to determine whether: (1) program funds were managed in accordance with the applicable federal requirements; (2) grant funds were expended as provided for in the approved grant budget; (3) internal grant guidelines and best practices, including program (internal) controls, were appropriate and operating effectively; (4) accounting and reporting requirements were implemented in accordance with generally accepted accounting principles (or other applicable accounting and reporting requirements); and (5) the matching requirements and the goals and objectives of the grant were met.

We reviewed the documentation provided and interviewed Pikeville, USDA Rural Development, and Southeast Tennessee Development District staff to obtain an overall understanding of the grant activities, the accounting system, and the operating procedures. We reviewed Pikeville's administrative procedures and related internal controls to determine if they were adequate to administer the grant funds. We reviewed financial and other required reports to determine whether they were properly supported and submitted in accordance with the requirements. We also reviewed the most recent Independent Auditor's Report to determine whether there were any issues that impacted the ARC grant.

We selected all \$484,387 of the expenditures charged to grant TN-16710 and claimed for reimbursement during the grant period for testing to determine whether they were properly supported and allowable. We also reviewed the documentation supporting the \$500,000 in expenditures charged to grant TN-16710 during the grant period and used for matching costs.

The primary criteria used in performing the audit were the provisions of the grant agreement, applicable Office of Management and Budget (OMB) Circulars, applicable parts of the USDA Rural Development instructions, and relevant parts of the ARC Code. The audit was performed in accordance with the *Government Auditing Standards*. The fieldwork was performed during the period of December 3-5, 2014, including on-site work at Pikeville's City Hall in Pikeville, Tennessee. The audit results were discussed with the Pikeville representatives at the conclusion of the on-site visit.

Summary of Audit Results

Overall, Pikeville's financial management and administrative procedures and related internal controls were adequate to manage the funds provided under the ARC grant reviewed. We found that Pikeville had an adequate process in place for obtaining and recording data related to the goals and objectives of the grant. The records and reports indicated that the tasks required by the grant agreement were being accomplished. The costs tested were mostly supported and considered reasonable. However, Pikeville did not have adequate controls in place to ensure competitive procurement procedures were used and that proper supporting documentation for contract services was provided. As a result, we questioned \$49,700 in costs claimed for reimbursement of engineering and contract administration because the expenditures were not adequately supported and the contract for professional services was not competitively procured. At the time of the audit, the work on the building had been completed, but there were currently no occupants in the building. The issues noted during the audit and our recommended corrective actions are discussed in detail in the Findings and Recommendations section of the report.

Finding and Recommendations

Unsupported Costs

Pikeville awarded a contract for Engineering Design and Construction Administration services but could not provide documentation to justify making the award non-competitively. Also, Pikeville made an advance payment to the contractor soon after the award for 20% of the contract value without supporting justification. As a result, we have questioned the \$49,700 of cost incurred under the contract for a lack of support. The payments made and charged to the grant from December 2011, through June 2013, as identified in the table below.

Costs Claimed - Farmer Morgan, LLC		
Invoice	Date	Amount
Advance	12/16/2011	9,940.00
#1	1/15/2012	6,626.66
#2	2/15/2012	6,626.66
#3	5/15/2012	6,626.66
#4	6/15/2012	6,626.66
#5	7/15/2012	4,417.67
#6	9/15/2012	4,417.67
#7	4/1/2013	4,418.02
Total		\$49,700.00

The contract with Farmer Morgan, LLC for Engineering Design and Construction Administration was not supported by documentation that justified it being awarded on a non-competitive basis. The Federal Acquisition Regulation (FAR), Subpart 6.3, Other Than Full and Open Competition, Section 6.303, Justifications, lists the applicable requirements (6.303-1) and content (6.303-2) required in the situation of a sole source contract. In addition, FAR Section 6.304, Approval of the Justification, contains the details of the approvals needed for justification of a contract awarded by other than full and open competition. Lastly, FAR Section 6.305, Availability of the Justification, contains details as to the recipients' responsibilities and requirements regarding the availability of the sole source justification to the public.

The contract compensation schedule included a stipulated amount of \$49,700 with a \$9,940 advance (20%) paid up front and the remainder to be paid in equal installments over five months. There was no documentation provided by the grantee supporting the required statutory requirements or determinations for advance payments to justify the use of an advance payment. The FAR, Subpart 32.4, Advance Payments for Non-Commercial Items, Section 32.402, General, Part (b) states: "Advance payments may be provided on any type of contract; however, the agency shall authorize advance payments sparingly. Except for the contracts described in 32.403 (a) and (b), advance payment is the least preferred method of contract financing (See 32.106) and generally they should not be authorized if other types of financing are reasonably available to the contractor in adequate amounts; (c) If statutory requirements and standards for advance payment determinations are met, the contracting officer shall generally recommend that the agency authorize advance payments."

The issue was discussed with the Pikeville representatives at the conclusion of the on-site visit, and they agreed with our findings. City employees, the USDA Rural Development personnel, and the Southeast Tennessee Development District Commission personnel explained that they had carefully reviewed the implementation of the project because of the City's problems with the former mayor and the engineering contractor (Farmer Morgan, LLC), and that they were sure the project (outside of this procurement) had been correctly implemented.

Recommendations

Pikeville should:

1. Provide supporting documentation to demonstrate that the requirements of the FAR, 2 CFR Part 225, and the ARC Grant agreement requirements were met; or refund the \$49,700 to ARC.
2. Submit a revised SF-270 report to ARC to adjust for any refunds that are made.
3. If Pikeville receives future ARC funds, it should:
 - a. Establish policy and ensure that future procurements are properly justified and follow appropriate criteria.
 - b. Ensure that policy is established for documenting all decisions and discussions relating to procurement.
 - c. Ensure that agency personnel involved are fully trained and aware of the proper procurement procedures, including documenting the process.

Grantee Response

Pikeville indicated agreement with the finding and provided a new procurement code, dated February 18, 2014, to show it had addressed the requirements listed in the recommendations. They included a binder of photographs and engineering drawings of the building to document the work accomplished to date. In addition, they provided the following comments in response to the recommendations.

"Unfortunately, as noted in the audit this contract award and advance payment were made by a previous administration. This contract was awarded by the former Mayor Gregg Johnson dated December 12, 2011. The current administration did not take office until September 1, 2012; and made sure that the roof retrofit was completed and within budget during the grant contract period. Although these issues did not occur under my purview, please know that we take them seriously and have taken corrective actions to insure they do not occur going forward.

ARC is an important funding source for our small, rural community; and we would not be able to accomplish any of our economic development goals without their assistance and funding assistance from other federal agencies. The audit does state that currently Pikeville's management and administrative procedures and related internal controls were adequate to manage the funds provided under the ARC grant reviewed. Also, that the goals and objectives of the grant agreement were met. The goal of the project was to rehab the roof so the building asset could be marketed to industrial prospects throughout the region. The roof rehabilitation was only the first step toward making this property marketable.

Since that time, the City of Pikeville has incurred \$72,757.81 in additional costs, repairing, renovating the inside and outside of the building so that it is presentable to industrial prospects. Documentation can be provided to support these additional costs that are outside the scope of the ARC project. Enclosed are photographs which clearly detail the work which has been done to a building asset that was in total disrepair.

Corrective Actions(s):

On February 18, 2014, upon third reading, the Pikeville City Council adopted Purchasing Policies and Procedures that insure that competitive procurement will be followed in accordance with all applicable federal and state guidelines. A copy of those policies and procedures are included.

All contracts for consulting services, grant agreements, etc. are reviewed by the city attorney, Mr. Ed Boring, and no contract is executed by the Mayor until final approval of the contract language and documents are approved by the city attorney. Only at that time is the contract presented to the City Council for approval after which it is executed by the Mayor.

In light of all these factors, Pikeville would request that consideration be afforded to waive the repayment of these questioned costs acknowledging responsibility and assuring that corrective actions have been implemented to guarantee that this will not occur going forward. Thank you in advance for your attention to this matter. We look forward to ARC's response and will be more than happy to furnish any additional information."

Reviewer's Comments

The three recommendations should remain open and ARC will determine whether the actions identified in the grantee's response are adequate to resolve the recommendations or whether additional information or actions are needed.

PHILIP CAGLE
MAYOR

BETTY KAY RENICK
ADMINISTRATIVE ASSISTANT



DEBRA BARNETT
CITY RECORDER

ALDERMEN
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February 11, 2015

**Re: Office of Inspector General Audit
City of Pikeville, Dura Building Acquisition and Retrofit
Appalachian Regional Commission, Project Number TN-16710**

To Whom It May Concern:

This will respond to the above referenced audit completed in conjunction with ARC Project Number TN-16710, Dura Building Acquisition and Retrofit.

Finding: The architectural/engineering contract awarded to Farmer Morgan, LLC for engineering design and construction administration was not competitively procured in accordance with FAR, 2 CFR Part 225. Documentation could not be provided.

We concur with this finding.

Finding: Advance payment was made to the consultant soon after the award of 20% of the contract value without supporting justification.

We concur with this finding.

Unfortunately, as noted in the audit this contract award and advance payment were made by a previous administration. This contract was awarded by the former Mayor Gregg Johnson dated December 12, 2011. The current administration did not take office until September 1, 2012; and made sure that the roof retrofit was completed and within budget during the grant contract period. Although these issues did not occur under my purview, please know that we take them seriously and have taken corrective actions to insure they do not occur going forward.

ARC is an important funding source for our small, rural community; and we would not be able to accomplish any of our economic development goals without their assistance and funding assistance from other federal agencies. The audit does state that currently Pikeville's management and administrative procedures and related internal controls were adequate to manage the funds provided under the ARC grant reviewed. Also, that the goals and objectives of the grant agreement were met. The goal of the project was to rehab the roof so the building asset could be marketed to industrial prospects throughout the region. The roof rehabilitation was only the first step toward making this property marketable.

Since that time, the City of Pikeville has incurred \$72,757.81 in additional costs, repairing, renovating the inside and outside of the building so that it is presentable to industrial prospects. Documentation can be provided to support these additional costs that are outside the scope of the ARC project. Enclosed are photographs which clearly detail the work which has been done to a building asset that was in total disrepair.

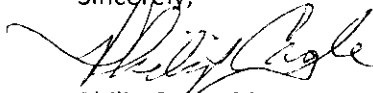
Corrective Action(s):

On February 18, 2014, upon third reading, the Pikeville City Council adopted Purchasing Policies and Procedures that insure that competitive procurement will be followed in accordance with all applicable federal and state guidelines. A copy of those policies and procedures are included.

All contracts for consulting services, grant agreements, etc. are reviewed by the city attorney, Mr. Ed Boring, and no contract is executed by the Mayor until final approval of the contract language and documents are approved by the city attorney. Only at that time is the contract presented to the City Council for approval after which it is executed by the Mayor.

In light of all these factors, Pikeville would request that consideration be afforded to waive the repayment of these questioned costs acknowledging responsibility and assuring that corrective actions have been implemented to guarantee that this will not occur going forward. Thank you in advance for your attention to this matter. We look forward to ARC's response and will be more than happy to furnish any additional information.

Sincerely,



Philip Cagle, Mayor

Enclosures

Cc: Alisa Farmer, U. S. Rural Development
Beth Jones, Southeast Tennessee Development District

ORDINANCE # 1-13-014
PROCUREMENT CODE

WHEREAS, Sections 42 and 98 of the City Charter were amended by Chapter 21 of the Private Acts of 2013 to allow the City to take advantage of T.C.A. 6-56-302(2); and,

WHEREAS, said state law allows cities procurement options including the ability to acquire goods and services through means other than publicly advertised competitive sealed bids for purchases of less than \$25,000.00; and,

WHEREAS, the City wishes to amend our current procurement code by increasing the amount over which publicly advertised competitive sealed bids are required from \$10,000 to \$25,000 and by increasing the amount over which three competitive sealed bids are required from \$10,000 to \$25,000 and by increasing the amount over which three competitive quotations in writing must be obtained from \$4,000 to \$7,500; and,

WHEREAS, many of Tennessee's public procurement statutes were amended and renumbered by passage of Chapter 403 of the Public Acts of 2013, effective July 1, 2013; and,

WHEREAS, the City's procurement code, adopted by Ordinance 12-O-29 and codified at Section 2-10 of the City Code, contains multiple referenced to State Code provisions which were amended by Chapter 403; and,

WHEREAS, adopting an amended procurement code is an appropriate way to make changes implementing Chapter 21 of the Private Acts of 2013 and Chapter 403 of the Public Acts of 2013.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PIKEVILLE, TENNESSEE, AS FOLLOWS:

Section 1. The Pikeville City Code is hereby amended by adding the following:

Section 5-5 PROCUREMENT CODE

(A) *Policy.* It is the policy of the City of Pikeville to obtain goods and services needed for the efficient operation of city government by using a variety of procurement methods in order to achieve purchases that meet quality, performance and delivery standards with fair and competitive pricing and value by using procedures that are consistent with the City's needs while complying with applicable federal and state laws. It is to achieve these policy goals that this procurement code is adopted.

(B) *Roles and Responsibilities.*

- (1) It is the role and responsibility of the Board of Mayor and Aldermen to fulfill the purchasing duties established by the city charter; to establish a budget; to approve all non-emergency procurements over twenty-five thousand dollars (\$25,000); to approve the use of the competitive sealed proposal procedure; and, to receive reports of all emergency procurements.
- (2) It is the role and responsibility of the Mayor to fulfill the purchasing duties established by the city charter; to recommend all procurements and procurement methods over a fixed dollar amount to the Board of Mayor and Aldermen, to approve all procurements and procurement methods which do not require Board approval; and, to establish administrative procedures for procurements consistent with these obligations.

- (3) It is the role and responsibility of the City Recorder to fulfill the purchasing duties established for that office by the city charter and administrative procedures established by the Mayor. The City Recorder has the right to review all procurements for consistency with this procurement code and the administrative procedures established by the Mayor.
- (4) It is the role and responsibility of the City Attorney to fulfill the purchasing duties established for that office by the city charter and the administrative procedures established by the City Mayor and subject to review and approval all contracts of procurement.
- (5) It is the role and responsibility of the purchasing agent to fulfill the duties established by this procurement code and the administrative procedures established by the Mayor. These duties shall include but are not limited to developing the specifications for the goods to be purchased or the scope of work for the services to be purchased; preparing the invitation to bid, request for competitive sealed proposals or request for proposals; arranging for adequate and appropriate public notice or advertisement; evaluating all responses; preparing a purchase recommendation for the Board of Mayor and Aldermen or department head as appropriate; ensuring correct documentation and execution of the contract or purchase order; and, ensuring delivery and/or performance of the purchased goods or services and payment for same. Unless otherwise designated by the Mayor, on a continuing or an individual procurement basis, the purchasing agent for each department shall be the employee in the Finance Department primarily assigned to purchasing agent duties.

(C) *Scope.* This procurement code shall be applicable to all purchases, leases, lease-purchases and rentals of goods and services; it shall not be applicable to interests in land.

(D) *Methods of Procurement.* The primary methods of procurement to be used by the City are:

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

(E) *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) Price competition requires public advertisement and competitive sealed bids by the City for all contracts for more than twenty-five thousand dollars (\$25,000) unless there is an applicable exception.
- (2) 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 state 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.
- (3) 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 (5%) higher than the highest value of the documented range, in accordance with T.C.A. § 12-3-1202.
- (4) A purchase based on price competition which does not require public advertisement and acceptance of competitive bids by the City, regardless of amount, include the purchase of new or second hand goods, equipment, supplies and commodities at a publicly advertised auction but only pursuant to written procedures established by resolution by the Board in accordance with T.C.A. § 12-3-1006.
- (5) A purchase based on price competition which does not require public advertisement by the city include those where the value of the good or services are twenty-five thousand dollars

(\$25,000) or less. The approved methods of procurement will vary depending on the price or type of item. The City Mayor will establish consistent procedures for such procurements. If the dollar amount is between seven thousand five hundred dollars (\$7,500) and twenty-five thousand dollars (\$25,000) three (3) competitive quotations, when possible, must be obtained in writing.

(6) 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.

(7) 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 Mayor and Aldermen. If this method is used for fuel and fuel products, the purchase should be based, whenever possible, on three (3) competitive prices.

(F) *Sole Sources 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 shall be informed of all reason making the proposed sold source procurement appropriate if the item costs more than twenty-five thousand dollars (\$25,000). If the item costs less than twenty-five thousand dollars (\$25,000), a record of such purchase specifying the amount paid, the item purchased and the vendor shall be made by the person authorizing the purchase.

(G) *Emergency Purchases.*

(1) The City Mayor is authorized to make emergency purchases of supplies and materials in the open market for immediate delivery in actual emergencies arising from unforeseen causes including delays by contractors, delays in transportation, unanticipated volumes of work, the failure to receive competitive bids from prospective bidders and other similar emergencies.

(2) The Mayor shall attempt to receive competitive quotations from supplies before making said emergency purchases. The Mayor may also use competitive sealed proposals for emergency purchases.

(3) A report of such emergency purchases in writing shall be made together with a record of the prices secured together with a full and complete account of the circumstances of such emergency. Such a report shall be made within two working days following the date of such purchase or purchase order and shall be kept on file in the office of the City Recorder and shall be open to public inspection. A copy of the report shall be presented to the Board at or before the next regular Board meeting.

(4) The limit for such emergency purchases shall be fifty thousand dollars (\$50,000) except for emergency purchases involving the health, safety or welfare of the City residents, such as but not limited to emergency purchases for the Water and Sewer Department, where repairs and parts cannot wait for the bidding process or Council approval at a regular meeting. In these cases, such emergency purchases shall not exceed two hundred thousand dollars (\$200,000)

and shall require the approval of the Mayor and Vice Mayor in the absence of the Mayor. For the purposes of this section, in the absence of the Mayor, the Vice Mayor has authority to act for and on behalf of the Mayor.

(H) *Competitive Sealed Proposal Purchases.*

- (1) The use of competitive bids may not be practical or advantageous to the City when qualifications, experience or competence are more important than price in making a purchase. In such events, the Board may decide to use competitive sealed proposals. Competitive sealed proposals may be used with Board approval only in the event of an actual emergency which emergency must be documented.
- (2) Competitive sealed proposals may only be used if there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution or if there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one or more solutions.
- (3) Competitive sealed proposals shall be used in accordance with the provisions of T.C.A. §12-3-1207.
- (4) Adequate public notice of competitive sealed proposals must be given. The notice method(s) used shall be the same as for competitive bids for purchases of more than twenty-five thousand dollars (\$25,000).
- (5) The request for competitive sealed proposals shall state the factors to be used to evaluate the proposals, including price, and shall state their relative importance in the evaluation. The request for competitive sealed proposals shall state that the evaluation shall determine whose proposal is the most advantageous to the City taking into consideration all of the stated factors. The request for competitive sealed proposals may state that price shall be separately submitted and included in the evaluation through a multi-step process. A multi-step process may include submission of pricing before or after the evaluation and any discussion of the proposals with the proposers.
- (6) The competitive sealed proposals shall not be disclosed during the negotiation and evaluation process, which shall follow their submittal and opening, but they shall be made open for public inspection after the intent to award the contract to a particular proposer is announced.
- (7) After the competitive sealed proposals are submitted, the City may but is not required to, conduct discussions to clarify and to assure full understanding of the proposal and its responsiveness to the City's requirements, provided that all responsible proposers whose proposals are reasonable capable of being selected are afforded fair and equal treatment. During these discussions, the City may not disclose to one proposer information derived from another proposal.
- (8) As a result of these discussions, proposers may but are not required to be allowed to make revisions to their proposals so that the City may obtain the best and final offer from each proposer if said revisions are submitted and received before the City's intent to award to a particular proposer is announced.
- (9) In recommending a particular proposal for acceptance, the purchasing agent shall describe the basis on which the award is made.

- (10) Each proposer shall be notified of the proposer selected for recommendation to the Board before the proposed Board action. A protest by an aggrieved proposer who is not selected will be heard by the Board if filed with the Board, through the City Recorder, within seven (7) days after the intended award is announced.
 - (11) Any issue raised by the protesting party after the seven day period shall not be considered as part of the protest. The Board may stay an award due to a pending protest without financial or other obligation to the proposer recommended to the Board. The Board may, by resolution, adopt rules and procedures applicable to protests.
- (I) Purchases of services from a professional.
- (1) Contracts from 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 services 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 purchasing agent 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 purchasing agent, or a selection committee, as specified in the RFQ or/and RFP, may interview the firm regarding the furnishing of the required services. The purchasing agent 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.

(J) *Water storage tank painting and maintenance.* The City, in accordance with T.C.A. §12-4-112, may use a request or proposal process for the painting and maintenance of water storage tanks and appurtenant facilities or may competitively bid such contracts.

(K) *Terms and Conditions.*

- (1) Any and all notices, advertisements, invitations to bid or requests to propose, or other procurement method shall state that the City has and retains the power to reject any and all bids or proposals. This power shall exist whether or not expressly so reserved.
- (2) In evaluating any bid or proposal, including those based on price competition and those using competitive sealed bids, the City may consider whether the bidder or proposer is responsible and disqualify from consideration any non-responsible bidder or proposal. A bid or proposal may be disqualified based on any of the following:
 - (a) Ability to perform the contract or to provide the material or service required;
 - (b) Ability to provide the material or service within the time specified without delay or interference;
 - (c) The character, integrity, reputation, experience and efficiency of the bidder or proposer;
 - (d) The previous and existing compliance by the bidder or proposer with laws and regulations relating to the contract or service;
 - (e) The ability of the bidder or proposer to provide future maintenance and/or service;
 - (f) The terms and conditions stated in the bid or proposal; and
 - (g) Past performance with the City by bidder or proposer.
- (3) The City may, but only to the extent the City Attorney deems allowed by federal and state law, give preference in competitive procurements to Tennessee goods and services.
- (4) The City shall use life cycle cost of commodities as developed and disseminated by the federal government in accordance with T.C.A. §12-3-903.
- (5) The City shall if required, and may if authorized by federal or state law, use energy efficiency standards in its procurement process in accordance with T.C.A. §12-3-904 through 12-3-911 et seq.
- (6) The City shall include re-refined or recycled motor oil in its specifications for competitive bids for lubricating motor oil, if any, in accordance with T.C.A. §12-3-807 unless specialized equipment or circumstances require specialized treatment.
- (7) The City shall not be obligated to award any contract or to make any purchase if:
 - (a) The contract or purchase would violate conflict of interest laws or the City's ethical standard policy;
 - (b) The vendor does not provide or complete all requirements for a valid City contract including but not limited to: non-collusion affidavits; illegal immigrant affidavits; payment and performance bonds; proof of insurance; retainage agreements; grants

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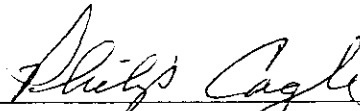
assurance certifications; drug free workplace policy certifications; proof of corporate existence and good standing; and, proof of required licenses or permits.

(8) Bid specifications for the purchase of chemical products shall require that the manufacturer create and maintain a material safety data sheet in accordance with T.C.A. § 6-56-307.

(L) *Rejection of Bids and Proposals.* The Mayor 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. Any such rejection and reissuance may be timely appealed to the Board in accordance with subsection (M), Protest.

(M) *Protests.* A participant in a City procurement may protest any such procurement. If the Board is required to approve the procurement award, the decision on the protest shall be made by the Board. If the procurement does not require the Board approval in advance of the award, the decision on the protest shall be made by the Mayor. Protests of competitive sealed proposals shall be made in accordance with subsection (H) and any resolution related thereto. Protests of procurements made by other methods shall be made in accordance with such rules and procedures as the Council made adopt by resolution.

SECTION 2. That this Ordinance shall take effect immediately after its passage upon third and final reading as an emergency exists, and the public welfare and the welfare of the City require its adoption as an emergency ordinance.


Philip W. Cagle, Mayor

Passed:

1st reading 1-20-14

2nd reading 1-27-14

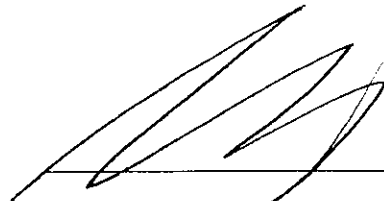
3rd reading 2-18-14

ATTEST:


Debra Barnett

Debra Barnett
City Recorder

APPROVED AS TO FORM:


Edward L. Boring

Edward L. Boring
City Attorney