



Administrative Policy

# EXCEPTIONS TO COMPETITIVE PROCUREMENTS

A.P. No.

A.P 5-11

Effective Date:

Upon Approval

## 1. POLICY STATEMENT

The policy of the City of Houston (City) is to conduct a competitive procurement process when purchasing goods or services, unless an exception applies that provides the best value to the City, as set forth in this policy.

## 2. POLICY PURPOSE

The purpose of this policy is to identify situations in which a competitive process may not be required.

## 3. SCOPE

This policy applies to all City departments.

## 4. DEFINITIONS

**Cooperative Purchasing Program:** A cooperative purchasing organization that pulls the buying power of more than one organization to leverage volume in order to reduce cost.

**Emergency Purchase Order (EPO):** A purchase order goods and/or services issued to address emergency conditions, pursuant to the authority in section 15-49 of the City Code and the processes established by the CPO and in this Administrative Policy.

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

**Piggyback Agreement:** A form of intergovernmental cooperative purchasing under which one governmental entity, pursuant to a prior Interlocal Agreement between the entities authorizing such purchases, may contract directly with a vendor, using the pricing and terms of a contract entered into by another governmental entity.

**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/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. Pursuant to Section 15-49 of the City Code, the Chief Procurement Officer (CPO) may execute contracts without the use of a competitive method without prior approval of city council when procurements are necessary (i) due to a threat to public health or safety, (ii) for repairs to city property in order to protect against further loss or damage, (iii) to

Approved:

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Date Approved:

12/12/2022

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prevent or minimize serious disruption in city services, (iv) to ensure the integrity of city records, or (v) in the reasonable opinion of the CPO, whenever the best interests of the City is served. The CPO shall implement procedures to meet these requirements, and when practicable, conduct informal competition for the award of an emergency contract. Any emergency purchases made in excess of the threshold (as defined in Section 15- 42 of the City Code) shall be submitted to city council for approval as soon as practicable.

5.1.2 Departments that need to make an emergency purchase must discuss the purchase with the CPO (not a designee) as soon as the situation has stabilized but at least within 8 hours, if not earlier, of the incident giving rise to the need to make an emergency purchase. Requesting departments will include a description of the incident as well as provide an estimated cost at the time of notification.

5.1.2.1 Departments shall provide a completed Emergency Justification Form (Justification Form) to the CPO within 24 hours of the incident. The form must include:

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

5.2.1.1.1 The cause of the emergency.

5.2.1.1.2 The estimated impact or damage that may result from following standard procurement procedures. The justification form must also include the not to exceed value for the cost of the work.

5.2.2 The CPO reviews the information and determines if an emergency purchase is warranted.

5.2.3 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.

### 5.3 Sole Source Purchases

5.3.1 Sole source purchases are permissible under the following circumstances:

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

5.3.1.2 An existing equivalent product does not exist;

5.3.1.3 Only one source is acceptable or suitable for the supply or service; or

5.3.1.4 After a competitive procurement is performed, to promote standardization of equipment or supplies.

5.3.2 When a department believes an item is available from only one source, it must complete a Sole Source Justification form, with enough evidence to demonstrate that the unique specifications, qualities, or capabilities of the item substantiates a sole source exception, and submit the form to the CPO for approval.

5.3.3 For sole source purchases within the department's spending authority and under \$50,000, the department may issue a purchase order upon approval of the CPO.

5.3.4 Sole source purchases in excess of \$50,000 (or other amount set by state law) must be approved by city council before a purchase order is issued.

## 5.4 Cooperative Purchasing Programs

5.4.1 When the City is participating in a cooperative purchasing program with another participating governmental entity or cooperative purchasing organization, the CPO or designee will designate an SPD representative to handle all matters relating to the program. When making purchases through a cooperative purchasing program SPD shall:

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

5.4.1.2 Ensure the City is buying the good or service at the best value to the City (which may include negotiating rates lower than those listed on the cooperative purchase agreement or schedule.) Whenever feasible and when there is more than one vendor available that offers the good or service valued over \$3,000, the City shall attempt to obtain at least three quotes from contractors/vendors on the cooperative program that may be utilized before making the purchase. If three quotations cannot be obtained, the department seeking to make the purchase must document its efforts and report them to the CPO.

5.4.1.3 Where appropriate or required by applicable law or city policy, SPD shall ensure:

5.4.1.3.1 The required contract terms and conditions are appended to the cooperative purchasing agreement (e.g., using GSA e-Buy system, adding a City PO Addendum or doing a piggyback agreement):

5.4.1.3.2 Solicit MWBE participation (as appropriate); and

5.4.1.3.3 take affirmative steps to encourage participation of small businesses, minority businesses, women owned enterprises and labor surplus areas firms where 2 C.F.R. Part 200 applies.

5.4.2 When 2 C.F.R. Part 200 or other federal law applies to the prospective procurement or purchase, Departments shall consult with the CPO or designee or City Attorney or designee to determine if a cooperative purchasing program is an acceptable procurement vehicle.

5.4.3 Departments seeking to purchase from a cooperative purchasing program must submit the Request to Purchase from Cooperative/Interlocal form to the CPO.

## 5.5 Interlocal Agreements

5.5.1 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 and submit it to the CPO.

5.5.2 When an interlocal agreement is already in place:

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

5.5.2.2 If the purchase is over \$50,000, SPD shall seek city council approval before issuing

the purchase order, unless otherwise authorized by the ordinance approving the interlocal agreement.

5.5.3 When no interlocal agreement is in place:

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

5.5.3.2 The final agreement shall be submitted to city council for approval.

5.5.3.3 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, unless otherwise authorized by the ordinance approving the interlocal agreement.

5.6 Other Noncompetitive Procurements

Departments seeking to use an exception not listed herein shall submit a justification form for an exemption to the CPO. The form shall identify the relevant law authorizing the exemption, along with other pertinent information to support the noncompetitive purchase.

## 6 ROLES AND RESPONSIBILITIES

6.2 Chief Procurement Officer or designee:

6.2.1 Determines when departments may exercise or rely on exceptions to procurement laws or city policy and best practices related to procurement, including the City Charter and Code of Ordinances, apply.

6.2.2 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.

6.2.3 Develops forms for justifying when an exception to a competitive procurement is permissible.

6.3 Finance Department Strategic Procurement Division

6.3.1 Assists departments with identifying opportunities to purchase from a cooperative or through an interlocal agreement.

6.3.2 Prepares Requests for Council Action when city council approval is required for any purchases made pursuant to this policy.

6.3.3 Coordinates the development of a "piggyback" agreement to allow departments to make purchases from the cooperative organization

6.3.4 Disseminates the availability of cooperative contracts, including authorized spending limits.

6.4 Departments

6.4.1 Ensure compliance with this policy.

## 7 CONFLICT AND REPEAL

7.2 This Administrative Policy supersedes Administrative Policy 5-11, effective August 8, 2022, which shall be of no further force or effect. All other departmental and City policies that are inconsistent with this Administrative Policy are hereby superseded.

## 8 RELATED DOCUMENTS AND INFORMATION

- Emergency Purchase Justification form
- Sole Source Justification form
- Request to Purchase from Cooperative/Interlocal form
- Professional Services Justification form
- Health and Safety Justification form

## 9 POLICY SPONSOR

**Department:** Finance Department Strategic Procurement Division