



Administrative Policy

# EXCEPTIONS TO COMPETITIVE PROCUREMENTS

AP No.

5-11

Effective Date:

Upon Approval

## 1. POLICY STATEMENT

It is the policy of the City of Houston (City) that a competitive process should generally be conducted when making purchases of goods and services, unless an exception applies that would provide the best value to the City, as set forth in this policy.

## 2. POLICY PURPOSE

To identify situations in which a competitive process may not be required.

## 3. SCOPE

This policy applies to all City departments.

## 4. DEFINITIONS

**Chief Procurement Officer (CPO):** The Chief Procurement Officer for the City of Houston or designee.

**Cooperative Purchasing Program:** (1) A cooperative purchasing organization that pulls the buying power of more than one organization to leverage volume in order to reduce cost or (2) an arrangement between two or more governmental entities to combine purchasing power to obtain advantages of volume purchases. Such programs may involve one or more governmental purchasing units purchasing from the same supplier or multiple suppliers.

**Emergency Purchase Order (EPO):** A purchase order for non-contract goods and/or services that must be issued to address emergency conditions. EPOs that exceed a department's spending authority shall be issued by the CPO and subsequently submitted to City Council for approval, if required.

**Interlocal Agreement:** An agreement between one or more governmental entities for the purpose of performing governmental functions and services.

**Purchase Order:** A document creating a binding contract between the City and a supplier/vendor for goods and/or services, including binding terms and conditions that govern the relationship.

**Sole Source Purchase:** The purchase of goods or services that can *only* be obtained from a single supplier and/or manufacturer. This should not be confused with a single source when only one source may be available locally but many suppliers/contractors are located elsewhere.

## 5. POLICY DETAILS

### 5.1. Emergency Purchases

5.1.1. An emergency purchase may be made when necessary to protect public health and safety or when necessary to relieve calamity or unforeseen damage to public property.

Approved:

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Date Approved:

3/4/2016

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5.1.2. Departments that need to make an emergency purchase must:

5.1.2.1. Complete the Emergency Purchase Justification form. The form must include:

5.1.2.1.1. The nature of the emergency (i.e., a hazard to life, welfare, safety, or property).

5.1.2.1.2. The cause of the emergency.

5.1.2.1.3. The estimated impact or damage that may result from following standard procurement procedures. The Emergency Purchase Justification form must detail the estimated impact or damage that may result from following standard procurement procedures.

5.1.3. The CPO reviews the justification form and approves if an emergency purchase is warranted.

5.1.4. For EPOs over \$50,000, the Strategic Procurement Division (SPD) shall obtain City Council approval before issuing the EPO, if at all possible. If time does not allow for City Council approval, SPD must obtain City Council approval as soon as possible after issuing the EPO.

## 5.2. Sole Source Purchases

5.2.1. Sole source purchases are permissible under the following circumstances:

5.2.1.1. The compatibility of the goods or services with current services, equipment, accessories, or replacement parts is the paramount consideration;

5.2.1.2. An existent equivalent product does not exist; or

5.2.1.3. Only one source is acceptable or suitable for the supply or service.

5.2.2. When a department believes an item is available from only one source, it must complete a Sole Source Justification form and submit the form to the CPO for approval.

5.2.3. For sole source purchases within the department's spending authority, upon approval of the CPO, the department may issue a purchase order.

5.2.4. Sole source purchases in excess of \$50,000 (or other amount set by state law) must be approved as sole source by the CPO and then by City Council before a purchase order is issued.

## 5.3. Cooperative Purchasing Programs

5.3.1. When the City is participating in a cooperative purchasing program with another participating governmental entity or cooperative purchasing organization, the City will designate a SPD representative to handle all purchases made through the program. When making purchases through a cooperative purchasing program SPD shall:

5.3.1.1. Determine whether the City is a member of a cooperative purchasing program through which the goods or services may be purchased.

5.3.1.2. Determine whether the City is buying the good or service at the price that provides the best value to the City.

5.3.1.3. Ensures appropriate documentation regarding the purchase is uploaded to SAP with other documents relating to the purchase.

5.3.2. Departments seeking to purchase from a cooperative purchasing program must submit the Request to Purchase from Cooperative/Interlocal form to the CPO for approval before the purchases may be made.

#### 5.4. Interlocal Agreements

5.4.1. SPD identifies whether an interlocal agreement exists through which the goods or services may be purchased or whether another governmental entity wishes to enter into an interlocal agreement for the purpose of purchasing goods or services. A department seeking to purchase through an interlocal agreement shall complete the Request to Purchase from Cooperative/Interlocal form.

5.4.2. When an interlocal agreement is already in place:

5.4.2.1. If the purchase is under \$50,000, SPD may issue a purchase order for the goods or services.

5.4.2.2. If the purchase is over \$50,000, SPD shall seek City Council approval before issuing the purchase order.

5.4.3. When no interlocal agreement is in place:

5.4.3.1. SPD, with the assistance of legal counsel, will negotiate an interlocal agreement between the City and one or more governmental entities.

5.4.3.2. The final agreement shall be submitted to City Council for approval, as required by Texas Government Code Chapter 791.

5.4.3.3. After City Council approves the agreement, SPD shall issue a purchase order if the goods or services to be purchased are \$50,000 or less. Purchases over \$50,000 must receive approval of City Council before SPD will issue a purchase order.

#### 5.5. Specialized or Professional Services

5.5.1. In some circumstances, services can be performed competently only by a person or persons having a special skill, expertise, education, or knowledge that is primarily mental or intellectual in nature rather than physical or manual. Such services include professional services, computer programming services, computer maintenance services, auditing services, financial advisory services, instructional services provided by trained educators, and the like.

5.5.2. Such specialized services may be obtained without competition, provided the justification is submitted to and approved by the CPO.

#### 5.6. Compliance

5.6.1. All employees through the department director shall comply with this policy from the date of approval forward. Violations of this policy may subject the offending employee to disciplinary action up to and including indefinite suspension/termination.

### 6. ROLES AND RESPONSIBILITIES

6.1. Chief Procurement Officer:

- 6.1.1. Determines when exceptions to policy, including the City Charter and Code of Ordinances, apply.
- 6.1.2. Develops and maintains specific procedures to ensure relevant law and best practices are implemented in procuring goods and services that are subject to an exception to procurement laws.
- 6.1.3. Develops forms for justifying when an exception to a competitive procurement is permissible.
- 6.1.4. Determines whether a request for an exception is authorized, by executing a justification form for a sole source, emergency cooperative program, or interlocal agreement. If the CPO does not approve an exception, the CPO shall require the purchase to be made through a competitive procurement.

## 6.2. Finance Department Strategic Procurement Division

- 6.2.1. Assists departments with identifying opportunities to purchase from a cooperative or through an interlocal agreement
- 6.2.2. Prepares Requests for Council Action when City Council approval is required for any purchases made pursuant to this policy.
- 6.2.3. Disseminates the availability of cooperative contracts, including authorized spending limits.

## 6.3. Department Directors or Designees

- 6.3.1. Ensure compliance with this policy.
- 6.3.2. Prepare justification forms when requesting a noncompetitive procurement for review by the CPO.

## 7. RELATED DOCUMENTS AND INFORMATION

This administrative policy supersedes Administrative Procedure 5-2, effective April 1, 2010, which shall be of no further force or effect. If the provisions of this policy conflict with any law, that law shall prevail.

## 8. APPENDICES

- Emergency Purchase Justification Form
- Sole Source Justification Form
- Request to Purchase from Cooperative/Interlocal Form

## 9. POLICY SPONSOR

**Department:** Finance Department Strategic Procurement Division