

ORDINANCE NO. 14991

FILE OF CITY COUNCIL

BILL NO. 23 - 2011

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APRIL 4, 2011

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLENTOWN, PENNSYLVANIA, AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A COOPERATIVE PURCHASING AGREEMENT FOR 911 GOODS AND SERVICES WITH OTHER PARTICIPATING MUNICIPALITIES PURSUANT TO THE INTERGOVERNMENTAL COOPERATION LAW (ACT 177 of 1996), 53 PA.C.S.A. SECTION 2301 ET. SEQ.

WHEREAS, the Intergovernmental Cooperation Law, 53 Pa.C.S.A. Section 2304, authorizes a municipality by act of its governing body to cooperate or agree in the exercise of any function, power or responsibility with one or more local governments; and

WHEREAS, Section 2305 of the Intergovernmental Cooperation Law, 53 P.C.S.A. Section 2305, requires the passage of an ordinance by its governing body authorizing the local government to enter into intergovernmental cooperation agreements;

WHEREAS, the City Council of the City of Allentown deems it advisable to enter the Joint Purchasing Agreement for the purchase of 911 emergency goods and services, which is attached hereto and made a material part hereof as Exhibit "A" as the City seeks to join with other municipalities in order to take advantage of lower prices, reduced costs and other economies associated with combining the purchase of materials, supplies, equipment and services through the joint competitive bidding process whenever it appears such combining of purchases may be to the advantage of the participating entities; and

WHEREAS, the attached Exhibit "A" which is incorporated herein by reference as though more fully set forth at length, satisfies the requirements of Section 2307 of the Intergovernmental Cooperation Law, 53 Pa.C.S.A. Section 2307.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLENTOWN AS FOLLOWS:

SECTION ONE. Authority to Enter Joint Purchasing Agreement

The Mayor of the City of Allentown or his designee is hereby authorized to execute the Joint Purchasing Agreement which is attached hereto as Exhibit "A".

SECTION TWO. Repealer.

All Ordinances or parts of Ordinances inconsistent herewith be and the same are hereby repealed.

SECTION THREE. Severability.

If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance which shall remain in full force and effect.

SECTION FOUR. Effective Date.

This Ordinance shall be effective in ten (10) days from the date of adoption.

SECTION FIVE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

	Yea	Nay
Joe Davis	X	
Jeanette Eichenwald	X	
Cynthia Y. Mota	X	
Ray O'Connell, VP	X	
Mike Schlossberg	X	
Peter G. Schweyer	X	
Julio A. Guridy, Pres.	X	
TOTAL	7	0

**I hereby certify that the foregoing Ordinance was passed by City Council on May 2, 2012 and signed by the Mayor on May 4, 2012.**



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CITY CLERK

## EXHIBIT "A"

### JOINT PURCHASING AGREEMENT

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2012 among the entities who have agreed to the provisions contained in this document and have indicated their agreement with an authorized signature attached to this document. All signatories are representatives of local government entities duly organized under the laws of the commonwealth of Pennsylvania, all of the parties to this Agreement being political subdivisions of the Commonwealth of Pennsylvania.

#### WITNESSETH:

**WHEREAS**, the Pennsylvania General Assembly enacted *The Intergovernmental Cooperation Law (Act 177 of 1996)* which was previously enacted by the General Assembly in 1972 to implement the provisions of Article IX, Section 5, of the then-new Pennsylvania Constitution, to foster intergovernmental cooperation; and,

**WHEREAS**, the parties seek to join with other political subdivisions in order to take advantage of lower prices, reduced costs and other economies associated with combining the purchases of materials, supplies, equipment and services, through the joint competitive bidding process, whenever it appears such combining of purchases may be to the advantage of the participating entities; and

**WHEREAS**, the signatories of this agreement seek to participate in the joint competitive bidding procedure through the establishment of a cooperative entity known as the **Joint Purchasing Board (BOARD)**.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound hereby, agree as follows:

#### **ARTICLE I. JOINT PURCHASING BOARD.**

Section 1.01. Location. The BOARD shall have no fixed location but be rotated among the meeting places of the member agencies.

Section 1.02. Membership. The BOARD shall consist of one member from each local government political subdivision participating in this agreement. Each participating entity to this agreement may change its designated representative at any time with written notice to the BOARD Chairperson. A member of the BOARD may resign at any time with written notice to the Chairperson. In the case of resignation or vacancy, each participating entity shall appoint a new BOARD member in a reasonable amount of time. Any member may send another representative to a meeting with full voting rights upon notification to the Chairperson.

Section 1.03. Local Government. A county, city of the second class, second class A and third class, borough, incorporated town, township, school district or any other similar general purpose unit of government created by the General Assembly after July 12, 1972.

Section 1.04. Applicable Laws. The BOARD shall, at all times, comply with the various laws governing joint purchasing including all applicable local, state and federal laws and specifically all rules and regulations regarding Joint Purchasing Agreements specified by Act 177 and contained within this agreement.

Section 1.05. Authority. The BOARD acts as a service provider for participating entities and has no authority to obligate participating entities in the awarding of bids, or in any of its other activities. A bid award recommendation by the BOARD constitutes a recommendation to the governing bodies of each participating entity and said governing bodies have sole responsibility and authority in deciding whether to accept or reject, in whole or in part, the BOARD's recommendation. Individual participating entities reserve all powers and rights to accept or reject the recommendation of the BOARD.

Section 1.06. Voting. Each BOARD member shall have one vote. A majority vote of the BOARD members present at regular or special Joint Purchasing Board meetings shall be required, and is sufficient, to conduct any BOARD business.

Section 1.07. Meetings. Meetings shall be held as needed at the call of the BOARD Chairperson.

Section 1.08. Administrative Operations. Unless otherwise directed by the BOARD, all administrative operations associated with the BOARD will be conducted by the participating entity designated by the BOARD. Administrative operations will be rotated among participating entities on a semi-annual basis.

Section 1.09. Budget. All BOARD administration and operating costs will be paid on an equal share basis by the members of the BOARD. As new member agencies are added to the BOARD, the costs will be readjusted accordingly and prorated as determined by the BOARD members. Administrative costs related to specific projects or grants will be governed by Section 1.13 below.

Section 1.10. BOARD Officers. At the first meeting after at least 3 participating entities sign this agreement, an election will be held for a BOARD Chairperson. The BOARD Chairperson shall serve for a term of one year and may be reappointed with a vote of a majority of BOARD members. Additional Officer Positions may be created by a vote of a majority of the BOARD as membership expands.

Section 1.11. Goods and Services to be Purchased. Goods and services to be purchased through the BOARD will include all goods and services which individual members are permitted to purchase separately under the applicable laws of their own jurisdictions.

Section 1.12. Termination of BOARD Membership. A participating entity may withdraw from BOARD membership at any time with 30 days written notice to the BOARD. However, any entity participating in a joint financial venture where funds have been expended or encumbered will be required to fulfill its financial commitment to that venture for the duration of the contract for which the goods or services were procured. This provision may be waived if, in the determination of the majority of remaining BOARD members, the withdrawal of the member will result in no undue financial hardship on the remaining members. No repayment of funds expended will be made to any member agency that withdraws from a project. An Agency withdrawing from the

BOARD will have no ownership or use of the product or service purchased after withdrawing from the group. .

Section 1.13. Fiduciary. For each distinct project funded by the BOARD or for each grant project or grant award, the BOARD will select a county or member agency to act as Fiduciary. This Member County or Agency will be responsible for the procurement of the product or services for the member agencies or the administration of the grant funds under the procurement and financial procedures of the Member County or Agency so chosen. If administrative costs are permitted under a grant, these costs will be appropriated by the Fiduciary County. For administrative costs resulting from the purchase of other goods and services or if the grant does not permit administrative costs, the Fiduciary County will be permitted to appropriate 2% of the project cost to cover these expenses.

## **ARTICLE II. MEMBERSHIP.**

Section 2.01. Participation. The BOARD may approve participation by other local government entities lawfully authorized to engage in joint purchases conducted by the BOARD. The approved additional entities may participate upon execution of this Joint Purchasing Agreement. Approved additional entities may share in any savings associated with Joint Purchasing Board activities. Every entity approved by the BOARD shall be permitted to designate a BOARD member with all rights and privileges associated with BOARD membership. If permitted by the BOARD, additional entity representatives may participate in discussions regarding bid preparation, bid award and/or other issues associated with bids in which they are participating.

Section 2.02. Charges and Fees. Any distribution of charges or fees associated with a purchase or bid for goods or services will be decided by a majority of the BOARD members prior to a bid or purchase.

## **ARTICLE III. BIDDING PROCEDURES, AWARDS and GRANTS**

Section 3.01. Applicable Law. Any signatory to this agreement must comply with all provisions of the Intergovernmental Cooperation Law, 53 Pa C S A. including without limitation sections 2308 - 2313 and including any amendments thereto.

Section 3.02. Bid Award Recommendations. Bid award recommendations shall only be made upon a majority vote of BOARD members present. Individual participants will, in accordance with any law applicable to the particular entity, issue a purchase contract for the item(s) awarded, to the vendor(s) selected, in accordance with each bid's specifications. In the event the participating entity rejects, or substantially alters, the bid award as recommended by the BOARD, the participating entity shall timely notify the BOARD of such action.

Section 3.03. The BOARD may apply for grants for other projects which would have a joint benefit for the member counties or agencies. Grants so obtained will be administered by the fiduciary county or agency selected for the project. Nothing in this section would prohibit any member agency from pursuing any grant or other funding opportunity as a separate entity.

## **ARTICLE IV. MISCELLANEOUS PROVISIONS.**

Section 4.01. Separate Bidding. Each entity represented on the BOARD agrees it will not bid separately any item bid jointly for a period of at least 180 days after the joint bids are received.

Section 4.02. Apportioned Costs. Depending on the type of equipment or service acquired by the BOARD, costs may be apportioned on a percentage basis or an equal share basis. The method of cost apportionment will be agreed to by the BOARD prior to each acquisition of goods or services an prior to any funds being expended.

Section 4.03 Maintenance Costs. Any good procured under this agreement which requires ongoing maintenance costs shall have the costs apportioned in the same manner as the acquisition costs.

Section 4.04. Ownership. Entities that participate financially in any purchase made by the BOARD will be considered in a joint ownership as determined by the apportionment method decided in Section 4.02. Any member withdrawing from a particular venture after funds have been expended forfeits any funds already spent for the project.

Section 4.05. Additional Members to Existing Projects. New members of the BOARD may participate in any new or ongoing project being implemented by the BOARD. The BOARD will determine any 'buy in' costs which may be required for the new member to participate in an existing project.

Section 4.06. Additional Procedures. The Joint Purchasing Board shall adopt additional operating procedures or may amend existing procedures to insure the Joint Purchasing Board's operations are conducted in a proper and efficient manner.

Section 4.07. Indemnity. Except for gross negligence or criminal conduct, all participating members to this agreement agree to indemnify and hold harmless the BOARD's officers and members from and against any and all liabilities and obligations related to any and all damages, losses, deficiencies, liabilities, costs and expenses resulting from, relating to, or arising out of, any joint bids or purchases under this Agreement, or any subsequent purchases of materials, supplies, services, and equipment made under this agreement.

Section 4.08. No Joint Liability or Joint Ownership. No participating entity shall be held to be jointly liable in the event of the failure of any participating entity to perform and discharge its obligations under any purchase pursuant to this Agreement, it being the intent hereof that any such purchase shall constitute the separate agreement of each participating entity with the particular contractor

Section 4.09. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected. This Agreement shall then be construed and enforced as if illegal or invalid provision had not been contained herein.

Section 4.10. Term. This Agreement shall become effective upon its due execution and delivery by at least 3 members hereto and shall remain in effect until dissolved by a majority vote of the BOARD membership.

**IN WITNESS WHEREOF**, each of the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

- **What Department or bureau is Bill originating from? Where did the initiative for the bill originate?**

Communications

- **Summary and Facts of the Bill**

The Intergovernmental Cooperation Law, 53 Pa.C.S.A. Section 2301 et.seq. requires the governing body of the municipality to enact an Ordinance authorizing the municipality to enter and execute intergovernmental cooperation agreements. This Ordinance will authorize the Mayor or his designee to execute a Joint Purchasing Agreement under the Intergovernmental Cooperation Law to purchase 911 emergency goods and services.

- **Purpose – Please include the following in your explanation:**
  - **What does the Bill do – what are the specific goals/tasks the bill seek to accomplish**
  - **What are the Benefits of doing this/Down-side of doing this**
  - **How does this Bill related to the City’s Vision/Mission/Priorities**

This Ordinance, upon passage, will permit the City to join with other municipalities participating in the Joint Purchasing Agreement to take advantage of lower prices, reduced costs and other economies associated with combining the purchases of materials, supplies, equipment and services through the joint competitive bidding process whenever it appears such combining of purchases may be advantageous.

- **Financial Impact – Please include the following in your explanation:**
  - **Cost (Initial and ongoing)**
  - **Benefits (initial and ongoing)**

The are no costs associated with this Ordinance.

- **Funding Sources – Please include the following in your explanation:**
  - **If transferring funds, please make sure bill gives specific accounts; if appropriating funds from a grant list the agency awarding the grant.**

No funding sources are implicated by this Ordinance.

- **Priority status/Deadlines, if any**

The Communications Department submits that this Ordinance is a priority for Council's consideration.

- **Why should Council unanimously support this bill?**

This Ordinance will enable the City to save money by attaining lower prices by way of making purchases as a group by combining purchases of 911 goods and services with other municipalities.