



## Office of the City Attorney

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### Memorandum

To: Finance Committee  
From: Brian Running  
Re: Informal Bid Process under Finance Policy F-6.2.1

This memo is in regards to the item submitted by the Fire Department, requesting that an informal bid process be followed in the purchase of breathing apparatus. The purpose of the memo is to explain the relevant portions of Finance Policy F-6.2.

F-6.2.1 provides for two methods of making purchases over \$25,000: By “sealed bids,” or by “informal bids.” It is up to the relevant committee, commission or board to determine which process will be used. In this particular case, the Finance Committee is the relevant committee.

It is in the Committee’s discretion whether to allow an informal bid process, but the committee must take into account the best interests of the City in the decision. The Committee is free to consider whatever factors it finds relevant, but these four must be considered:

1. The nature of the product being purchased.
  - *Whether the goods are highly technical, specialized, and require a certain level of expertise to make a purchase decision.*
2. The product’s availability in the market.
  - *Whether the goods are widely-available, in the nature of a commodity, or are only available from a few, specialized sources.*
3. Time constraints.
  - *Whether an urgent circumstance does not allow for a formal bid process.*
4. Market price fluctuations.
  - *Whether it’s necessary to act quickly to get a favorable price.*

If, after considering these factors and any others that the Committee finds relevant, the Committee believes that the City’s interests in protecting public funds and obtaining the best deal for the City can still be met by an informal bidding process, then the Committee can find that

sealed bids are not required, and that an informal process can be followed. This process is explicitly provided for in the policy, this is not a “between-the-lines” interpretation, and the Fire Department’s request is not for a special exception or waiver. State law does not require formal bids for purchases of this kind.

The informal bid process is described in F-6.2.2:

- Whenever practical, the “budget authority” (in this case, the Fire Chief), will solicit at least three informal bids.
- Solicitation of bids will be by posting on the official notice bulletin board, or by such other means as the Chief finds appropriate.
- The Chief must keep records of all purchases.
- The Chief has sole discretion as to which bid to accept.

According to the Department’s cover sheet, they have done research into the desired equipment and have settled on a particular make and model. Essentially, the Department is asking that you find that their selection of this particular apparatus is the best choice for the City, and that they simply be allowed to go out and find the best price using the informal bid process. If you find that the F-6.2.1 criteria are met, then it is within the Committee’s authority to allow an informal bid process to be used.

Please let me know if you have any questions.

# CITY OF WAUKESHA

## FINANCIAL POLICIES AND PROCEDURES (F-6.0)

### PURCHASING AND BIDDING

**6.1** It is in the best interest of the City of Waukesha and its citizens to insure that all purchases of supplies, materials, equipment and services be accomplished in the most efficient and effective manner possible. At the same time, the City must provide a system that insures that public funds are safeguarded and the public trust preserved.

**6.2** The city will, therefore, operate in accordance with the following policies, except as otherwise provided by law or by resolution of the Common Council.

**6.2.1** When any single or related group purchase exceeds \$25,000, the relevant standing committee, commission or board (purchasing authority) shall determine whether sealed bids are appropriate. The purchasing authority shall consider all relevant factors surrounding the proposed purchase, including but not limited to: the nature of the product or service, availability in the market, time constraints surrounding the purchase, and price fluctuations in the market. If the purchasing authority determines sealed bids are appropriate, the following procedures shall be followed:

- a. The city official or department director (budget authority) shall solicit sealed bids from prospective bidders by sending them a request for bids and by advertising for bids by posting of such request on the public notice board and such other means as may be determined by the budget authority.
- b. Bids shall be submitted to the budget authority on or before the time and at the place specified in the request for bids. The budget authority at his or her discretion may require a surety to accompany any bid.
- c. Sealed bids shall be opened in public at the time and place specified in the request for bids and, after examination, tabulation and recording by the budget authority, shall be open to public inspection.
- d. The purchasing authority shall have the sole discretion to reject any and all bids, accept or reject parts of bids and to waive any irregularities in the bid or bids.

If the purchasing authority determines that sealed bids are not required the procedures for informal bids will be followed except that the purchasing authority shall have the sole discretion in awarding of the contract upon recommendation of the budget authority.

**6.2.2** When any single or related group purchase exceeds \$5,000 but is less than \$25,000 the purchase will be made by obtaining informal bids as follows:

## PURCHASING AND BIDDING

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- a. Whenever practical the budget authority will solicit at least three informal bids.
- b. Solicitation of informal bids shall be by posting of notice on the public notice board or by such other means as the budget authority shall deem appropriate.
- c. The budget authority shall keep a record of all such purchases.
- d. The budget authority shall have sole discretion to award or not award a contract under this section.

**6.2.3** When any single or related group purchase is less than \$5,000, the purchase will be made at the sole discretion of the budget authority responsible for the purchase.

**6.2.4** When the need for an immediate purchase makes the procedure in this policy impracticable, following authorization of the Mayor or City Administrator, any budget authority may secure such supplies, materials, equipment, or contractual or professional services without taking formal or informal bids. A report of the circumstances of such a purchase will be provided to the Common Council within 14 calendar days.

**6.2.5** The total term expenditure of a lease or rental agreement will determine the purchase procedure to be followed.

**6.2.6** Any budget authority may secure supplies, materials, equipment or contractual or professional services without taking formal or informal bids using sole source purchasing provided the circumstance of such purchase is entered into the records of the purchase.

**6.2.7** Notwithstanding the other provisions of this policy, when a budget authority determines that the best interests of the city are served by its entering into a cooperative purchase agreement they may proceed if the agency offering the cooperative agreement has been approved by the Common Council.

**6.2.8** All purchases will be made pursuant to the authority of the adopted annual budget as it may be amended. For purchases under \$5,000 signatures of the Mayor, City Administrator or budget authority will be sufficient to evidence the propriety of the purchase. For purchases in excess of \$5,000, a purchase order will be required. Prior to the issuing of a purchase order by the Finance Department, the budget authority will provide documentation this policy has been complied with and that there is to the credit of the budget authority an unencumbered appropriation sufficient to defray the cost of such purchase.

**6.3** The City Administrator shall monitor the performance of all department heads to ensure their compliance with this policy.