

ORDINANCE NO. 010-2023

**AN ORDINANCE AMENDING SECTION 2-5 OF THE MUNICIPAL CODE OF THE
CITY OF EFFINGHAM, ILLINOIS
(Purchase Policy and Procedures)**

WHEREAS, the City of Effingham, Illinois, pursuant to Ordinance No. 3-2011 established a purchasing policy, with said policy being codified at Section 2-5 of the Municipal Code of the City of Effingham, Illinois; and,

WHEREAS, the City Council for the City of Effingham, Illinois, after careful consideration, has determined that it is necessary to amend its policies and procedures concerning purchasing by the City, as provided for herein.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF EFFINGHAM, ILLINOIS, THAT:

Section I: The findings made in the prefatory portion of this Ordinance are hereby adopted.

Section II: Section 2-5 of the Municipal Code of the City of Effingham, Illinois, is hereby repealed and replaced with the following:

Sec. 2-5. Purchase policy and procedures.

- (a) *Basic goals.* The basic goals of the city's purchase policy and procedures are:
 - (1) To receive maximum value for each public dollar spent, while procuring quality goods and services.
 - (2) To purchase only goods and services for which monies have been approved.
 - (3) To comply with the legal requirements of public purchasing pursuant to the ILCS, as amended.
- (b) *Planning.* Planning for purchases should be done on both a short-term and long-term basis. Departments should pool purchases of commonly used goods (e.g., copier paper, computer paper, office supplies, stationery supplies, and certain chemicals). Cost shall be allocated based on use by each department.
- (c) *Overdrafts prohibited.* No purchase will be authorized which would overdraft a department budget. Department heads may petition a redistribution of a line-item appropriation within their departmental budget by submitting a written request to the city administrator. If approved, the administrator will implement the budget adjustment. Department heads who are contemplating a purchase that will exceed their budget should contact the administrator to ensure that provision is made for the necessary budget allocation.

- (d) *Buying proper quality.* Quality and service are just as important as price and it is the duty of every department to secure the best quality for the purpose intended.
- (e) *Sales tax.* The city is exempt from paying all local sales taxes, state sales taxes, and federal excise taxes. The city treasurer shall provide the necessary exemption documents to any vendor upon request. Department heads shall make reasonable effort to ensure their municipal purchases are exempt from said tax.
- (f) *Purchasing.* A purchase order shall be processed, with the proper approvals as described below, before any order or purchase is made that will cost more than two-thousand-five-hundred dollars (\$2,500.00), with the exception of routine, recurring services or lot purchases. No contract, purchase, or sale shall be subdivided to avoid the requirements of this section.
- (g) *Definitions.* As used in this section, the following terms shall have the meanings ascribed to them:

Capital equipment: All large items that are found in the adopted capital improvements plan, as amended, such as cars, trucks, and backhoes.

Capital projects: Construction projects that are found within the adopted capital improvements plan, as amended, either new or replacement such as roads, buildings, water and sewer lines.

Contractual services: Includes all telephone, utilities, gasoline, uniform services, cleaning contracts, rental, repair or maintenance of equipment, machinery and other city-owned property. This category also includes personal services of a person, agency or group of a non-technical or professional nature.

Cooperative agency: Any department, agency, commission, bureau or other unit in any other governmental unit whether school district, special authority, park district, other municipality, county, state, federal or otherwise governmental type unit that cooperates with the city through its city administrator in purchasing any items covered by this section.

Department heads: The person that is the head of a major function of the city and reports directly to the city administrator.

Item: Anything that is one (1) each, i.e., one (1) backhoe, one (1) car, one (1) radio, one (1) total project, one (1) service contract. An item cannot be subdivided to avoid the requirements of this section.

Local business preference: A five percent (5%) reduction may be applied to the bid of a local business (as defined by operating within the geographical boundary of Effingham County, Illinois) for comparison purposes, provided the reduction amount does not exceed one-thousand dollars (\$1,000.00).

Purchase order: A document generated by the deputy city administrator's office, which authorizes the purchase of any supplies, materials, or services, with the exception of routine, recurring services or lot purchases. Any purchase of a combined total that will cost more than two-thousand-five-hundred dollars (\$2500.00) from the same vendor or service provider requires proper approvals before the purchase is made.

Purchase order requisition form: A document generated by the employee requesting a purchase order from the deputy city administrator's office authorizing a purchase.

Professional service: The performance of a technical or professional service by a person, group, or company requiring specialized knowledge, intensive academic or technical training, and/or a high degree of expertise such as engineers, lawyers, programmers, accountants, financial advisors, appraisers, real estate specialists, urban planners, and medical personnel.

Supplies: All commodities, materials, or equipment used in the daily operation of the city.

Total purchase: The mathematical extension and total of all items being purchased on a purchase order, contract or any other type of agreement including freight and labor associated with said purchase.

Using departments: Any commission, committee, department, or unit of the city government using supplies or procuring contractual services as provided for in this section and which shall be under the direction and/or control of the city council.

(h) *Bidding.*

(1) *Bidding.* All purchases and contracts for supplies and contractual services, except for professional and engineering services and all sales of personal property that have become obsolete and unusable shall, except as expressly provided in this chapter, shall be based wherever possible on competitive bids, with the following exceptions:

- a. Motor fuel to operate city-owned vehicles and equipment;
- b. Monthly utility supply purchases;
- c. Monthly insurance payments;
- d. Bond payments;
- e. Where a bona fide emergency exists or public health and safety requires the expedited authorization and expenditure of monies;
- f. Purchases of supplies or services less than twenty-five thousand dollars (\$25,000.00).

(2) *Formal purchasing procedures.* All supplies, services, equipment, and projects, except as otherwise provided herein, when the extended cost thereof shall equal or exceed twenty-five thousand dollars (\$25,000.00) shall be purchased through a formal competitive bid process with a formal written contract from the lowest responsive and responsible bidder, unless otherwise justified after due notice inviting proposals.

When goods or services are bought under the formal competitive bidding process, specifications must be prepared by the department head, public works director, deputy city administrator, or the city administrator. Specifications, regardless of the type, should do four (4) things:

- a. Identify minimum requirements;
- b. Allow for a competitive bid;
- c. Be capable of objective review; and,
- d. Provide for an equitable award at the lowest possible cost.

(3) *Solicitation of bids.*

- a. *Formal bids.* The city administrator, or his or her designee, shall by certified or registered mail, or in his/her discretion by first class mail, courier, or by electronic mail, solicit sealed bids from at least three (3) responsible prospective suppliers setting forth detailed specifications and all pertinent information necessary for the prospective supplier to file a bid or proposal. The invitation to bid will also be advertised one (1) time in at least one (1) legal local paper and on the City website. The bid process should be approximately two (2) weeks or ten (10) working days (excluding Sundays and holidays) from the first ad published. Prospective suppliers or service suppliers to whom invitations to bid are sent shall be limited to those who are part of the trade group offering commodities and services similar in character to that being purchased. If the administration is unable to reasonably find three (3) responsible suppliers, certification of that will be forwarded to the city administrator, who may deem the lesser number to be in compliance with the requirements of this section. The provisions of this section may be waived when the department head and the city administrator agree that following this section's provisions may cause excessive delay, public inconvenience, and/or a significant cost penalty.
- b. *Bond.* Every contract awarded for public works shall be accompanied by a payment/performance bond with:
 1. Corporate surety licensed to do business in the State of Illinois; or,
 2. Cash in the form of a cashier's check, conditioned upon the faithful performance of the contract of said work and payment of all subcontractors and suppliers.
 3. Contracts under one hundred thousand dollars (\$100,000.00) may provide a bank letter of credit.
 4. Said bond or letter of credit shall be equal to at least the entire amount of the public works contract.
- c. *Bid bond required.* All public works contracts shall be bid requiring a five percent (5%) bid bond.
- d. *Lien waivers required.* All contracts shall require lien waivers prior to final payment.
- e. *Bid packet and bid list.* The City Clerk's office shall maintain a bid list for all bids directly administered by the City pursuant to this section. Said list shall capture the name of the business, the date the bid packet was picked up, and confirmation that the bid packet was received. An electronic version of the plan and specifications may be available in lieu of paper plans and specifications.
- f. *Manner of submission of bids, bid opening, recommendations to the council.* Sealed bids or proposals shall be submitted to the City and shall be identified as to the bid involved on the envelope. The City shall note the date and time the sealed bid was received. The bids shall be opened in public at the time and place stated in the invitation to bid and in any public notices. After the opening, the

department head requesting the bid shall review and file a report to the city administrator with his/her recommendation and justification. The city administrator will process the bid in accordance with [subsection] (j), Approval.

- g. *Award of contract to best bidder.* The City shall award the contract to the "best" bid, not necessarily the lowest bid and shall have the right to reject any and all bids. The city council, by a minimum vote of two-thirds ($\frac{2}{3}$), may determine the best bid is not the lowest bid. When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the department head and forwarded to the city administrator for city council consideration. This statement will be filed with the bid documents.
- h. *Factors for determination of best bid.*
 - 1. Cost to the City.
 - 2. The ability, capacity, and skill of the bidder to perform the contract or provide the services required.
 - 3. Whether the bidder can perform the contract or provide the services within the time specified without delay or interference.
 - 4. The character, integrity, responsibility, judgment, experience, and efficiency of the bidder.
 - 5. Whether the bidder is in default on the payment of taxes, licenses, or monies due the City. This factor alone shall justify disqualification.
 - 6. Whether the bidder is delinquent in the payment of any tax administered by the Department of Revenue unless the individual or other entity is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of tax.
 - 7. The quality and performance of previous contracts or services.
 - 8. The ability of the bidder to come in under or at bid for previous contracts or services.
 - 9. The previous and existing compliance by the bidder with laws, provisions of the ordinance, and any other city ordinances relating to the contract or service.
 - 10. The quality, availability, maintenance, and adaptability of the supplies or contractual services to the use required.
 - 11. Local business preference.
 - 12. That all taxes or other monies billed by the City are paid in full and that all licenses required by the City are in proper order.
 - 13. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- i. *Informal purchasing procedures.* All purchases of supplies and personal services that cost more than two-thousand-five-hundred dollars (\$2,500.00) and less than twenty-five thousand dollars (\$25,000.00) shall be made upon the basis of at least

two (2) quotes from two (2) prospective suppliers. If the department head is unable to reasonably find two (2) responsible suppliers or service providers, certification of that will be forwarded to the city administrator, who may deem the lesser number to be in compliance with the requirements of this section. The provisions of this section may be waived when the department head and the city administrator agree that following this section's provisions may cause excessive delay, public inconvenience and/or a significant cost penalty. The department head requesting the services or materials will solicit quotes by direct mail, electronic media, or telephone, and receive the quotes either by direct mail, electronic media, or via fax. All quotes will be recorded and attached to the purchase order requisition form at time of submittal to the city administrator for approval.

- j. *Open market procedure.* Purchase of supplies and contractual services that cost two-thousand-five-hundred (\$2,500.00) or less can be made on the open market without bids or quotes. Departments shall always strive to maximize value and to minimize costs when making these purchases.
- k. *Purchasing process waiver.* The bidding or quotes process may be waived for the purpose of purchasing goods and services for the following situations:
 - 1. Where bids, contracts, or cooperative purchasing agreements such as the Illinois Department of CMS or a cooperative agency are established.
 - 2. Where professional services of a specialized nature are required.
 - 3. There exists only a sole supplier.
 - 4. Where the standardization of parts and replacement is absolutely necessary.
 - 5. Where ensuring compatibility with existing City equipment is in the best interest of the City.
 - 6. Where it is advantageous for the City to remain with a current provider of professional services to maintain continuity in municipal operations (i.e., liability insurance, worker's compensation insurance, health insurance, employee assistance program).
 - 7. Where the City desires to implement a renewal clause within an existing agreement and/or contract.
 - 8. In case of emergency.
 - 9. When immediacy produces the most cost-effective purchasing power for the City.
 - 10. To protect life, limb, and property.
 - 11. For other reasons as deemed necessary by the city council.
- l. *Emergency purchasing procedures.* In the event of an apparent emergency that requires immediate purchase of supplies or contractual services, the city administrator is empowered to secure by an open market procedure, at the lowest obtainable price, any supplies or contractual service regardless of the amount of

the expenditure. A full report of the circumstance of an emergency purchase shall be filed by the city administrator with the city council and shall be entered into the official records of the council.

- m. *Single source purchasing.* The requirement of competitive bids or quotes for supplies may be waived when the city administrator has determined that there is only a single feasible source for the procurement. A single source exists when:
 - 1. Supplies are proprietary and only available from the manufacturer or a single distributor.
 - 2. Based on past procurement experience, it is determined that only one (1) distributor serves our region.
 - 3. Supplies are available at a discount from a single distributor for a limited period of time.
 - 4. In order to match or fit with equipment already on hand.
- n. *Authority to engage in cooperative purchasing.* The city administrator shall have the authority to join with other units' cooperative agencies in cooperative purchasing when it would serve the best interests of the city. When engaged in cooperative purchasing, i.e., State of Illinois, General Services Administration, etc., in which case bidding has already been conducted by another agency, the requirement of competitive bids or quotes shall be waived.

(i) *Purchasing procedures and approval authorizations.*

- (1) All purchases shall require a purchase order number, with the exception of routine, recurring services. All purchases of more than two-thousand-five-hundred dollars (\$2,500.00), with the exception of routine, recurring services, shall require a purchase order number before the purchase is made. The employee shall initiate the procedure by completing a purchase requisition, providing the vendor's name, address, phone number, the quantity, the description and the cost of the item or items per unit being ordered and shipping costs, if any. The purchase order request will then be approved pursuant to [subsection] (j).
- (2) Routine services such as utility billings, credit card services, fuel card services, uniform services, recreational concessions, legal services, bonds, loans, notes, leases, payroll taxes, and health insurance shall not require a purchase order.
- (3) The expenditure of funds for items which have been previously approved pursuant to council actions (such as resolutions) shall not require council approval.
- (4) Water deposit refunds, payroll tax withholdings, and inter-fund payments for goods and services (i.e., accounting and reengineering reimbursements) shall not require council approval.

(j) *Approval.*

- (1) The department heads, city engineer, and public works operations manager may approve the purchase of budgeted expenses, including contractual and professional services, up to fifteen-thousand dollars (\$15,000.00).

- (2) The deputy city administrator and city administrator may approve the purchase of budgeted expenses, including contractual and professional services, up to twenty-five thousand dollars (\$25,000.00).
- (3) The city council may approve the purchase of budgeted expenses, including contractual and professional services, over twenty-five thousand dollars (\$25,000.00).
- (4) Unbudgeted items shall require approval by the city administrator or deputy city administrator, pursuant to subparagraph (j)(8).
- (5) The city council shall pre-authorize all capital expenditures within the expressed 5-Year Capital Improvement Plan and Maintenance Improvement Plan either through the budget process or by motion in a city council meeting before the purchasing process will begin. All planned capital expenditures shall be identified in the annual budget process. The city administrator or deputy city administrator may approve the actual purchase of budgeted capital equipment and capital projects if the purchase does not exceed the estimated budgeted amount for said capital expenditure by more than ten (10) percent. The city administrator or deputy city administrator shall notify the city council concerning the status of all budgeted capital expenditures. If said capital expenditure exceeds the authorized budgeted amount by more than ten (10) percent, the purchase shall require city council approval prior to purchase or the award of the authorization to proceed.
- (6) Contractual services. Contracts for contractual services over twenty-five thousand (\$25,000) shall require authorization and approval by the city council. The mayor and/or city administrator (or deputy city administrator) will approve and sign all agreements for contractual services pursuant to authorization by the city council. The contracts will be filed with the city clerk, and a purchase order for encumbrance of funds sent to city administrator before work commences.
- (7) Professional services. Contracts for professional services over twenty-five thousand (\$25,000) shall require authorization and approval by the city council. A contract, signed by the mayor and/or city administrator (or deputy city administrator) pursuant to authorization by the city council, shall be filed with the city clerk and a purchase order for encumbrance of funds sent to city administrator before work commences.
- (8) Unbudgeted purchases. The city administrator or deputy city administrator may approve unbudgeted items up to ten-thousand dollars (\$10,000.00). Unbudgeted expenses over ten-thousand dollars (\$10,000.00) shall require city council approval.
- (9) Change orders to a non-capital, existing purchase order or contract shall follow the same approval guidelines as regular purchases with the new total not exceeding their respective authorization levels.
- (10) Change orders for capital project shall require city administrator or deputy city administrator approval. The city administrator or deputy city administrator shall advise the city council of the change order approval and the nature of the change during the next city council meeting. Change orders that increase or decrease the total contract price more than ten-thousand dollars (\$10,000.00) or reduce or extend the contract length by thirty (30) days or more shall require city council approval.

- (11) Emergency/exigent circumstances. Where a bona fide emergency situation or public health and safety require the immediate authorization of expenditure of funds, city council approval shall not be required. However, during the next regularly scheduled meeting of the city council, the city administrator shall brief the council concerning the nature of the purchase and emergency.
- (12) Contingency. All other purchases or contracts not included above shall require city council approval.
- (k) *Authorizations.* Authorization shall be made by the person in the described position or the person delegated by that position in his/her absence or non-availability. This shall include the mayor, city council, city administrator, deputy city administrator, and department heads as defined within this policy, [subsection] (g).
- (l) *Transfers.*
 - (1) The city administrator may make transfers within a department's budget, as may be necessary for the successful financial management of the department's budget.
 - (2) The city administrator shall have the authority to make transfers from one (1) department budget to another department budget within the same fund.
 - (3) The city administrator shall be authorized to make administrative transfers to correct accounting procedures such as classification errors.
- (m) *Petty cash.* Pre-approved petty cash purchases shall be limited to a maximum of one hundred dollars (\$100.00). Petty cash reimbursements shall be limited to a maximum of one hundred dollars (\$100.00).
- (n) *Sale of equipment or property.*
 - (1) All sales of real and personal property that has become obsolete and unusable and has an estimated value of one thousand dollars (\$1,000.00) or more will be declared as surplus property by the city council and shall be sold:
 - a. By using the formal bid method as described in the purchasing procedures and awarded to the highest responsible bidder; or,
 - b. By holding a public auction that has been advertised a minimum of one (1) time, in a legal local newspaper. The property will be awarded to the highest bidder meeting the criteria of the auction.
 - (2) The City may dispose of used equipment by trading it in on new purchases. In this case, the net cost of the new equipment, less the trade in, will be used in the comparison of bids.
 - (3) The city council may declare items of personal property as surplus in which case these items may be offered to another governmental or tax supported agency at lower than market value.
 - (4) Items valued at less than one-thousand dollars (\$1,000.00) may be declared as surplus by the city administrator and discarded in the most efficient method available depending on condition, salvage value, useful life remaining and other pertinent factors.

- (o) *City council.* The city council in its sole and absolute discretion may waive or modify any and all aforementioned procedural requirements.
- (p) *Conflict of interest—City purchases.*
 - (1) *Prohibition of interest.* Any City officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the City or in the sale of any land, material, supplies or services to the City or to a contractor supplying the City, shall make known that interest and shall refrain from voting upon or otherwise participating in the making of such contract or sale. Violations of this section with the knowledge express or implied of the person or corporation contracting with or making a sale to the city shall render the contract voidable by the city council.
 - (2) *Officers and employees not to deal with certain entities.* No officer or employee of this City shall enter into any private business transaction with any person or entity that has a matter pending or to be pending upon which the officer or employee is or will be called upon to render a decision or pass judgment. If any officer or employee is already engaged in the business transaction at the time that a matter arises, he/she shall be disqualified from rendering any decision or passing any judgment upon the same.
 - (3) *Unfair advantage.* In order to protect the integrity of the procurement process, bidders are advised that the City of Effingham shall reject a bid in the following circumstances: if the bidder, any of its subcontractors, any of their respective employees or former employees was involved in any manner in the preparation of the bid specifications, requirements, scope of services, or request for proposals, if the bid specifications, in the City of Effingham's opinion, gives the bidder an unfair advantage.
- (q) *Pre-authorized payments by City to certain vendors.* The city treasurer is hereby pre-authorized to process the requested payment, upon receipt of the bill or invoice from any entity which:
 - (1) Shall supply utilities (including but not limited to electric, telephone, internet, cable, and natural gas) and solid waste removal to the City of Effingham; or,
 - (2) Shall supply employee insurance services (including but not limited to major medical, pharmacy, dental, and life insurance); or,
 - (3) Shall supply employee retirement benefits (IMRF or another entity contracted to provide said service); or,
 - (4) Shall supply routine services that require quick and efficient payment to avoid late fee penalties (including but not limited to credit services, fuel services, chemicals, and park concession supplies); or,
 - (5) Shall supply services or a product that was obtained through a contractual agreement or that was previously approved by the city council; or,
 - (6) Issued general obligation, tax increment finance, or revenue bonds on behalf of the city. The City shall pay said bill within the time required by the provider, but shall review said bill for accuracy and determine as to whether or not said bill is lawfully owed. If said bill or invoice is required to be paid in the reasonable and normal course of business before a lawfully constituted meeting of the city council, the mayor, city

administrator, deputy city administrator, and city treasurer, shall be authorized to pay said bill prior to official approval by the city council. However, the aforementioned bill and/or invoice and record of payment shall be presented to the city council at the time other monthly bills are presented—such presentment shall be for purposes of inspection and review. If the city council determines that said bill was in any way overpaid, then the city council shall order that a credit be taken on the next month's payment.

- (r) *Illinois products/contractual services.* In letting contracts for the performance of any job or service, the City shall give preference to all firms, corporations, or individuals doing business as Illinois firms, corporations, or individuals, or which maintain Illinois offices or places of business, when the quality of performance promised is equal or better and the price quote is the same or less.

Section III. Invalidity. In the event a court of competent jurisdiction declares any particular provision of this Ordinance to be invalid or unenforceable, the remaining provisions of this Ordinance shall be construed to be valid and enforceable. The invalidity of any part of this Ordinance shall not affect any other part or parts thereof.

Section IV. Effective Date. This Ordinance shall be in full effect from and after passage and approval as provided by law.

Section V. All prior ordinance or resolution of the City of Effingham, Illinois, contrary to the terms and conditions of this Ordinance shall be deemed to be repealed as of the effective date of this Ordinance.


Placed on file this 13th day of March, 2023.

Presented, passed and approved this 4th day of April, 2023.


Mayor Schutzbach:	<u>Yea</u>
Commissioner Stephens:	<u>Yea</u>
Commissioner Micenheimer:	<u>Yea</u>
Commissioner Gillenwater:	<u>Yea</u>
Commissioner Moeller:	<u>Yea</u>

YEAS: 5
NAYS: 0

CITY OF EFFINGHAM, ILLINOIS


Michael Schutzbach, Mayor

ATTEST:


Abbey Nosbisch, City Clerk