

# **CITY OF KEMPNER PURCHASING POLICY**

## **1.0 PURPOSE AND SCOPE**

The Purchasing Policy applies to the procurement activities of the City of Kempner. All procurement activities for the City shall be administered in accordance with the provisions of this policy, with the express intent to promote open and fair conduct in all aspects of the procurement process for the purpose of this policy. Any bids obtained under the guidelines of this policy must be brought before the council. This policy will help maintain at all times and under all conditions a continuous supply of goods and services necessary for the City's operations.

## **2.0 OBJECTIVES**

The Mayor is responsible for ensuring that City departments comply with federal, state and local statutes regulating competitive sealed bids, competitive sealed proposals, professional services, high technology purchases, cooperative purchases, and emergency and sole-source purchases. The Mayor solicits for all competitive procurements as required by law, evaluates bids and proposals, and with the user department makes recommendations to the City Council for awarding of contracts.

Public purchasing has the responsibility to obtain the most value for the tax dollar in a fair, efficient and equitable manner. To achieve this objective the Mayor seeks to foster as much competition as possible. In doing so, we adopt the goal of fairness by ensuring all who wish to compete for the opportunity to sell to the City of Kempner can do so. Our policy is intended to:

1. Give all suppliers full, fair, prompt and courteous consideration;
2. Encourage open and fair competition;
3. Solicit supplier suggestions in the determination of clear and adequate specifications and standards;
4. Cooperate with suppliers and consider possible difficulties they may encounter; and
5. Observe strict truthfulness and highest ethics in all transactions and correspondence.

### **2.01 General**

The Mayor is authorized to make procure goods and services and to otherwise make expenditures that are below \$5,000. Any purchases that exceed \$5,000 must be approved by the Board of Alderman.

## **3.0 General Duties of Purchasing**

1. Observe and enforce the policy and procedures outlined in the City of Kempner Purchasing Procedures or as directed by the Mayor or his/her designee;
2. Advise and assist in the formulation of policies and procedures connected with the purchasing activities of the City

3. Investigate and analyze research done in the field of purchasing by other governmental agencies and by private industry, in an effort to keep abreast of current developments in the fields of purchasing, price, market conditions and new products;
4. Coordinate, organize, and assist departments in the specification writing process to ensure that specifications are written concisely and are not written in an exclusive manner;
5. Join with other governmental agencies in cooperative purchasing plans when it is in the best interest of the City;
6. Receive, open, and evaluate competitive solicitations;
7. Prepare and coordinate with user departments staff reports recommending award of competitive solicitations for City Council approval;
8. Combine purchases of similar items whenever possible and practical, to allow for better pricing and establish a more competitive atmosphere;
9. Assist department heads in the disposition of junk and scrap material such as pallets, scrap pipe, paper products, etc.;
10. Dispose of stolen, abandoned and recovered property coming into the possession of the City;
11. Dispose of surplus City property;
12. Conduct regular training sessions for employees involved in the purchasing process

#### **4.0 CODE OF ETHICS**

By participating in the procurement process, employees of the City of Kempner agree to:

- Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
- Demonstrate loyalty to the City of Kempner by diligently following the lawful instructions of the employer, using reasonable care, and only authority granted.
- Refrain from any private business or professional activity that would create a conflict between personal interests and the interest of the City of Kempner.
- Refrain from soliciting or accepting money, loans, credits, or prejudicial discounts, and the acceptance of gifts, entertainment, favors, or services from present or potential suppliers that might influence, or appear to influence purchasing decisions
- Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether as payment for services or not; and never accept for himself or herself or for family members, favors or benefits under circumstance which might be construed by reasonable persons as influencing the performance of Governmental duties.
- Engage in no business with the City of Kempner, directly or indirectly, which is inconsistent with the conscientious performance of Governmental duties.

- Handle confidential or proprietary information belonging to employer or suppliers with due care and proper consideration of ethical and legal ramifications and governmental regulations.
- Never use any information gained confidentially in the performance of Governmental duties as a means of making private profit.
- Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.
- Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.
- Expose corruption and fraud wherever discovered.
- Uphold these principles, ever conscious that public office is a public trust.

## **5.0 COMPETITIVE PURCHASING REQUIREMENTS**

Under no circumstances shall multiple requisitions be used in combination to avoid other applicable bidding requirements or City Council approval.

### **5.1 Procedures for Purchases less than \$3,000**

Purchase under \$3,000 may be made either through a purchase order (PO) process or via the City's credit card.

### **5.2 Procedures for Purchases of \$3,000 to \$25,000**

All purchases greater than \$3,000 but less than \$25,000 must be processed in accordance with the following procedure.

- Purchases totaling \$3,000 to \$25,000 will require three or more quotes. Two no quotes returned equal one quote.
- All quotations received must be in writing from the vendor and available for review by the Mayor.

### **5.3 Procedures for Purchases \$25,000 to \$50,000**

The Mayor will be responsible for distribution of all formal quotes from \$25,000 to \$50,000. All requisitions \$25,000 and over will require approval by Council prior to purchase order being issued. Requisitions \$25,000 and over will be taken to Council as a Financial Transaction.

**5.4 Purchases more than \$50,000** 1. Except as otherwise exempted by applicable State law, requisitions for item(s) whose aggregate total cost is more than \$50,000 must be processed as a competitive solicitation (e.g. sealed bids, request for proposals, and request for offers.) Texas Local Government Code, Subchapter B, Section 252.021 defines the requirements for competitive bids.

**Texas Local Government Code, Section 252.062, states:**

A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B Misdemeanor.

A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described in subsection (a). An offense under this subsection is a Class B Misdemeanor.

A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by subsection (a) or (b). An offense under this subsection is a Class C Misdemeanor. Conviction for any of these offenses may result in immediate removal from office or employment.

### **5.5 Reciprocity**

The State of Texas Reciprocity Law provides that the State or political subdivision cannot award contracts or purchases to non-resident bidders having local preference laws in their resident states unless their bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the amount that a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

### **5.6 Award of Contract**

The City of Kempner shall award contracts based on criteria deemed in the best interest of the City.

**Texas Local Government Code, Section 252.043, states, in part:**

(a) if the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(b) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

### **5.7 Disclosure of Information**

Access to bidder-declared trade secrets or confidential information shall be in accordance with the Texas Government Code Chapter 552, the Public Information Act, and applicable City policies implementing this chapter.

**Texas Local Government Code Chapter 252.049(b) states, in part:**

If provided in an RFP, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

### **5.8 Professional Services**

Personal and professional services are exempted from the competitive bidding process and are procured through the use of Request for Qualifications (RFQ) documents. The Purchasing Division is available to consult with departments regarding the preparation of information; however, the presentation of

technical and qualifications aspects of personal and/or professional services included in the RFQ documents is the sole responsibility of the requesting department.

1. Texas Government Code, Chapter 2254, Subchapter A, Professional Services, states that contracts for the procurement of defined professional services may not be awarded on the basis of competitive bids. Instead, they must be awarded on the basis:

(a) of demonstrated competence and qualifications to perform the services;

(b) For a fair and reasonable price;

(c) Fees are allowed;

(d) Must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and

(e) May not exceed any maximum provided by law.

2. Professional Services for the purposes of Government Code Chapter 2254 are defined as those "services within the scope of the practice, as defined by state law, of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, or professional nursing, or provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant, an architect, a landscape architect, a land surveyor, a physician, including a surgeon, an optometrist, a professional engineer, a state certified or state licensed real estate appraiser, or a registered nurse.

**5.9 Automated Information Systems** All requests for computer equipment, software, telecommunications and related services or supplies should be submitted to the Mayor for review and evaluation. The Mayor will review each request for compatibility with other hardware and software and will investigate alternatives. Recommendations and comments will include but not be limited to:

- Additional costs incurred because of the purchase;
- Compatibility considerations;
- Cost effectiveness of the request; and
- Alternatives that would effectively meet the users' needs. No purchases for computer related equipment or supplies are allowed without approval.

### **5.10 Cooperative Purchases**

Cooperative purchasing occurs when two or more governmental entities coordinate some or all purchasing efforts to reduce administrative costs, take advantage of quantity discounts, share specifications, and create a heightened awareness of legal requirements. Cooperative purchasing can occur through inter-local agreements, state contracts, piggybacking, and joint purchases.

The Mayor shall take advantage of the following types of cooperative purchases when deemed to be in the City's best interest:

- Inter-local Agreement Purchases

- State Contract Purchases
- Piggybacking
- Joint Purchases

### **5.11 Emergency Purchases**

Valid emergencies are those that occur as a result of the breakdown of equipment which must be kept in operation to maintain the public's safety or health, or whose breakdown would result in the disruption of City operations. When this situation occurs, the department shall contact the Mayor and conduct the procurement of supplies and services in accordance with the Purchasing Manual.

The Legislature exempted certain items from sealed bidding in the Texas Local Government Code Section 252.022(a), including but not limited to:

1. A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality.
2. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;
3. A procurement necessary because of unforeseen damage to public machinery, equipment or other property.

### **5.12 Sole Source Purchases**

Sole-source purchases are items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies as defined by local government code.

When a department has identified a specific item with unique features or characteristics essential and necessary to the requesting department and no alternate products are available, a detailed written justification must be provided to the Purchasing Division in advance for review and approval.

## **6.0 LEGAL DEFINITION**

The legislature exempted certain items from sealed bidding in the Local Government Code Section 252.022 (a) 7, in part:

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;
5. books, papers, and other library materials for a public library that are available only from the person holding exclusive distribution rights to the materials; and

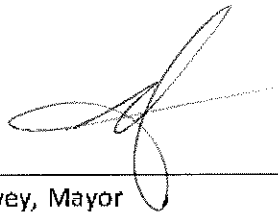
6. management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

#### **7.0 RECOMMENDATION TO CITY COUNCIL**

The Mayor will make final recommendations to the City Council for awarding of contracts, in accordance with approval thresholds, for all solicitations in the stated areas of responsibility.

#### **8.0 PURCHASING MANUAL**

The Purchasing Policy contains expanded explanation and process for accomplishing the procurement of goods and services in accordance with this policy. The Mayor maintains responsibility for updating the Policy in accordance with the applicable State and Local Government Codes, as approved by City Council.



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Dr. Keith L. Harvey, Mayor

*22 October 2019*

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Date