


McGINTY, HITCH, PERSON & ANDERSON, P.C.

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney 

RE: **Purchase of Personal Property without Competitive Bidding**

DATE: July 22, 2022

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The purpose of this memorandum is to address what is, by all appearances, a common circumstance in which personal property is being purchased by the City without competitive bids. As discussed at recent Council meetings, competitive bidding is provided for by ordinance, but seldom used for the typical purchase of personal property obtained by the City. I have been asked to determine whether the practice of purchasing property without competitive bidding is proper, given the City Charter and the ordinance that regulates the purchase of property by the City, including personal property.

At Section 15.2 of the Charlotte City Charter, it is provided that the Council shall establish, by ordinance, the procedure for the purchase and sale of personal property. The Charter provision provides that the ordinance shall also provide dollar limits within which purchase and sales of personal property may be made without securing competitive bids, and the dollar limit when sales may be made without approval by Council. Thus, in my opinion, the Council has the discretion to purchase personal property as provided by the Charter, without competitive bids.

In implementing this Charter provision, Division 3 of Article V of Chapter 2 of the City Code of Ordinances sets out the procedure for purchasing, contracting and selling real and personal property by the City.

At § 2-178 Paragraph (E)(1), it is provided:

(E) Competitive bidding may not be required in the following cases:

(1) Where the subject of the contract is other than a public work or improvement and the product or material contracted for is not competitive in nature or no advantage to the city would result from requiring competitive bidding and the Council by resolution authorizes execution of a contract without competitive bidding;

At § 2-180(A), it is provided as follows:

(A) Any expenditure for supplies, materials, equipment, construction projects or contracts obligating the city, where the amount of the city obligation is in excess of

\$5,000 or such other amount which may be established by the Council by resolution, must be approved by Council.

Taken together, these Code provisions provide the Council with clear authority to authorize purchases over \$5,000 without competitive bidding. In Subsection (E)(1), the administration is given the discretion for the purchase of personal property other than a public work or improvement where the product or material is not competitive in nature or no advantage to the City would result from requiring competitive bidding. So long as Council authorizes the purchase being fully aware that there was no competitive bidding, it may approve such purchase of personal property.

Likewise, in § 2-180, the City is authorized to, again, make purchases over \$5,000 so long as it is approved by Council.

It is therefore my opinion that it is entirely proper for the City to make purchases of the sorts of personal property where the City can easily ascertain the best price without a bid, or where there is no advantage to the City in requiring competitive bidding. As discussed at the Council meeting, the City has established relations with a number of vendors and the solicitation of informal quotes, to obtain the best price, clearly demonstrates that it is of no advantage for competitive bidding.

As a general proposition, the acquisition of personal property will not be through a competitive bidding process. It is reasonable for Council to assume that there is no competitive bidding and because it would be unusual, the City Administration should, in the acquisition of property, make it known to Council whether there was a competitive bid. It is reasonable for the Council to assume, if not told otherwise, that the purchase of the personal property was not pursuant to competitive bids because there is no advantage to do so and that with that understanding, it is proper for the Council to approve the purchases without such competitive bids.

TMH:cf