

PARK BOARD POLICY AND STATE LAWS GOVERNING PURCHASING

General Information

The Park Board operates as a local government. It must adhere to Texas State Law that governs procurement for local governments. The policies are based on Texas State Law. Any purchases involving federal or state funding shall be made per applicable federal or state procurement requirements.

All purchasing shall be under the State of Texas laws, including chapters 252, 271 of Texas Local Government Code and chapters 2254 and 2269 of the Texas Government Code and, and the Park Board policies and procedures pertaining to purchasing.

Park Board – Purchasing Policy

Section 2-117. Purchasing Policies and Procedures Manual

All purchasing and bidding shall be done in accordance with applicable state and federal law and per policies and procedures outlined in the document entitled "The Park Board of Trustees of the City of Galveston Texas Purchasing Policies, Procedures, and Controls Manual," a true and correct copy to be kept on file by Board Administration.

State Laws

Historically Underutilized Business

Texas Local Government Code Section 252.0215. COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS.

- In making an expenditure of more than **\$3,000** but less than **\$50,000**, a municipality shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code.
- If the list fails to identify a historically underutilized business in the county where the municipality is situated, the municipality is exempt from this section.

Separate, Sequential, or Component Purchases

Texas Local Government Code Section 252.062. CRIMINAL PENALTIES.

- A. 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.
- B. 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 by Subsection (a). An offense under this subsection is a Class B misdemeanor.
- C. 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. See Purchasing Code of Ethics section, page 13, for definitions and examples of separate, sequential, and component purchases.

Note: The above section applies only to the competitive procurement requirement of Texas Local Government Code Chapter 252, with a contract value of \$50,000 or greater.

General Exemptions to Local Government Code Chapter 252

Texas Local Government Code Section 252.022 exempts certain items from competitive bidding.

1. A procurement made because of a public calamity requires the immediate appropriation of money to relieve the necessity of the municipality's residents or preserve the municipality's property.
2. A procurement necessary to preserve or protect the municipality's residents' public health or safety is a procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
3. A procurement for personal, professional, or planning services.
4. A procurement for work that is performed and paid for the day as the work progresses.
5. Purchase of land or right-of-way.
6. Procurement of items that are available from only one source, including items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available on from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facilities to which the organization has provided significant financial or other benefits.
7. Purchase of rare books, papers, and other library materials for a public library.
8. Paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements.
9. A public improvement project, already in progress, authorized by the voters of the municipality, for which funds are deficient for completing the project in accordance with the plans and purposes authorized by the voters.
10. A payment under a contract by which a developer participates in constructing a public improvement as provided by Subchapter C, Chapter 212.
11. Personal property sold, either at an auction or by a state-licensed auctioneer. Property sold at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code. Property sold by a political subdivision of this state, a state agency of this state, or an entity of the federal government or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391.
12. Services performed by blind or severely disabled persons.
13. Goods purchased by a municipality for subsequent retail sale by the municipality.
14. Electricity or advertising, other than legal notices.
15. This chapter does not apply to bonds or warrants issued under Subchapter A, Chapter 571. that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that chapter with respect to that expenditure.
16. This chapter does not apply to expenditures by a municipally-owned electric or gas utility or unbundled divisions of a municipally-owned electric or gas utility in connection with any purchases by the municipally owned utility or divisions of a municipally-owned utility made in

accordance with procurement procedures adopted by a resolution of the body vested with authority for management and operation of the municipally owned utility or its divisions that set out the public purpose to be achieved by those procedures. This subsection may not be deemed to exempt a municipally-owned utility from any other applicable statute, charter provision or ordinance.

17. This chapter does not apply to an expenditure described by Section 252.021(a) if the governing body of a municipality determines that a method described by Chapter 2269, Government Code, provides a better value for the municipality with respect to that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that chapter with respect to the expenditure.
18. Please note that the sole source procurement has been created because copyrights or "natural monopolies" have not been reviewed by the Texas courts or the Attorney General's office.

General Exemptions to the Park Board Purchasing Policy

In addition to the items exempt from Texas Local Government Code 252, the following items are exempt from the Park Board Purchasing Policy's competitive bidding procedures. All other requirements in this policy, and by law, are still applicable.

1. Travel by Park Board employees, including meals and lodging. Park Board employees should still make efforts to find the best deal when traveling. Per diem rates are still applicable.
2. Training for Park Board employees.
3. Purchasing of surety bonds or investments subject to the Park Board's investment policy.
4. Purchases of publicly provided or publicly regulated gas, electricity, water, cable TV, internet service, telephone, cellular telephone, sewer, and refuse collection services.
5. Contracts with professional entertainers.
6. Legal services for advice, consultation, and representation of the Park Board.
7. Purchases consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees, memberships, and other similar purchases where prepayments are required.
8. Sponsorship contracts allowing a person or entity to publicize participation in Park Board events in exchange for donations of goods and services.
9. Purchase of parts and labor or maintenance agreements to repair equipment or machinery by a franchised dealer or by a factory authorized repair shop.
10. Leases, exchanges, or purchases of real property, including closing costs.
11. Postage or shipping services.
12. Services provided solely by other government agencies or institutions of higher learning.
13. Contracts for professional services relying on previous professional services rendered, when the vendor providing the previous professional services can provide the additional professional services in a manner clearly less expensive and expeditious in the opinion of the Chief Financial Officer.

14. Purchases of books, periodicals, films, music, training materials, and online information services.
15. The Chief Financial Officer may grant other exemptions to this policy, as necessary.

Note: Items that are exempt from the requirement to get quotes, proposals, or bids may indeed be subject to the state competitive bidding laws if the **\$50,000** threshold is met. In those instances, state law prevails over this policy. Other requirements outlined in this policy like requisitions, purchase orders, approvals, etc., are still applicable.

Professional Services

Texas Government Code Title 10, Chapter 2254. Professional Services are 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 the practice of a person licensed or registered as a certified public accountant, architect, landscape architect, land surveyor, a physician (including a surgeon), an optometrist, a professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse.

PURCHASING

General Requirements

A staff member authorized to make purchases on behalf of the Park Board shall determine the most appropriate and effective purchasing services or commodities for the Park Board. The staff will have various options to select from when making a purchase; these options include state contracts, purchasing cooperatives, inter-local agreements, and City of Galveston contracts. If the above options are not available, the Accounting Department will assist the department or staff member with other options and/or methods. Factors in determining how to acquire commodities or services are:

- A. Meeting department's needs while ensuring that the method selected achieves best value,
- B. Conforming to standards of ethical conduct, and
- C. Complying with all applicable laws, rules, and regulations.

Purchasing Authority

Authority to obligate Park Board funds for the purchase of supplies, materials, equipment, and services (including repairs and maintenance agreements) has been granted to the CEO and Park Board Chair. The primary purchasing document used by the Park Board to secure supplies and/or equipment is the Purchase Order (PO).

Obligation of Funds

The purchase order represents a binding written agreement between the Park Board and a seller. It obligates the Park Board to pay for specific goods or services when delivered in accordance with the purchase order terms and conditions. The Accounting Department issues all purchase orders.

Any other commitments, written or verbal, are considered unauthorized purchases, and the individual making the commitment might incur a personal obligation to the vendor. The only exception is valid Credit Card Purchases.

Purchasing

The Park Board of Trustees follows the State of Texas bid solicitation guidelines:

Purchases \$1,000 or less

- The individual buyer/department/department representative may exercise discretionary purchasing and acquisition of these purchases.
- Credit card purchases are allowed for this amount.
- Quotes are recommended but not required for this threshold.
- E-Requisitions and Purchase Orders are not required for these purchases
 - However, when submitting an invoice for payment or when submitting a credit card receipt, department staff **MUST** indicate what fund, department, and account code to use.
- Structured Purchasing will not be allowed at this or any other level.

Purchases \$1,001 to \$1,999

- The individual buyer/department/department representative may exercise discretionary purchasing and acquisition of these purchases.
- Credit card purchases are allowed for this amount.
- Quotes are recommended but not required for this threshold.

Purchases \$2,000 to \$9,999

- Requires three (3) quotes obtained by user department via email, telephone (call must be documented with vendor name, phone number, the person spoke with, and the amount quoted), or written.
- The Bid Quotes Report will be completed for each purchase, including sole source. The report will also be signed by the manager of the fund being charged. All written quotes will be attached to the Bid Quotes Report. The completed Bid Quotes Report will be forwarded to the Accounting Division.
- Written documentation provided to the Accounting Department prior to requisition.
- Credit card purchases are allowed only with written approval from the CFO and within limits placed on the credit card being used.

Purchases \$10,000 to \$49,999 (Board approved)

- Requires three written bids and Park Board approval.
- The Bid Quotes Report will be completed for each purchase, including sole source. The report will also be signed by the manager of the fund being charged. All written quotes will be attached to the Bid Quotes Report. The completed Bid Quotes Report will be forwarded to the Accounting Division.
- Written documentation provided to the Accounting Department prior to requisition.
- Credit card purchases are not allowed at this level.

Purchases \$50,000 or more – State law level

- Purchases at State Law level and greater require sealed bids or proposals unless they are exempt by Texas LGC 252.022.
- The Park Board must approve all purchases **\$10,000** and over, even if the purchase is exempt from sealed bids/proposals.
- The Bid Quotes Report will be completed for each purchase, including sole source. The report will also be signed by the manager of the fund being charged. All written quotes will be attached to the Bid Quotes Report. The completed Bid Quotes Report will be forwarded to the Accounting Division.
- Department Head or department designee shall ensure that funds are available in the department's budget before requisitions are issued and before purchases are made for the department.
- Separate, Sequential, and Component Purchases are not permitted at this level. "Component Purchases" means purchases of the component parts of an item that would be purchased in one purchase in standard purchasing practices. "Separate Purchases" means purchases, made separately, of items that would be purchased in one purchase in standard purchasing practices. "Sequential purchases" means purchases made over a period of items that would be purchased in one purchase in standard purchasing practices.

Employees shall not make any purchases without a purchase order number; the only exceptions are purchases **\$1,000** or less and Emergency Purchases as defined in the section below and outlined in Texas LGC 252.022.

Sealed Competitive Bids/Proposals

These procurements are defined as purchasing materials or services at or greater than the state law level of **\$50,000**. The Park Board may use either Competitive Sealed Bidding or Competitive Sealed Proposals for expenditures or procurements at state law level or greater. However, before the competitive process begins, the CEO or designee must determine which method provides the board's best value. (See Texas LGC 252 & 271)

Competitive Sealed Bid – (Formal Bid)

- Notice to bidders must be publicly advertised in the newspaper for two (2) consecutive weeks, with the first date of publication being at least fourteen (14) days prior to the opening of the bid.
- A public bid opening will be conducted at the Park Board Plaza building.
- Bids are presented by the user department, with a staff report, to the Board. The Board has the right to reject all offers or award any or all offers.
- The Board will use the best value method to award contracts under the competitive sealed bid method.
- The Board will indicate in the bid specifications that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods and services as the best value to the Park Board.

Competitive Sealed Proposal – (Formal Proposal)

- Notice to proposers must be publicly advertised in the newspaper for two (2) consecutive weeks, with the first date of publication being at least fourteen (14) days prior to the opening of the proposal.
- A public proposal opening will be conducted at the Park Board Plaza building; price information is only read aloud if it is a construction, public work project, as defined in Texas Government Code Chapter 2269.
- Proposals are presented by the Department, with a Staff Report, to the Board.
- The Board has the right to reject all offers or award any or all offers.
- A proposal offers the Board the ability to negotiate with a selected vendor prior to awarding a contract.
- Evaluation of Proposals can include the following criteria:
 - Purchase Price
 - Reputation and financial responsibility of the proposer and the proposer's good and services
 - Quality of the proposer's goods or services
 - Extent to which the goods or services meet the Park Board's needs
 - Proposer's past relationship with the Park Board
 - Impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses, nonprofit organizations employing persons with disabilities
 - Total long-term cost to the Park Board to acquire the proposer's goods or services
 - Any relevant criteria specifically listed in the request for bids or proposals

Any incomplete bid or proposal submitted by an offeror will be marked as non-responsive.

No bid or proposal will be considered if it is submitted after the deadline.

User departments should plan ahead when a contract for services, commodities, or construction need to be executed for the Park Board. If you have items that are procured annually, check your contract dates for expiration. Contact Accounting a minimum of four (4) months prior to the expiration of a contract to avoid a lapse in contracting for services or commodities. Purchases must have budgeted funds.

Note: In rare instances, it may be difficult to obtain three (3) quotes, bids, or proposals. In those instances, department staff must make a reasonable effort to secure three (3) quotes, bids, or proposals and document their efforts and the reason why three (3) quotes, bids, or proposals were not obtained.

Buy boards such as HGAC-Buy can be used in lieu of the bidding process. All contracts available to participating members have been awarded by virtue of a public competitive procurement process compliant with statutes of the state of Texas. It is recommended that a cost comparison be performed to take advantage of receiving the lowest price available.

The Park Board of Trustees is a tax-exempt organization. Vendors should be made aware of this status. A State of Texas tax-exempt form should be completed and submitted to the vendor.

All contracts MUST be reviewed and approved by the CFO and legal counsel BEFORE being submitted to the CEO or Park Board Chair. Contracts can only be signed and executed by the CEO or Park Board Chair. There is NO exception to this rule.