

**COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA**

**ORDINANCE NO. 2023-2**

**AN ORDINANCE OF THE CITY OF AUSTIN, INDIANA ADOPTING A PURCHASING  
POLICY AND MATTERS RELATED THERETO**

**WHEREAS**, the Common Council of the City of Austin (the “Council”) desires to adopt a purchasing policy for the City of Austin and its non-exempt entities.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Austin, Indiana, as follows:

1. **SECTION 1: CITY PURCHASING POLICY.** The Purchasing Policy attached and incorporated herewith as Exhibit “A” is hereby adopted.
2. **SECTION 2: CITY PURCHASING RULES AND PROCEDURES.** The following are the purchasing rules for the City of Austin, Indiana:

**A. Protection of Offers; Status of Documents as Public Records.**

- i. **Protection of Offers Prior to Opening.** The purchasing agent shall retain all offers received in a secure location prior to the date and time at which offers will be opened in order to prevent disclosure of the contents prior to the opening of the offers.
- ii. **Unobstructed Evaluation of Offers.** After offers have been opened, the purchasing agent shall be responsible for maintaining the offers in such a manner as to permit evaluation of the offers by the persons responsible for evaluating the offers.
- iii. **Public Records Status of Bids.** Bids submitted in response to an invitation for bids must be available for public inspection and copying after the time of the bid opening.
- iv. **Register of Proposals.** The purchasing agent shall prepare a register of proposals for each request for proposals issued which shall contain information concerning the proposals available for public inspection and copying. Proposals may not be disclosed.

- B. Discussions With Offerors Responding to a Request for Proposals.** The purchasing agent may conduct discussions with, and best and final offers may be

obtained from responsible offerors who submit proposals determined to be reasonably susceptible of being selected for a contract award.

- C. **Delay of Opening of Offers.** When the purchasing agency makes a determination that is noted in its meeting minutes that it is in the City's best interests, offers may be opened after the time stated in the solicitation. The date, time and place of the rescheduled opening must be announced at the time and place of the originally scheduled opening.
- D. **Evidence of Financial Responsibility.** A purchasing agent may specify in a solicitation that an offeror must provide evidence of financial responsibility in order to be considered responsible. The evidence of financial responsibility may be a bond, certified check, or other evidence specified by the purchasing agent in the solicitation.
- i. Purchases Less Than \$50,000. The purchasing agent may not require evidence of financial responsibility when the estimated cost of a purchase is less than \$50,000.
  - ii. Purchases Between \$50,000 and \$150,000. The solicitation may include a requirement that an offeror provide evidence of financial responsibility. If evidence of financial responsibility is required, the solicitation must indicate the kind of evidence that will be acceptable. If a bond or certified check is required, it may not exceed ten percent (10%) of the estimated cost of the purchase.
  - iii. Purchases Over \$150,000. The solicitation shall include a requirement that an offeror provide evidence of financial responsibility and must indicate the kind of evidence that will be acceptable. If a bond or certified check is required, it may not exceed ten percent (10%) of the estimated cost of the purchase.
  - iv. Small Business Set-Asides. The purchasing agent may determine that no evidence of financial responsibility shall be required for a small business set-aside purchase.

3. **SECTION 3: NO CONFLICT.** All ordinances, resolutions, and orders (or parts thereof) that conflict with the provisions of this Ordinance hereby is repealed to the extent of such conflict.
4. **SECTION 4: SEVERABILITY.** If any section, paragraph, or provision of this Ordinance is held to be invalid or unenforceable for any reason, then the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Ordinance.
5. **SECTION 5: EFFECTIVENESS.** This Ordinance shall be in full force and effect from and after its passage and publication in accordance with Indiana Code.

PASSED AND ADOPTED by the Common Council of the City of Austin, Indiana, this 11 day of Apr. 1, 2023 by a vote of 4 ayes and 0 nays.

Attest:

Chris Fugate  
Chris Fugate, Clerk-Treasurer

Common Council City of Austin, Indiana

Roger Hawkins  
Roger Hawkins, Presiding Officer

Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, on Apr. 11 at 2:23 p.m.

Chris Fugate  
Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), on Apr. 11 at 6:23 p.m.

Roger Hawkins  
Roger Hawkins, Mayor

Attest:

Chris Fugate  
Chris Fugate, Clerk-Treasurer

## **EXHIBIT “A”**

### **PURCHASING POLICY OF THE CITY OF AUSTIN**

## **CITY OF AUSTIN PURCHASING POLICY**

- I. **POLICY STATEMENT.** The City of Austin is a political subdivision of the State of Indiana and is governed by the state's public purchasing statutes including, but not limited to, the "Public Purchasing Law" found at Indiana Code § 5-22-1-1 et seq. and "Public Works Project" found at Indiana Code § 36- 1-12 et seq. as amended from time to time. In addition to Indiana Code, the City's purchasing activities are further governed by executive orders from the Mayor, local ordinances and resolutions of the Common Council and resolutions of the Board of Public Works & Safety.

The Common Council has adopted the following policies and procedures to be applicable to the purchase of goods and services and for public works projects in accordance with Indiana Code. These policies and procedures apply to all City departments, boards, and commissions that are not exempt by Indiana Code § 5-22-1-2.

If the policy refers to a section in Indiana Code, the information provided is for informational purposes only and the Indiana Code must be followed.

- II. **DEFINITIONS.** The following terms have meanings specific to the purchasing statutes, where used in this Policy, the following terms shall mean:

**Department Head:** Directors of each department and the Chief of Police.

**Governmental Body:** Governmental body means an agency, a board, a branch, or another establishment of a political subdivision. A governmental body may be the council, the board of works, redevelopment commission or parks board.

**Policy:** Refers to this Purchasing Policy.

**Professional Services:** Services performed by architects, professional engineers or surveyors.

**Public Works Project:** The construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

**Purchase:** Purchase includes to buy, procure, rent, lease, or otherwise acquire. The term includes:

- a. A description of requirements (specifications, delivery terms, etc.);

- b. Solicitation or selection of sources from which purchase will be made;
- c. Preparation and award of the purchase contract;
- d. All phases of contract administration; and
- e. All functions that pertain to purchasing.

NOTE: This would include a trade-in or warranty work requirements.

**Purchasing Agency:** The body authorized to enter into contract by Indiana Code, by rules adopted by the governmental body or another law. The Board of Public Works & Safety is designated as the Purchasing Agency for the City of Austin.

**Purchasing Agent:** A person authorized by the purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency. The Mayor, the Clerk-Treasurer, and each department head may act as purchasing agents for that office or department.

**Services:** Means the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.

**Supplies:** Any property, including equipment, goods, and materials. Does not include real property.

### III. PURCHASING REQUIREMENTS.

#### Public Works I.C. 36-1-12 et seq.

<u>Purchase Amount</u>	<u>Procedure</u>	<u>Approval</u>
Greater than \$150,000	Full specification and bidding requirements, including: (1) develop specifications; (2) publish notice no more than 6 weeks before date of receiving bids (10 weeks if project over \$25 million); (3) open bids publicly; and (4) award to lowest responsible and responsive bidder, or reject all bids. If the lowest bid is rejected, reasons for the rejection must be noted in the	Governmental Body

	meeting minutes. Once bids have been reviewed, they should be given to the Clerk for storage and return of bid bonds.	
	See also I.C. § 36-1-12-4  If over \$300,000, Contractor must be prequalified by INDOT.	
Less than \$150,000, but greater than \$50,000	Invite quotes on behalf of Board of Public Works & Safety by mail, including: (1) develop specifications; (2) invite quotes from at least 3 persons known to deal in the class of work proposed by mailing them notice stating the plans and specs are on file; (3) mail notice no less than 7 days before deadline for receiving quotes; (4) open bids publicly; and (5) award contract to lowest responsible and responsive bidder, or reject all quotes. If the lowest quote is rejected, reasons for the rejection must be noted in the meeting minutes.  See also I.C. § 36-1-12-4.7.	Governmental Body
Less than \$50,000	Invite quotes on behalf of Board of Public Works & Safety by mail, but may reject all and negotiate, including: (1) same procedure as above, except: (2) if all quotes are rejected, then write the reasons for rejecting all quotes; and (3) may then negotiate and enter into agreements in open market without inviting or receiving quotes.	Governmental Body

	<p>May also now solicit quotes by telephone, fax or email for under \$50,000 including: (1) solicit three quotes by email, telephone or fax; and (2) 7 day waiting period does not apply. If using this procedure, bid result must be read aloud in the Board meeting.</p> <p>See also I.C. § 36-1-12-5.</p>	
Emergencies – any price	<p>(1) Declare emergency (reflect declaration in board meeting minutes); and (2) invite bids or quotes from at least 2 persons known to deal in the public work required to be done (reflect name of persons invited to bid in meeting minutes).</p> <p>See also I.C. § 36-1-12-9.</p>	Governmental Body
Using Own Workforce – \$100,000 - \$250,000	<p>For projects between \$100,000 and \$250,000, (1) publish notice, hold a public meeting &amp; determine it is in public's interest to use government workforce; and (2) follow public purchasing rules for purchase of materials.</p> <p>See also I.C. § 36-1-12-3.</p>	Governmental Body
Routine Maintenance Less than \$150,000	Follow procedures for purchase of supplies and equipment.	Governmental Body

**Purchase of Supplies and Equipment**  
**I.C. 5-22**

<u>Purchase Amount</u>	<u>Procedure</u>	<u>Approval</u>
Greater than \$150,000	Full bidding requirements, including: (1) issue invitation for bids; (2) publish notice of bid twice 1 week apart, with	Board of Public Works & Safety



	<p>the second publication made at least 7 days before bid opening; (3) open bids publicly; (4) award contract to lowest responsible and responsive bidder; and (5) maintain bidder information. If the lowest quote is rejected, reasons for the rejection must be noted in the meeting minutes. Once quotes have been reviewed, they should be given to the Clerk for storage.</p>	
Less than \$150,000 but greater than \$50,000	<p>Invite quotes by mail, including: (1) invite quotes from at least 3 persons known to deal in supplies purchased; (2) mail invitation to quote at least 7 days before time fixed for receiving quotes; and (3) award contract to lowest responsible and responsive offeror, or reject all quotes.</p>	Board of Public Works & Safety
Less than \$50,000	<p>If purchase requires a contract, invite at least one quote by email, fax, telephone or mail. If purchase does not require a contract, purchasing agent may purchase from one supplier without obtaining quotes.</p>	<p>Less than \$10,000 – Department Head</p> <p>Less than \$50,000 – Mayor or Mayor's designee</p>
Special Purchases Greater than \$50,000	<p>(1) Determine whether special purchasing may be used; (2) maintain a separate contract file, detailing why a special purchasing method was used and why a particular contractor was chosen; (3) supplies or services must meet the specifications of the City; and (4) must be purchased at a fair market price.</p> <p>Special Purchases require a Declaration or Resolution</p>	Board of Public Works & Safety

	from the Board of Public Works & Safety.	
Nonprofit Agencies for Persons With Severe Disabilities [Exception, IC 5-22-13]	The City may purchase supplies and services from a qualified agency without advertising or bidding.	Same as other Supplies & Equipment
Vehicles & Equipment	See above for applicable process depending upon cost.	Same as other Supplies & Equipment

Any purchases that require a contract under \$50,000 that are signed by the Department Head or the Mayor shall be submitted to the Clerk-Treasurer to be placed on the next meeting agenda of the Board of Public Works & Safety. The Department Head or Mayor shall include the quotes received and the signed contract with the submittal.

### **Services I.C. 5-22-6**

Agreements or contracts are required for services. Agreements for services shall require the same approvals as purchase of supplies and equipment herein. All contracts for services must be reviewed and approved by the City Attorney prior to approval by the Department Head or submittal to the Board of Public Works & Safety.

### **Professional Services I.C. 5-16-11.1**

1. The City hereby determines that notice as required by I.C. 5-16-11.1-4 is not required for professional services and that approval of professional services shall follow the same requirements as services.
2. Each contract for professional services shall be on the basis of competence and qualifications for the type of services to be performed and negotiate compensation that the City determines to be reasonable.

### **Requests For Proposals I.C. 5-22-9**

Competitive bidding is not advantageous or practicable for certain services, supplies or equipment that require feedback from the offeror or a collaborative approach between the City and the offeror, and therefore the Request for Proposal (RFP) process is the preferred method for that type of service, supply or equipment.

A purchasing agent may award a contract for services, supplies or equipment through a RFP procedure instead of competitive bidding, subject to the policies of the City.

The process includes:

1. The RFP must be published two times, one week apart with the second publication at least seven days prior to the date fixed for receiving proposals.
2. The RFP must include the following: factors or criteria to be used in evaluating proposals, statement concerning the relative importance of price and the other evaluation factors, proof requirements, and a statement on whether discussions may be conducted with responsible offerors.
3. Proposals must be opened to avoid disclosure of contents to competing offerors during the process of negotiation.
4. The purchase contract shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City. The purchase may be awarded to more than one offeror, as long as it was outlined as a possibility in the RFP.
5. Offerors must be accorded fair and equal treatment with opportunities for discussions and revisions of proposals.

The Department Head shall prepare and maintain a register of proposals that must be open for public inspection after contract award.

### **Legal Services**

The City Attorney is the only person authorized by Indiana Code to contract for legal services. All contracts for legal services must be presented to the City Attorney for approval. The City Attorney may submit approval of the contracts to the Board of Public Works of his/her approval. Elected officials can hire their own counsel if allowed under Indiana Code.

### **Contracts**

1. All contracts must include the following:
  - a. The proper name of the parties;
  - b. Terms and conditions that are clearly stated and consistent throughout the document with no conflict with federal, state, or local laws or regulations;
  - c. The amount of payment due on the contract must be clearly stated with a detailed description as to the payment schedule, rate of pay, if applicable, the services to be provided with any deliverables clearly identified, and all deadlines or schedules stated as appropriate;
  - d. Indemnity and Insurance requirements;
    - i. Certificate of Insurance should be included.
  - e. The effective start and end date of the contract, and any applicable renewals; and
  - f. Does not contain any visible Social Security number in the contract, or any of the attachments or exhibits.

2. This list is not inclusive and additional terms may be required pursuant to Indiana Code. Therefore, all contracts must be reviewed by the City Attorney before being submitted to the appropriate entity for approval.
3. All contracts for financial services must be reviewed by the Clerk-Treasurer and the City Attorney before being submitted to the appropriate entity for approval.
4. Only those officers, department heads, boards, commissions or other agency of the City empowered by Indiana Code may execute a contract on behalf of the City of Austin. A board or commission may authorize certain persons to sign contracts on its behalf, but unless expressly authorized by statute or proper resolution, an employee without express approval is considered unauthorized to bind the City to the contract. Department heads are authorized to sign contracts only as set forth in this Policy. Staff members do not have authority to sign contracts except as set forth herein.
5. Certificates of Insurance from the contractor or vendor are required for contracts for public works, professional services and services.
6. All contracts must be signed by the other party(ies) before being submitted to the Board of Public Works & Safety or Department Head for final approval.

#### **Purchase of Supplies Manufactured in the United States**

Supplies manufactured in the United States shall be specified for all City of Austin purchases and shall be purchased unless the purchasing agent determines that:

1. The supplies are not manufactured in the United States in reasonably available quantities;
2. The prices of the supplies manufactured in the United States exceeds by an unreasonable amount the price of available and comparable supplies manufactured elsewhere;
3. The quality of the supplies manufactured in the United States is substantially less than the quality of comparably priced available supplies manufactured elsewhere; or
4. The purchase of supplies manufactured in the United States is not in the public interest.

#### **Purchasing Preferences**

Only one price preference may be applied to each item, even if the respondent has indicated they wish to claim multiple preferences. The preference that is most beneficial should be applied.

1. Department of Correction [Preference required, IC 5-22-11]: The Board or Purchasing Agent shall purchase from the department of correction supplies and services produced or manufactured by the department, as listed in the department's printed catalog, unless the supplies and services cannot be furnished in a timely manner.
2. Purchase of Rehabilitation Center Products [Preference required, IC 5-22-12]: To the extent such a catalogue exists, the Board or Purchasing Agent shall purchase articles produced by the rehabilitation center established by the Indiana Rehabilitation Services Bureau and listed in its catalogue, unless similar articles are produced by the

governmental body, do not meet the specifications and needs of the governmental body, are not offered at a fair market price or the governmental body receives a written statement from the bureau that it cannot furnish it.

3. Small Business Set Aside [Preference allowed, IC 5-22-14]: The Board hereby determines to establish criteria for determining qualifications as a small business and to identify specific services, supplies or equipment for small business set aside purchases. The solicitation must state that offers will only be accepted from small businesses.

Qualifications. A business qualifies as a small business that is independently owned and operated, is not dominant in its field of operation and does not fall under one of the following categories:

- A. A wholesale business, if its average annual sales for its most recently completed fiscal year exceeds \$4 million;
- B. A construction business, if its average annual receipts for the preceding three fiscal years exceeds \$4 million;
- C. A retail business or business selling services, if its annual sales and receipts exceed \$500,000; or
- D. A manufacturing business, if it employs more than 100 persons.

Specific Supplies Eligible for Small Business Set-Aside may be determined on a case-by-case basis by the Department Head, as long as there is a reasonable expectation that two small businesses can provide a quote. A contract shall be awarded to the lowest responsible and responsive offerer among the small businesses or the Board may reject all bids or quotes and withdraw designation of the purchase as a small business set-aside.

4. Local Business Preference [Preference allowed, IC 5-22-15-20.9]: A price preference allows local business to be able to compete for the City's business while taking into consideration a preference. If a respondent claims a price preference, a given percentage will be deducted from the price of the item(s) that meet the criteria for that preference, and the newly figured prices will be used for evaluation purposes to determine who should receive the award.

"Local Indiana business" refers to any of the following:

- A. A business whose principal place of business is located in Scott County.
- B. A business that pays a majority of its payroll (in dollar volume) to residents of Scott County.
- C. A business that employs residents of Scott County as a majority of its employees.

There are the following price preferences for supplies purchased from all Local Indiana business:

- A. Five percent (5%) for a purchase expected by the purchasing agency to be less than fifty thousand dollars (\$50,000).
- B. Three percent (3%) for a purchase expected by the purchasing agency to be at least fifty thousand dollars (\$50,000) but less than one hundred thousand dollars (\$100,000).
- C. One percent (1%) for a purchase expected by the purchasing agency to be at least one hundred thousand dollars (\$100,000).

A business that wants to claim a preference provided under this section must do all the following:

- A. State in the business's bid that the business claims the preference provided by this section.
- B. Provide the following information to the purchasing agency:
  - i. The location of the business's principal place of business and a statement explaining the reasons the business considers Scott County as the business's principal place of business.
  - ii. The amount of the business's total payroll and the amount of the business's payroll paid to Scott County residents.
  - iii. The number of the business's employees and the number of the business's employees who are residents of Scott County.