



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

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Dated: February 29, 2012

ORDER NO. S-155

RE: Ordinance establishing a purchasing procedure

TO: Sherikia Hawkins, City Clerk
John Naglick, Finance Director

The **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** in **Section 17(1)** empowers an Emergency Manager to issue the orders the Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local officials or employees to whom they are issued. **Section 19(1)** provides that an Emergency Manager may take on one or more additional actions with respect to a local government in receivership: **(dd)** [e]xercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and the governing body concerning the adoption, amendment, and enforcement of ordinances...; and **19(2)** ...the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the Emergency Manager.

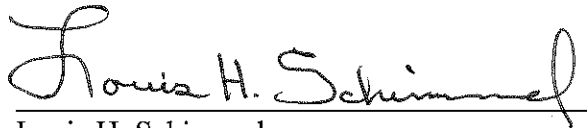
It is hereby ordered:

1. That the attached Ordinance No. 2233, an ordinance to establish a purchasing procedure for the City of Pontiac, is adopted, effective upon publication.
3. That the City Clerk shall take all actions required under the law to reflect the attached ordinance changes on the City books and records, including publication of the adopted ordinance.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (**Public Act 442 of 1976, MCL 15.231, et. seq.**).

This Order is necessary in order to carry out the duties and responsibilities required of the Emergency Manager as set forth in the **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** and the contract between the State of Michigan and the Emergency Manager.

A handwritten signature in cursive script that reads "Louis H. Schimmel". The signature is written in black ink and is positioned above a horizontal line.

Louis H. Schimmel
City of Pontiac
Emergency Manager

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council

Ordinance No. 2233

An ordinance to establish a purchasing procedure for the City of Pontiac

The City of Pontiac ordains:

Section 1. Amendments.

Chapter 2, Article IV, Division 2 of the Code of Ordinances shall be amended to read as follows:

DIVISION 2. - PURCHASING

Sec. 2-516. - Legislative purpose.

- (a) This division is to provide for the purchasing of and disposition of property by the city, and for the changes in the administration and procedures of the purchasing division consistent with the Charter.
- (b) The people of the city by referendum vote have adopted a Charter effective May 3, 1982; and that Charter made significant changes in the administration of the purchasing department by assigning its functions to a division of the finance department, imposing upon it the responsibility of procuring all property and contracts for the city and disposing of all personal property which has become unsuitable for city use, unless provided otherwise by ordinance or administrative procedure, and requiring that all procurements and dispositions be made in accordance with open and fair procedures.
- (c) The procedures for procuring property and services and the disposition of property are to be established by ordinance to protect the interest of the city and to assure fairness; and the Charter provides that those procedures shall require competitive bidding for all purchases and contracts for procurement that exceed a dollar amount fixed by ordinance.

Sec. 2-517. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contract means any city contract, including contracts awarded by competitive bidding, single-source or negotiated contracts, or contracts awarded by any other procurement process and whether or not done in conjunction with any other government agency, or public or private entity. Purchase orders and so-called blanket purchase orders are contracts under the provisions of this division.

Division means the purchasing division of the finance department.

Invitation for bids means the complete assembly of related documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

Lowest responsible bidder means that bidder who submits the lowest bid, conforming to specifications, as evaluated under pursuant to section 2-519, and who is qualified by meeting the following standards as they relate to the particular contract under consideration. The bidder must demonstrate:

- (1) Adequate financial resources for performance, or the ability to obtain such resources as required during performance, as determined by the purchasing agent, after consultation with the department that will be utilizing the goods or services procured, and the necessary experience, organization, technical qualifications, skills and facilities, or has the ability to obtain them (including probable subcontractor arrangements);
- (2) Ability to comply with the proposed or required time of delivery or performance schedule;
- (3) A satisfactory record of integrity, judgment and performance (contractors who are delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall, in the absence of evidence to the contrary or compelling circumstances, be presumed to be unable to fulfill this requirement);
- (4) Qualifications and eligibility to receive an award under applicable laws, ordinances and regulations; and the ability to comply with applicable bonding and insurance requirements;
- (5) That the bidder is not disqualified under section 2-528, pertaining to contractors or vendors in default or indebted to the city, of this division.

Major means a purchase or contract of not less than the specified dollar valuation of a contract as set forth below in relation to the corresponding contract classification. A contract or purchase that is "major" shall be considered as exceeding the dollar amount requiring competitive bidding as defined in this section, pursuant to section 4.304 of the Charter.

MAJOR CONTRACTS

Purchases of materials, equipment and supplies over \$10,000.00

Public work contracts for demolition, street paving, or other construction over \$10,000

Other purchases and contracts, including services (including, but not limited to, tree removal, catering, janitorial, maintenance, etc.) over \$10,000.00

Disposition of materials, equipment and supplies pursuant to section 2-520 over \$10,000

Disposition or purchase of real property pursuant to section 2-520 over \$10,000.

Contracts and purchases shall not be divided into units smaller than the amounts set forth above in order to avoid being classified as major.

Professional service contract means a contract for services to the city or any agency of the city by physicians, attorneys, accountants, architects, engineers, or any other person rendering service to the city which would usually be considered professional.

Purchasing agent means purchasing agent of purchasing division, finance department, of the city.

Subcontract means an agreement between a subcontractor and a contractor under which the subcontractor will provide goods, services, materials, equipment or supplies to a contractor.

Subcontractor means any person providing goods, services, materials, equipment or supplies to a contractor.

Unit means any item offered for sale by the city as a separate item, or, when items to be sold by the city are deemed to be more readily saleable in groups, any group of items offered for sale by the city in a group and not separately.

Sec. 2-518. - Centralized purchasing authority.

Except as otherwise provided in this division, all rights, powers, duties and authority relating to the procurement of supplies, services and construction, in or exercised by the city or any agency of the city, and the sale and disposal of materials, equipment and supplies owned by the city or any agency of the city, are hereby transferred to the finance director and purchasing agent as provided in this division and the Charter, sections 4.303 and 4.304.

Sec. 2-519. - Duties of purchasing agent.

All purchases by the purchasing agent shall be made in the following manner:

(1) If the purchase is major as defined in this division, the purchasing agent shall proceed to obtain competitive bids as follows:

a. Prepare the invitation for bids, describing the requirements of the city clearly, accurately and completely, but avoiding restrictive specifications that might unduly limit the number of bidders. (See section 2-526 regarding specifications for construction contracts and purchases where written specifications are utilized.)

b. Publicize the invitation for bids by advertising for bids on the City's webpage for at least seven calendar days. In cases where the purchasing agent deems it advisable, he may also advertise for such bids in trade journals and other publications, and may send copies of such advertisement to persons and firms likely to be interested therein. Such advertisement shall accurately and clearly describe or refer to the subject matter of the proposed purchase, and may refer the bidder to specifications on file in the purchasing agent's office. Such advertisement shall also contain information as to the time and place of submitting bids, and such other information from the specifications as the purchasing agent shall deem advisable in the interest of the city. After publication of one advertisement, specifications shall not be changed prior to the award of the contract without the publication of a new advertisement calling attention to such change, or, in the case of a change or correction of the specifications in a purchase or project where written bid documents have been prepared and obtained by prospective bidders, changes not affecting the scope of the project may be made by written addendum sent to all parties who have obtained bid documents, in which case such changes may be made without readvertising. Sufficient time shall be allowed to enable prospective bidders to prepare and submit bids before the time set for public opening of bids. Any invitation or solicitation for bids shall reserve in the city the right to reject any and all bids, and the right to determine whether each bidder is a responsible bidder in accordance with qualifications and standards duly adopted by the city.

c. Receive written bids submitted by prospective contractors.

d. The above requirements for competitive bidding shall not be applicable if any one of the following conditions is found to exist:

1. The expenditure involved is not "major" as defined in section 2-517
 2. Public emergency requires the immediate delivery of the articles or performance of the service;
 3. Only one source of supply is available and the purchasing agent shall so certify;
 4. The item to be acquired is rare or unique and the purchasing agent shall so certify.
- e. When an invitation for bids is published, it shall designate whether or not the bids shall be sealed bids and whether or not they will be opened in public. The purchasing agent shall determine when sealed bids and a public opening shall be required based upon standards set forth in the administrative rules adopted under this division.
- (2) If the purchase or sale entails an expenditure that is not "major" as defined in section 2-517, the purchasing agent is authorized to let the contract subject to the following conditions:
- a. Proposals shall be solicited by the purchasing agent from qualified persons.
 - b. The practice of competitive bidding is required, but formal advertising shall not be required.
 - c. The purchasing agent must make a determination that the prospective contractor is responsible. The purchasing agent should utilize all available information from within the purchasing division and other city departments, from the prospective contractor, from banks and other financial companies, in order to ascertain whether the prospective contractor is responsible, under the guidelines set forth under "lowest responsible bidder" in this section.
 - d. No contract shall be awarded by the purchasing agent under this subsection (2) until the purchasing agent shall have made a determination that the contract price is reasonable, based upon the following criteria:
 1. Other recent contracts for same or similar materials or services, under the same or similar specifications;
 2. The price bid by the prospective contractor is validated by a federal, trade or other recognized index, to the extent possible;
 3. Allowance for a reasonable profit considering prevalent market conditions;
 4. An adequate number of proposals were submitted to ensure a fair price; or
 5. Any other relevant factors.
- (3) The following provisions shall apply to all purchases and/or contracts entered into pursuant to this division.
- a. Any person who submits a bid or proposal to the city shall comply with all reasonable requirements of the city and any agencies of the city regarding the submission of statements and information as to the qualifications of the bidder; its experience in completing contracts or constructing the type of improvements bid upon; the bidder's organization and the equipment owned by the bidder or available to the bidder for the work; and any detailed

financial statement requested.

b. The city may reject the proposal or bid of any person who it determines is not qualified to perform the obligations to be performed pursuant to the contract in question. The city may reject any proposal by any bidder as unqualified whom does not habitually perform and complete a major portion of contract work with its own forces or does not follow the city's requirements for submitting bids.

Sec. 2-520. - Disposition of excess or obsolete property.

(a) The purchasing agent shall sell by sealed bid or auction all personal property of the city no longer necessary or which shall have become unsuitable for public use or which may have been condemned as useless or deemed unnecessary to the city by any of the various departments, offices, boards, courts, commissions and institutions. All items, however, that are determined by the purchasing agent and the director of the utilizing department to be of greater value when traded in or transferred to a supplier as payment or partial payment for new equipment of a same or similar nature shall be disposed of by the purchasing agent in this manner. All personal property with a unit value less than or equal to \$10,000.00, or fungible property to be disposed of in bulk with a value of less than or equal to \$10,000.00, shall be considered minor, and no public hearing shall be required prior to the sale thereof, pursuant to section 3.113 of the Charter. All personal and real property valued over \$10,000.00 may be disposed of only after public hearing and approval by resolution of the council, but the city council may waive a sealed bid process for the disposal of real property.

(b) The same procedures shall be followed in the disposal of property under this section, as near as may be, as in the case of purchases, except that disposition of personal property which is not in the ordinary course of business shall be made in accordance with the provisions of section 2-523

(c) The values for property to be disposed of under this section, for the purposes of this section, shall be determined by the agreement of the purchasing agent and the director of the utilizing department, who may rely on the sources commonly used by persons dealing in the type of equipment in question in establishing such values.

(d) Once the value of property for purposes of this section is determined to be under or equal to \$10,000.00, such valuation shall not be affected if more than \$10,000.00 is subsequently bid for or paid for the property.

Sec. 2-521. - Professional service contracts.

Professional service contracts are excluded from the provisions of this division. The mayor shall with the concurrence of the council adopt administrative rules regarding the retention of professional services. However, any contract for professional services in excess of \$10,000.00 must have the express approval of the council.

Sec. 2-522. - Other powers of purchasing agent.

The purchasing agent shall have such other powers and perform such other duties as are prescribed by the Charter and this division or may be necessary under this division or the Charter for the proper discharge of his duties. The powers and duties of the agent and of the purchasing division, as set forth in this division, shall be regarded as supplemental to the powers and duties as set forth in the Charter and other ordinances of the city, and shall not be deemed to restrict or circumscribe powers and duties elsewhere granted or imposed.

Sec. 2-523. - Cooperatative Purchasing participation.

The City Council shall have the authority to join with other units of government in cooperative purchasing plans when it is in the best interests of the city. The cooperative purchasing may include but is not limited to joint or multiparty contracts between public purchasing units and open-ended state or federal public purchasing unit contracts which are made available to the city, notwithstanding any other provisions of this article. The city may also utilize cooperative purchasing organizations, including those using electronic bidding, to purchase supplies and services when deemed by the purchasing agent or city council to be in the best interest of the city. In such instances, where bids are received through a formal cooperative purchasing program or when bids are received by another governing unit for an item that meets the needs of the city, the advertising and bidding requirements identified in this ordinance shall be deemed to have been met.

Sec. 2-524. - Disposition of unique and rare items.

The purchasing agent is hereby authorized to contract for the disposition of unique and rare items, including, but not limited to, art objects, antiques, books or animals, by competitive bidding, either in writing or at auction, or by negotiated sale or competitive negotiation, in the purchasing agent's discretion. Disposition of such items except those defined as minor in section 2-520 shall be subject to the approval of the city council.

Sec. 2-525. - Security.

The mayor is authorized to adopt administrative rules on security requirements, including but not limited to bid bonds and insurance and indemnity requirements, in order to provide reasonable security to the city. This provision shall be interpreted as supplemental to, and not as a substitute for, the requirements relating to bid and performance bonds as may be required by law.

Sec. 2-526. - Specifications, contracts and bid documents for construction contracts and purchases.

(a) Specifications, contracts and bid documents for construction contracts and purchases where written specifications are utilized shall be drawn in accordance with the directives set forth in this division and shall be prepared by the using department, subject to the approval of the purchasing agent. Whenever a commodity is to be procured or disposed of by more than one department, the purchasing division shall establish standard specifications after consulting with all involved departments.

(b) Notwithstanding the foregoing provisions regarding the preparation of contract specifications and the provisions of this division regarding the procedures for advertising, bidding and award of city contracts, the administration of construction contracts after the award thereof shall be the responsibility of the engineering division or other department or division as designated by the mayor, and not the purchasing agent.

Sec. 2-527. - Requirement for tax or appropriation; payment for goods and services.

(a) No contract shall be let or entered into for the construction of any public work until the city council has levied a tax or assessment to defray the cost and expenses of such construction, or until the city council has created a local assessment district for the levy of a special assessment therefore or until an appropriation has been made therefore in the duly adopted city budget. The creation of a local assessment district for any improvement shall be a sufficient appropriation under the terms of this

division.

(b) No obligations shall be incurred against, and no payments shall be made from, any allotment or appropriation except in accordance with appropriations duly made and unless the budget control officer certifies that there is a sufficient unencumbered balance in the allotment or appropriation and that sufficient funds will be or are available to meet the obligation.

(c) Whenever the city is a party to any contract or other instrument, the department head of the using department shall attach a certification to the purchase order or other instrument, stating that property purchased was received in proper condition in accordance with the specifications for the purchase or contract, before payment is made.

Sec. 2-528. - Contractors or vendors in default or indebted to city.

No bid shall be accepted from or contract awarded to any person who is in arrears to the city upon debt or contract, including payments of real property taxes, or an income tax obligation of any kind, or who is in default as to security or otherwise upon an obligation to the city, nor any person who shall in other respects be disqualified according to the provisions of this division, or any other provision of this Code or the Charter. The city treasurer shall maintain a record of those entities that are in arrears on any obligation to the city as provided in this section and furnish an updated copy thereof to the purchasing agent regularly.

Sec. 2-529. - Violations and penalties.

Any person who shall violate any provision of this division shall be punishable in accordance with the provisions of section 1-25 of this Code. Any material misrepresentation to the city by a bidder, vendor or contractor, or prospective bidder, vendor or contractor, included in any material submitted in a bid or proposal or otherwise submitted to the city in connection with an attempt to obtain a contract with the city or engage in a business transaction with the city, shall be a violation of this division, and may be considered sufficient basis to disqualify the contractor or vendor from eligibility for the award of a city contract.

Sec. 2-530. - Conflict of interest.

The conflict of interest provisions contained in section 6.107 of the Charter shall apply to any and all transactions arising under this division.

Section 2. Severability.

If any section, clause, or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

Section 3. Repealer

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 4. Emergency Declaration

This Ordinance is hereby determined to be immediately necessary for the preservation of the public health, safety, and welfare and shall be in full force and effect upon publication as required by law.