

CITY OF WOODCREEK, TEXAS

RESOLUTION NO. 2023-07-12-03

A RESOLUTION OF THE CITY OF WOODCREEK, TEXAS
UPDATING THE PROCUREMENT POLICY

WHEREAS, the City Council has reviewed the existing procurement policy and the newly proposed version on July 12, 2023; and

WHEREAS, the City Council finds the maintenance of the financial policy to be in the public interest, and necessary for the efficient and effective administration of City business.

NOW, THEREFORE, BE IT RESOLVED by the City of Woodcreek City Council:

1. The document entitled, "City of Woodcreek Procurement Policy" is hereby approved and adopted for purposes of conducting City business.
2. The City Council directs City Staff to implement the Procurement Policy to the extent reasonably possible.
3. The City Secretary is instructed to include a copy of this Resolution and the Procurement Policy enacted by this resolution in and among the records of the City.
4. The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings act, Texas Government Code, Chapter 551.

PASSED AND APPROVED this, the 12th day of July 2023, by a vote of 5 ayes to 0 nays to 0 abstentions of the City Council of Woodcreek, Texas.

CITY OF WOODCREEK:



Jeff Rasco, Mayor

ATTEST:



Suzanne MacKenzie

Suzanne MacKenzie, City Secretary

**City of Woodcreek
City of Woodcreek, TX
PROCUREMENT POLICY
July 12, 2023**

1.0 GOVERNING AUTHORITY

The primary governing authority for the City of Woodcreek's Purchasing Policy shall be the Local Government Code Chapter 252, "Purchasing and Contracting Authority of Municipalities." All procurement activity shall be governed by the Purchasing Policy, in accordance with applicable state and local government codes.

All powers of the City vest in the City Council. Authority for purchasing of goods and services is delegated to the City Manager provided the purchase does not exceed \$50,000.

To ensure proper oversight, all purchases will be reported to Council monthly.

2.0 PURPOSE AND SCOPE

The Purchasing Policy applies to the procurement activities of the City of Woodcreek. 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.

3.0 OBJECTIVES

The City Manager 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 City Manager solicits all competitive procurements required by law evaluates bids and proposals and makes recommendations to the City Council for awarding of contracts.

The City Manager or designee should be included in all stages of acquisition, through planning, ordering and receiving. The City Manager or designee processes bids, and/or negotiates and executes contracts to deliver goods and services in a timely manner. Ensure compliance with State of Texas purchasing statutes and the City's purchasing policies.

The City Manager is committed to providing quality service through effective teamwork and communication with vendors, in order to fulfill the purchasing needs of the City in a professional, responsive and timely manner in compliance with all City policies and applicable federal, State, county and local purchasing laws. Public purchasing has the responsibility to obtain the best value for the tax dollar in a fair, efficient and equitable manner. To achieve this objective the City of Woodcreek 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 Woodcreek 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.

3.1 General Duties of City Manager or designee

1. Observe and enforce the policies and procedures outlined in the City of Woodcreek Internal Purchasing Controls
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, prices, 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 recommendations for 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. Dispose of surplus City property;
10. 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 Woodcreek agree to:

- Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.
- Demonstrate loyalty to the City of Woodcreek 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 Woodcreek.
- 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 Woodcreek, 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 to circumvent other applicable bidding requirements or City Council approval.

5.1 Procedures for Purchases Less than \$4,999

Purchases under \$5,000 may be made through a simplified requisitions process.

- Items not subject to this process may include utility bills, lease payments, membership dues, employee reimbursements, travel fees, fuel, etc.

5.2 Procedures for Purchases of \$5,000 to \$50,000

All purchases \$5,000 or greater but less than \$50,000 must be processed in accordance with the following procedure:

- Purchases totaling \$5,000 to \$50,000 will require three or more quotes, when available. Two no quotes returned equal one quote.
- All quotations received must be provided in writing or by electronic mail from the vendor and available for review by the City Manager or designee.
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5.3 HUB'S

- Local Government Code Chapter 252.0215 Competitive bidding in relations to Historically Underutilized Business vendors, states that a municipality, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two HUB vendors on a rotating basis. If the list fails to identify a disadvantaged business in the county in which the City is situated, the City is exempt from this section.

HUB – Certified businesses that are at least 51% owned, operated, and controlled by the qualifying groups which include Asian Pacific Americans, Black Americans, Hispanic Americans, Native Americans and American Women.

5.5 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 solicitations (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 intentional 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.

5.6 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.

5.7 Award of Contract

The City of Woodcreek 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.*

5.8 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 a 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.

5.9 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 City Manager 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;*
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.

5.10 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 and should be used when deemed in the City's best interest.

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 City Manager and procure 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 Office in advance for review and approval.

6.0 LEGAL DEFINITION

The legislature exempted certain items from sealed bidding in the Vernon's Texas Codes Annotated- Local Government Code Section 252.022 (a) 7, in part: Procurement of items available from only one 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;
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.