

PURCHASING POLICY



I. Introduction

This is the Purchasing Policy and Procedures Manual (“manual”) for the City of Kerrville, Texas (“City”). Texas law is the primary authority for purchasing procedures, and therefore, portions of this manual use language taken directly from state statutes. At other times, the manual paraphrases and generalizes state law in an effort to assist in the understanding and application of purchasing requirements. This manual does not address every purchasing situation. Should a City employee have any questions or when an unusual situation occurs, please consult the City’s Finance Department (“Finance”) and/or the City Attorney’s Office. State law supersedes the City’s policy in the event of a conflict.

A. Purchasing Goals

1. Ensure compliance with Federal, State, and local purchasing laws
2. Establish policies and procedures that maintain the integrity of the purchasing process, encourage competition, and achieve cost savings.
3. Procure goods and services of the requested quality and quantity from responsible sources using the most efficient and economical means at the best possible price with availability when and where they are needed

B. General Purchasing Information

1. **Purchasing Authorization:** The City Manager, pursuant to the City’s Charter and City Council’s approval of this manual, has delegated purchasing authority and responsibilities with respect to the purchasing of goods and services to certain City positions including members of the Finance Department with purchasing certifications and training, as well as Department Directors and their designees. City Council authorizes the City Manager to sign contracts that are below thresholds for which explicit City Council approval is required.
2. **Public Funds Agreements:** In addition, the City Council authorizes the City Manager to enter into agreements to grant public funds to various organizations as appropriated by the budget. Such grants include proceeds from occupancy tax and funding related to community support. Such agreements are limited to one (1) year.

See table on following page for general purchasing guidelines.

The following table provides general guidelines for purchases and the required quotes/bids.

CITY OF KERRVILLE PURCHASING COMPLIANCE QUICK REFERENCE			
Total Amount of Request	Compliance Requirement	Responsible Party	Approvals Required
Contracts Valued at \$50,000 or more	Competitive bids opened at a public meeting	Department or Project Manager	City Council and City Manager Finance
Goods Valued at \$50,000 or more	At least 3 competitive bids / quotes based on like products or proof of purchasing co-op pricing	Department, Project Manager, Purchasing Agent	City Council and City Manager Finance
\$25,000 to \$49,999.99	At least 3 competitive bids / quotes based on like products or proof of purchasing co-op pricing	Department, Project Manager, or Purchasing Agent	Department Director and Finance
\$5,000.00 to \$24,999.99	At least 3 competitive bids / quotes based on like products or proof of purchasing co-op pricing	Department purchasing staff	Department Purchasing Approver and/or Finance
up to \$4,999.99	Compare pricing and quality to obtain the best value for the City	Department purchasing staff	Department Purchasing Approver and/or Finance

- * All bids, quotes and/or purchasing co-op pricing must be obtained **PRIOR** to purchase.
- * All requisitions related to a Capital Improvement Project (CIP) require Finance approval.
- * The City Manager may approve contracts or purchases up to \$50,000 without prior Council Approval.
- * For purchasing compliance consideration, the amount is determined by the total amount of related purchases or total term value of a contract, not individual invoice.
- * Purchasers should refer to full policy for specific requirements related to the table above.
- * It is the responsibility of each Department to maintain and actively monitor their department's agreements, schedule service calls under the agreements, and renew agreements as necessary.

II. Purchasing Considerations

A. Tax Exempt Status

The City is exempt from federal, state, and local taxes in most cases. An exemption certificate is available from the Finance Department to provide to City vendors or contractors.

B. Historically Underutilized Business (HUB)

Section 252.0215 of the Texas Local Government Code (TLGC) requires Texas cities to contact at least two (2) historically underutilized businesses (HUB) on a rotating basis when making any expenditure of more than \$3,000 but less than \$50,000. A HUB vendor list may be obtained at: www.window.state.tx.us/procurement. If the list fails to identify a disadvantaged business in Kerr County, the City is not required to follow this requirement.

C. Contractors and any sub-contractors employed by the City of Kerrville shall ensure compliance with TLGC section 2258 by using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act and subsequent amendments.

III. Competitive Bidding

A. Legal Requirements-Expenditures Over \$50,000

Pursuant to state law, before the City may enter into a contract that requires an expenditure greater than \$50,000 (including insurance and technology), the City must (Ch. 252, Subchapter. B, TX. Local Gov't Code):

1. comply with the procedure established by state law for competitive sealed bidding or competitive sealed proposals (where necessary);

1. use the reverse auction procedure as defined by Section 2155.062(d) of the Government Code for purchasing; or
2. comply with a method described by Chapter 2269 (Contracting and Delivery Procedures for Construction Projects) of the Government Code.

B. Alternate Delivery Methods

The City may use the best-value competitive bidding process, competitive sealed proposal method, construction manager-agent method, construction manager-at-risk method, design-build method, and the job order contract method for public procurement in place of the standard competitive bidding method that is also allowed under Chapter 2269 of the Government Code or Chapters 252 and 271 of the TLGC. The City may use any of the alternative delivery methods for any project involving an improvement to real property.

IV. Requirements for Purchases Under \$50,000

A. Purchases of Goods or Services Under \$5,000

1. Assigned purchaser should compare pricing and quality to obtain the best value for the City

2. All purchasing documentation must be attached to the requisition (invoice, quotes, special information, etc.)
3. Department purchasing approver must review all documentation **PRIOR** to approval
4. Assistant Director of Finance, Accounting Manager, or CFO must approve prior to payment

B. Requirements for Purchases \$5,000-\$49,999

1. At least (3) three written quotes for like items or services, proof of co-op pricing, or exemption information must be obtained **PRIOR** to placing order for, making purchase of, or entering into agreement for goods or services
2. Department purchasing approver, depending on the value of purchases, should review quotes prior to purchase
3. All quotes must be attached to requisition along with other purchasing documentation (invoice, agreement, special information, etc.)
4. Notes should be made to indicate why staff chose to purchase from a particular vendor, example, price, quality, availability, etc.
5. In the event that every effort has been made to obtain at least (3) three quotes but are unable to do so, adequate documentation must be attached to purchasing requisition proving staff efforts to obtain minimum number of quotes
6. Department purchasing approver must review all documentation prior to approving
7. Assistant Director of Finance, Accounting Manager, or CFO must approve prior to payment

C. Other Considerations

1. It is the responsibility of each staff member with purchasing authority to utilize all resources when expending funds belonging to the citizens of Kerrville. The best value method should be used, regardless of how small the purchase.
2. All purchases are subject to review during the City's annual audit by an external auditing firm to determine compliance with the City's policies along with state and federal purchasing requirements.
3. Purchases over the amount of \$5,000 are subject to capitalization, as part of the City's fixed Asset Management process. Items purchased independently that are part of a project or product valued over \$5,000 should be reported to the Finance Department upon purchase.
4. Finance purchasing staff have the responsibility to ensure compliance with the City's Purchasing Policy, up to and including reporting employees who repeatedly fail to meet the requirements of the Policy, which may lead to revocation of purchasing privileges.

5. It is the responsibility of each department to obtain proper vendor information prior to doing business with vendor. Vendor information is located on the p: drive in the Finance Department "forms" folder. Vendor information can be submitted electronically to: accountspayable@kerrvilletx.gov.
 6. All invoices should be directed to Accounts Payable staff electronically at:
accountspayable@kerrvilletx.gov.
 7. Requisitions should be entered and approved timely by deadlines set by the Finance Department. Any questions regarding purchasing compliance should be directed to the Finance Department, Purchasing Agent, or the City Attorney's Office PRIOR to purchase.
- V. Exemptions from Competitive Bidding (see "Additional Information" section for specific details)
- Section 252.022 of the TLGC provides the following exemptions from competitive bidding:
- A. a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the City's residents or to preserve the property of the City;
 - B. a procurement necessary to preserve or protect the public health or safety of the City's residents;
 - C. a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
 - D. a procurement for personal, professional, or planning services;
 - E. a procurement for work that is performed and paid for by the day as the work progresses;
 - F. a purchase of land or a right-of-way
 - G. a procurement of items that are available from only one source (sole source), including;
 1. items that are available from only one source because of patents, copyrights, secret processes or natural monopolies;
 2. films, manuscripts, or books;
 3. gas, water, and other utility services;
 4. captive replacement parts or components for equipment;
 - H. a purchase of rare books, papers, and other library materials for a public library;
 - I. paving drainage, street widening, and other public improvements, or related matters, if a least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from improvements;

J. Personal property sold:

1. at an auction by a state licensed auctioneer;
2. at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;
3. by a political subdivision of this state, an agency of this state, or an entity of the federal government; or
4. under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391

K. Services performed by blind or severely disabled persons;

L. Goods purchased by a municipality for subsequent retail sale by the municipality;

M. Advertising, other than legal notices;

N. Purchases made through an existing state contract (Chapter 271, Subchapter D), Cooperative purchasing program (Chapter 274, Subchapter F), or inter-local cooperation (Interlocal Cooperation Act, Chapter 791 Government Code).

VI. Bids, Proposals, and Contracts

- A. The City Manager has authority to approve any contract or the purchase of goods not valued at more than \$50,000. The total value is determined by the aggregate value over the term of the contract or individual purchase.
- B. Only City Council has the authority to approve and award bids, proposals, and contracts that exceed \$50,000. State law (§252.021, TLGC) provides that all purchases and contracts estimated at greater than \$50,000 require advertising which requests sealed bids or proposals. The Department or Project Manager, with assistance from the City Secretary's Office, when requested, is responsible for the advertisement and distribution of the requests for bids or proposals. The Department or Project Manager is responsible for the advertisement and distribution of the requests for bids or proposals. City Council is responsible for approving the bid or proposal, in accordance with state law. Criminal penalties may apply to those who fail to comply with competitive bidding requirements.

C. Bid Process

1. The Department or Project Manager will prepare bid specifications, bidder mailing lists, advertising dates, and schedule the bid opening date, time, and location. Where appropriate, the City will utilize website notices for national advertising.
2. The City must publish a notice indicating the time and place at which the bids or proposals will be publicly opened and read aloud. The notice must be published at least once a week for two consecutive weeks. The first publication must appear before the 14th day before the date that the bids or proposals are publicly opened and read aloud. The notice must be placed in the City's official newspaper.
3. The City will accept bids in both paper and electronic formats. The City Secretary will accept all paper bids and maintain them in a secure confidential file until the date of the bid opening. Electronic bids will only be accepted via the City's current procurement software, which can be accessed via the City's website: www.kerrvilletx.gov. This software ensures the identification, security, and confidentiality of electronic bids or proposals and ensures that the electronic bids or proposals remain effectively unopened until the proper time in compliance with Texas Local Government Code. (§252.0415, TLGC)
4. At the time of the bid opening, the City Secretary or designee will present all bids to the Department or Project Manager for opening, review, and analysis. The City will reject any bid or proposal which is received after the due date and time. The time stamp in the City Secretary's Office will be the official time. Specific rules regarding the security of electronic submissions can be found in the appendix section of this policy.
5. The Department or Project Manager will conduct the bid opening and read the bids aloud at the designated time and place. Bid openings are open to the public.
6. Pursuant to state law, the City must award bids on the basis of the lowest, responsible bidder or the bid that provides the best value. As for "best value", the City, pursuant to law, may consider:
 - a. price
 - b. reputation of the bidder, including any safety record or financial capability
 - c. reputation of the bidder's goods or services, including personnel
 - d. extent to which the goods and services meet the needs of the City
 - b. bidder's past relationship with the City
 - c. impact to the City's ability to comply with HUB requirements
 - d. total longer-term cost to the City of acquiring goods or services
 - e. any other relevant criteria that the City listed in specifications (§252.043, TLGC)

7. After reviewing the bids, the Department or Project Manager will prepare an agenda bill with staff recommendation for City Council consideration, approval, and award.
8. The City has the option to reject any or all bids, even if only one bid is received.
(§ 252.043(f), 271.027(a), TLGC)

D. General Contract Requirements

1. Bids with Residents vs. Non-Residents

- a. If two or more bidders have bids that are identical in nature and amount, with one bidder being a resident of the City and the other bidder or bidders being non-residents, the City must select the resident bidder or reject all bids. (§271.901, TLGC)
- b. For contracts less than \$100,000, if the City receives one or more competitive bids or quotations from a bidder whose principal place of business is in the City and whose bid is within five percent of the lowest bid price received by the City from a bidder who is not a resident of the City, the City may enter into a contract with the lowest bidder or the bidder whose principal place of business is in the City if the City Council determines, in writing, that the local bidder offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the City and increased tax revenues to the City. (§271.9051, TLGC)

2. Bonding for Public Works Projects

State law requires contractors to submit bonds to the City for bids, payment, and performance of contracts on certain public works projects. State law establishes standards for when the bonds are required and the amount of the bond. A corporate surety duly authorized and admitted to do business in the State of Texas must issue the bonds. Although the term "public work" is not defined by statute, it is generally understood to mean the construction, repair, or renovation of a structure, road, highway, utilities, or other improvement or addition to real property. Bonds are required in the following amounts:

- a. Bid Bond: A bid bond, in the amount of 10 percent of the proposed contract price, is required where a contract is in excess of \$100,000.
- b. Performance Bond: A performance bond, in the total amount of the contract, is required if the contract is in excess of \$100,000.
- c. Payment Bond: A payment bond is required if the contract is in excess of \$50,000, in the total amount of the contract. The bond is intended solely for the protection of all claimants supplying labor and material in the prosecution of the work provided for in the contract.

- d. Maintenance Bond: In addition to the above statutorily required bonds, the City will require a Maintenance Bond for all public works projects for a minimum time period of one (1) year. (Chapter 2253, TX. Gov't Code)

3. Bonds for Non-Public Works Projects

Based upon good business practices, whenever the City enters into a contract for purchases of a product system, or service in which the system or service will be of little value to the City until it is complete, the City may require performance and payment bonds.

4. Change Orders

Section 252.048 of the TLGC allows change orders as long as the contract price is not increased by more than 25 percent and the change order is not being used to purchase new products or to create an entirely new project. Pursuant to this section, the City Manager has authority to approve such change orders that are less than \$50,000. Change orders over \$50,000 are subject to City Council approval.

5. Insurance Requirements

Where the City contracts with an outside party (contractor, consultant, vendor, or concessionaire) for goods or services, the contract should include indemnity and hold harmless provisions that appropriately transfer the project risks from the City to the contractor. Because the contractor may or may not have the financial resources to account for the risks, the City requires the contractor to purchase and maintain valid insurance to help ensure the financial security required by the City. The insurance types and amounts are as follows:

- a. Workers Compensation: Workers Compensation covering all employees per the state statutory requirement is required on all contracts.
- b. Liability Insurance: The following insurance is required on all contracts over \$15,000:
 1. Employer's Liability of \$100,000;
 2. Comprehensive General Liability and Bodily Injury & Property Damage \$1,000,000, per occurrence and \$2,000,000 general aggregate; and
 3. Business Automobile Liability covering owned vehicles, rented and non-owned vehicles, and employee non ownership Bodily Injury Property Damage \$1,000,000 (per occurrence and aggregate).
- c. Reasonable Coverage: Although insurance coverage is not required for every project, and limits will vary by exposure, understanding insurance is important to assure that all of the City's potential liabilities and exposures from a project are properly and reasonably protected. Where questions arise about the types of insurance or amounts the Department should contact the City's Director of General Operations.

6. Boycotting Israel

House Bill 793 provides that contracts for goods and services must have written verification from the company that it:

- a. Does not boycott Israel / will not boycott Israel during the term of the contract by providing that:
 1. The company does not include a sole proprietorship; and
 2. The law applies only to a contract that:
 - a. Is between a governmental entity and a company with more than 10 full-time employees, and;
 - b. Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the government entity

VII. Other Purchasing Arrangements

A. Warranties and Service Agreements

A Department should include any requirement for warranties or service agreements in the purchase specifications documents. It is the responsibility of each Department to maintain and actively monitor their department's agreements, schedule service calls under the agreements, and renew agreements as necessary.

B. Simple Leases (auto, office equipment, etc.)

Competitive bidding or proposal requirements apply to any lease of personal property that will require an expenditure of more than \$50,000 in City funds, unless the expenditure is covered by a specific statutory exception that would relieve the City from the duty to bid or seek proposals on the item. For example, if the lease were for an item that was necessary to preserve or protect the public health or safety of the City's residents, the City would not be under a duty to use competitive bidding or proposals for its acquisition.

C. Lease Purchase Agreements

Normal statutory procurement requirements generally apply to these lease purchase agreements. That is, a lease purchase agreement for personal property shall be competitively procured unless the type of item purchased is covered by a specific exception to the statutory procurement requirements. Competitive bidding requirements do not apply to the lease of real property.

VIII. Purchasing Methods

A. Purchase Requisition

Most purchases are made using a requisition that is processed through Incode. The requisitions prepared and approved by the department requesting the purchase or other necessary approver. The requisition is completed and submitted electronically along with all supporting documentation

(invoice, receipt, bids or quotes {if necessary}, sole source or emergency justification forms (if necessary)). Appropriate staff must approve requisitions for payment. Accounts Payable must have a W-9 on file for all vendors in order to make payment. Accounts Payable processes payments for approved purchase orders weekly.

B. Purchasing Card (P-card)

1. Overview: The City issues and authorizes the use of Purchasing Cards (P-card) to efficiently purchase goods or services needed for City business that require immediate payment. The P-card is designed to delegate the authority and capability to purchase limited items directly to an authorized employee. A P-card will enable authorized employees to purchase non-restricted goods directly from vendors without the issuance of a purchase order. Authorized employees may use a P-card with vendors that accept VISA. P-cards are ordered through the Finance Department with a P-card Request form (see Exhibit C).
2. Responsibilities:
 - a. The Accounting Manager, Assistant Director of Finance, and the Chief Financial Officer are the administrators for the P-card program.
 - b. A Department Director, where appropriate, may authorize an employee(s) under their direction to use a P-card. The Director will make recommendations to the Finance Department as to recommended limits on the account, to include monthly spending limits, number of transactions per day, number of transactions per billing cycle, and merchant category restrictions.
 - c. An employee authorized to use a P-card must sign a Purchasing Card Cardholder Agreement prior to being issued a P-card. The employee is responsible for not only protecting the card, but is also responsible and accountable for all purchases made using the P-card. The employee will assume responsibility that all purchases made with the P-card adhere to this policy and will insure that no unauthorized purchases are made. The City will consider unauthorized purchases to be misappropriation of City funds that violates City policy and potentially state law. The employee authorized to use the P-card and the Department Director are responsible for the integrity and accuracy of P-card purchases and as such, are responsible for receipts for all P-card purchases and transactions. All purchases processed against a P-card must be made by, or under the immediate direction of, the employee to whom the card is issued. P-card receipts must specify all purchased items. Receipts that show only a total amount without any itemized details are unacceptable. The employee must inform the merchant of the City's tax-exempt status. The City may hold the employee personally responsible for items purchased without the supporting

documentation.

- d. The Finance Department will return incomplete receipts to the P-card holder and the Department Director who will then be responsible for obtaining a detailed receipt or attaching a signed statement.
- e. P-card holders who do not retain acceptable receipts for P-Card purchases may have their authority for using the P-card revoked. The Accounting Manager or Chief Financial Officer will notify a Department Director concerning any misuse of a P-card.
- f. Reconciliation: Finance places spending limits and other restrictions on each P-card issued to an authorized employee depending on the purchasing authority of the cardholder. The Department must maintain receipts for each purchase throughout the month. During the month and at month's end the Department may view all purchases online. The Department must review the charges, print the register, and reconcile the amounts with the receipts for the purchases. The Department must then forward the register and receipts to Finance.
- g. Disputed Charges: An authorized employee who is issued a P-card holder is responsible for attempting to resolve any dispute with a vendor. If a resolution is not possible, the employee must immediately notify the bank of the disputed item and follow the bank's dispute process. The employee shall keep the Finance Department informed of any such charge.
- h. Termination or Transfer of an Employee: When an employee who has been issued a P-card terminates from City employment or transfers from a Department, the Department Director should notify the Accounting Manager of the change immediately. The employee's P-card approver will be responsible for a final reconciliation of the employee's P-card account.
- i. Loss of P-Card: A P-card holder must report a lost P-card immediately but in any event, within one business day of discovered loss. The City may hold an employee liable for any losses not covered by the protection plan. The City may also hold an employee responsible for the cost of a replacement card.
- j. Travel Expenses: All travel expenses paid for using a P-card must be documented in accordance with the City's Travel Policy.

IX. Petty Cash

- A. Purpose: Petty cash funds are for the purpose of infrequent, small dollar, non-travel departmental purchases when an employee does not have access to a p-card, a p-card cannot be used for payment, or there is a reason, approved by Assistant Director of Finance or CFO, why the purchase cannot go through the accounts payable process.
- B. Requesting Petty Cash: Requests for petty cash or requests for reimbursement from petty cash should be submitted to the Utility Billing Office or the Department's Petty Cash Custodian, if the

department maintains a petty cash fund.

1. The request may not exceed \$50.00.
2. All petty cash slips must be signed, approved by the Department Director, include the amount, reason for expenditure, date and the account number to be charged.
3. Cash will only be reimbursed when accompanied by itemized receipts.
4. In the event that petty cash is requested in order to make a purchase on the City's behalf, a petty cash voucher will be issued and a signature of the person given cash will be required. An itemized receipt and unspent cash must be returned the same day that the petty cash was given.

C. Maintaining Petty Cash: Petty cash vouchers, receipts, and cash on hand should equal the total amount authorized for the petty cash fund. The itemized sales receipt must be attached to the petty cash voucher after the purchase. The petty cash voucher should include the amount and description of the expenditure, the expense account number, and be signed and dated by the recipient.

D. Replenishing Petty Cash Fund: If a department maintains a departmental petty cash fund, the department should turn in petty cash vouchers with receipts to the Utility Billing Department to exchange for cash to reimburse the departmental petty cash. Petty cash should be replenished by departments monthly. It is CRITICAL that all petty cash vouchers are redeemed and petty cash is replenished no later than September 30th of each year.

E. Performing Petty Cash Audits: The Finance Department will periodically audit petty cash funds at least twice each year to verify compliance with the petty cash policies and procedures.

F. Travel advances, meals, mileage, or other travel-related expenditures will not be reimbursed using a petty cash fund under any circumstance. All travel expenses must be recorded on the appropriate travel form and be submitted through Accounts Payable.

X. Disposal of Surplus Property

All departments shall review their assets and supplies each year and determine whether any items are no longer needed. A department may submit a list of any surplus, obsolete, or unused supplies, materials, or equipment to the purchasing agent, including a description, make, model, and serial number, if applicable. Finance, in coordination with a department and the purchasing agent, may transfer items between departments based upon needs. Where equipment or durable goods are deemed to be surplus, obsolete, or unused, the City may attempt to sell the property using an online auction, competitive bid, or in any other legal way that provides value and a public benefit to the City. In addition, property can be traded in toward the purchase of new property. Proceeds received will be credited to the fund that owned the property.

XI. Ethics Requirements

A. City Policies

The City demands the highest ethical standards of conduct from its employees and from vendors or contractors dealing with the City. City employees engaged in purchasing shall comply with the following ethical standards:

1. **Gratuities:** Certain kinds of conduct such as offering gifts, gratuities, or discounts to City employees to influence their decisions in the purchasing process are expressly prohibited. The City may reject a bid or cancel a contract without liability if it is determined by the City that gratuities were offered or given by a vendor or contractor, or an agent or representative of the vendor or contractor, to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such a contract.
2. **Confidential Information:** It is a violation of City policy for any employee to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.
3. **Purchase of materials, equipment, and supplies for personal use:** Employees may only purchase City property for personal use if purchased through the City's normal disposal of surplus property procedures including public or online auction. Such purchases are subject to City Manager approval.
4. **Purchases for personal, private use:** Employees may not use the purchasing power of the City to make purchases for personal, private use.
5. **Travel, meals, and other expenses paid by vendor or contractor:** Travel costs to a vendor's or
6. **Contractor's site shall be paid by the vendor or contractor only if the bid or proposal solicitation states that such visits would be at the vendor's or contractor's expense. The City will pay all other travel costs.**

A. State Requirements

City officials and employees shall comply with various state laws with respect to purchasing. The following provides a summary and the general requirements of the laws:

1. **Chapter 171, Texas Local Gov't Code:** Chapter 171 regulates a local public official's conflicts of interest. The law defines "local public official" as an elected official, such as a Councilmember, or an appointed official (paid or unpaid) who exercises responsibilities that are more than advisory in nature.
2. The law prohibits a local public official from voting or participating in any matter involving a business entity or real property in which the official has a substantial interest if an action

on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public or, in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.

1. A local public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with City Secretary, stating the nature and extent of the interest.
2. A local public official is required to abstain from participating in the matter.
3. A local public official who is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and file affidavits of similar interests on the same official matter.

3. Chapter 176, Texas Local Gov't Code: Chapter 176 is a related ethics law.

- a. Chapter 176 is applicable to the City. The law also applies to a local government corporation, board, commission, district or authority whose members are appointed by City Council and local government officers. Local government officers include (1) a mayor or City Council member, (2) a director, superintendent, administrator, president or any other person who is designated as the executive officer of the local government entity; and (3) an agent (including an employee) of the local government entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.
- b. An officer is required to file a conflicts disclosure statement if:
 1. the officer or officer's family member has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months.
 2. the officer or officer's family member accepts one or more gifts from a vendor with an aggregate value of more than \$100 in the preceding 12 months.
 3. an officer has a family relationship with a vendor.
- c. Anyone meeting this condition or circumstance should consult with the Finance Department and/or the Legal Department with respect to this law.

4. Chapter 252, Texas Local Government Code: Chapter 252 contains laws related to competitive bidding. If a person fails to comply with the competitive bidding or competitive proposal procedures required by Chapter 252 that person may be convicted of a Class B or C misdemeanor, removed from office or employment and made ineligible to hold office in the state or to be employed by the City for four years after the conviction. This includes a situation in which a person

makes or authorizes separate, sequential, or component purchases in an attempt to avoid competitive bidding requirements.

5. Section 2252.908, Texas Local Government Code: Section 2252.908 relates to interested party disclosures and applies to contracts entered into after January 1, 2016. The law provides that:
 - a. The City is prohibited from entering into a contract with a business entity unless the business entity submits a disclosure of interested parties (i.e., discloses a person who has a controlling interest in the business or who actively participates in facilitating the contract for the business) if the contract requires an action OR vote by the City Council before the contract may be signed;
 - b. The disclosure must be on a form prescribed by the Texas Ethics Commission; and
 - c. The City must, not later than 30 days after receiving a disclosure, submit a copy to the Texas Ethics Commission.

Additional Purchasing Information

A. Additional Exemption Information

1. Professional Services

- a. Section 252.022 of the TLGC specifically exempts contracts for professional services from the competitive bidding requirements. The Professional Services Procurement Act states that a City may not use traditional competitive bidding procedures to obtain the services of architects, engineers, certified public accountants, land surveyors, physicians, optometrists or state certified real estate appraisers. If the professional services desired by the City do not fall under the Professional Services Procurement Act, state law permits the services to be obtained with or without the use of competitive bidding, as the City desires.
- b. Fees must be fair and reasonable, consistent with and not in excess of published recommended practices and fees of applicable professional organizations, and not in excess of any maximums specified by state law.
- c. The Professional Services Procurement Act specifies that when obtaining architectural, engineering, or land surveying services, the City must first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and then attempt to negotiate a contract with that provider at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the City must formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate and attempt to negotiate a contract with that provider at a fair and reasonable price. The City must continue this process to select and negotiate with providers until a contract is entered into.
- d. The Professional Services Procurement Act does not specify the exact process by which a City may procure accounting, medical, optometrist, interior design, or real estate appraisal services. The law merely prohibits obtaining these services through competitive bidding and requires that such services be selected on the basis of demonstrated competence and qualifications.

2. Emergency Purchases

- a. Emergency purchases occur when a situation arises that is unforeseen and must be remedied immediately. Pursuant to state law, emergency purchases are exempt from the bidding process. An emergency is described as follows:
 1. Acts of God (e.g., flood damage, tornado)
 2. Machinery that is critical to the operation of the City and rendered out of service
 3. To preserve or protect the health and safety of the municipalities of residents
 4. Procurement necessary because of unforeseen damage to public machinery, equipment, or other property (§252.022(a)(1-3) TLGC)
- b. Where an emergency exists and a purchase estimated over \$5,000.00 is required, the following procedure will be used:
 1. The Department should notify Finance of the purchase and attach an approved emergency justification form signed by the Department Director and the Assistant Director of Finance or Chief Financial Officer, (see Exhibit B) and attach to the Purchase Requisition.
 2. If the emergency purchase causes a department to exceed their annual budget, the Department Director will work with the Finance Department, City Manager and, if necessary, City Council, to secure funding needed for the purchase.

3. Sole Source Purchases

According to Section 252.022 TLGC, competitive bidding requirements do not apply to items that are available from only one source due to patents, copyrights, secret processes, or natural monopolies. Items such as captive replacement parts or components may be considered as sole source items.

- a. Sole source purchases greater than \$5,000; The Department must contact the vendor or manufacturer for verification and justification as to why the procurement is sole source. Documentation on vendor letterhead or on the sole source form (see Exhibit A) should be attached to the purchase order.
- b. Sole source purchases greater than \$50,000. Sole source purchases greater than \$50,000 must be reviewed by the City Manager and approved by City Council. Documentation on vendor letterhead or on the sole source form (see Exhibit A) should be attached to the requisition. Sole source documentation is valid for two years.

B. Insurance

All purchases of insurance related products are processed through the Director of General Operations. Cities must seek competitive bids or proposals when purchasing insurance that will cost more than \$50,000. Chapter 252 of the TLGC does not specifically address the need to use a competitive bidding or proposals if a City's liability coverage is gained through participation in a group risk pool. Under state law, the coverage provided by risk pools is not considered to be insurance or subject to the traditional requirements applicable to insurance policies. Therefore, most risk pools take the position that statutory procurement requirements do not apply. (§252.021, TLGC)

C. Purchasing Cooperatives

1. The City works with many purchasing cooperatives whose sole purpose is to source vendors for purchasers with the goal of offering a variety of goods and/or services with competitive pricing
2. A purchaser may use a vendor's co-op membership as purchasing compliance in lieu of obtaining quotes as long as:
 - a. The vendor's membership with co-op is current
 - b. The quote AND invoice clearly notates co-op pricing along with the vendor's co-op contract number
 - c. The City has a current relationship with the co-op