



# THE BEACON



**Introduction:** The Beacon is published by the Office of the City Auditor. The Beacon is intended to provide information and compile or summarize relevant criteria for processes and activities that might be subject to upcoming audits. Other potential activities or processes that may be discussed in future issues of the Beacon include: environmental management, cash handling, and inventory control. In addition to email and paper copies, we will be publishing the Beacon on our website at [www.ci.austin.tx.us/auditor/](http://www.ci.austin.tx.us/auditor/). This issue focuses on State law, the City Code, and City policies and procedures associated with sole source contracting and procurement. If you have any questions, contact us at: 512-974-2805, or [shari.mills@ci.austin.tx.us](mailto:shari.mills@ci.austin.tx.us).

## Keeping the Spirit of Competition Alive

Tempting situations may arise to unduly justify a sole-source when making a contracting or procurement decision, such as:

- meeting strict deadlines,
- dealing with political pressure to choose a particular vendor,
- having personal or organizational bias towards a vendor,
- having the desire to maintain (establish) good relationships with existing, past, or future vendors,
- having close personal ties with vendors, or
- being offered gifts or favors.

However, there are far more compelling reasons to keep the spirit of competition alive in the City of Austin such as:

- providing opportunities for all businesses including minority and women owned businesses,
- ensuring that government monies are being used wisely,
- making certain that there is an ethical process for awarding contracts,
- guaranteeing fair pricing for products and services, and
- encouraging vendors to provide the City with quality products and services.

The City Auditor's Office would like to remind you that if you are involved with making any purchasing decisions for your department, you are privileged and entrusted with a very important job. Bear in mind, you are in part responsible for the allocation of City assets, as well as selecting the best service provider for your fellow employees, management, Council, and the citizens we serve. Thus, it is essential that you understand State law, the City Code, and City policies and procedures associated with sole-source contracting and procurement.



## When in Doubt Ask for Assistance

Texas State Law, Chapter 252 of the Local Government Code provides instructions on how to handle City contracts and procurements. However, Section 252.022, exempts procurements or contracts of items which are available from only one source. Some of these items are:

- 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 only 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 facility to which the organization has provided significant financial or other benefits.

An employee who intentionally or knowingly violates chapter 252, is subject to criminal punishment. A violation of this code can range from a Class C misdemeanor to a Class B misdemeanor, based on the factors of the violation.

## What Does the City Charter Say about Procurements?

The City Charter states that, “before the city makes any purchase or contract for supplies, materials, equipment or contractual services, opportunity shall be given for competition unless exempted by state statute. The city manager shall have the authority to contract for expenditures without further approval of the council for an expenditure that does not exceed [\$46,000] annually. A contract or an amendment to a contract, involving an expenditure of more than [\$46,000] annually must be expressly approved by the Council. All contracts or purchases involving more than \$5,000 shall be let to the bid deemed most advantageous to the City after there has been an opportunity for competitive bidding; provided, however, that the council shall have the right to reject any and all bids. Contracts for personal or professional services shall not be let on competitive bids and each such contract, or amendment to a contract, involving more than [46,000]



*Let's make sure everyone has a chance for a piece of the pie!*

annually shall be approved by the Council. The city manager may not contract for personal or professional services under the manager’s authority if the manager knows or reasonably should know that the contractor’s full scope of work will exceed the limit of the manager’s authority. The amount of the [\$46,000] annual limitation shall be modified each year with the adoption of the budget to increase or decrease in accordance with the most recently published federal government, Bureau of Labor Statistics Indicator, Consumer Price Index (CPI-W U.S. City Average) U.S. City Average.”

## Let the City Purchasing Policies be Your Guide

The City purchasing policies and procedures set forth criteria that most City departments are expected to follow when making the decision to sole source a contract. The City purchasing policies and procedures state that, “a sole source exists if an item or service meeting the following criteria is the only one capable of meeting the department's requirements, and that item or service is only available from the source recommended, based on:

- compatibility of equipment, accessories, or replacement parts is an overriding consideration and the goods can only be supplied by one source, or;
- competition is precluded because the required purchase involves goods that are patented, copyrighted, that use secret processes, or involve natural monopolies; purchases of films, manuscripts, or rare books, sole expertise, or purchases of electricity, gas, and water as well as other utility services; and the purchase of captive replacement parts or components for equipment.”

Exhibit A is the City’s current sole source justification form. When a sole source is warranted, it is crucial that this form is filled out completely and signed by the proper authority.

### Exhibit A: Sole Source Justification

PURCHASING OFFICE CITY OF AUSTIN  REQUEST FOR SOLE SOURCE PROCUREMENT
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TO: Purchasing Officer or Designee FROM: \_\_\_\_\_

1. Request approval for Sole Source Procurement of goods and/or services for the reasons as described in Section 3 herein.
2. Describe item/service to be purchased. Include cost, name, and telephone number of vendor and other descriptive information.  
Please remove these instructions and replace with your explanation of the need for a sole-source purchase. This box will automatically size to fit your entry, and your information will be automatically bold-faced and underlined.
3. Definition of Sole Source Procurement Condition (check one or more items). This procurement is necessary because:
  - \_\_\_ A. the compatibility of equipment, accessories, or replacement parts is the paramount consideration.
  - \_\_\_ B. a public utility service is to be procured.
  - \_\_\_ C. competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies; purchase of films, manuscripts, or books; purchases of electric power, gas, water, and other utility services, and the purchase of captive replacement parts or components for equipment.
4. Summary of Sole Source Procurement Condition:  
Please remove these instructions and replace with your summary of the conditions. This box will automatically size to fit your entry, and your information will be automatically bold-faced and underlined.

## Exception for Austin Energy Purchasers

Austin Energy, however, may go outside the requirement of following Chapter 252, the City Charter, and or City purchasing policies and procedures. This is possible due to deregulation. Senate Bill 7 provides municipally-owned electric utilities an exemption from the purchasing requirements of Chapter 252 of the Local Government Code if the municipally-owned electric utility's governing body adopts substitute purchasing procedures. Austin City Council has chosen to adopt resolution number 000330-13. This Resolution greatly increases the flexibility and efficiency of the procurement process for Austin Energy in a manner similar to privately-owned electric utilities with whom Austin Energy must compete. A "critical business need" must be identified in order to use this resolution. The following are some examples of "critical business needs" listed in the resolution"



- Emergency situations that arise to protect the public health or safety or in response to a public calamity;
- A purchase needed because of unforeseen damage to public equipment, machinery, or property;
- Any procurement needed to preserve the competitive interests or position of Austin Energy.

The resolution grants the Austin Energy General manager or his designee this discretion to determine the "critical business need." Yet, in these situations, the threshold approval amounts established by the City Charter must be followed.

The resolution states, "once it has been determined that a procurement is necessary to meet a critical business need of Austin Energy, the Purchasing Manager will manage the procurement so as to assure that it expeditiously meets the critical business need of Austin Energy while providing competition to the extent possible and maintaining a fair process."

Exhibit A: Sole Source Justification Form  
Cont. from page 2

5. Check only one of the following:

I certify that a Sole Source Procurement exists for a purchase of \$5,000 or more. Please forward this request to the Purchasing Office.

I certify that a Sole Source Procurement exists and that the following efforts were undertaken in obtaining goods/services from MBE/WBE for a purchase under \$5,000. Please continue to sections 6 and 7. Forward to the Purchasing Office.

Director	Department	Signature	Date
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6. Solicitations:

	Vendor Name Person Contacted / Telephone Number	Indicate M/WBE or Non-Minority	Total Bid Amount
A.	_____	_____	_____
B.	_____	_____	_____
C.	_____	_____	_____

7. A reasonable effort was made to obtain goods/services from MBEs/WBEs (if MBEs/WBEs were not contacted and/or not awarded the contract, state reasons).

**Please remove these instructions and replace with your statement of efforts. This box will automatically size to fit your entry, and your information will be automatically bold-faced and underlined.**

Purchasing Office:

\_\_\_\_\_ Concur      \_\_\_\_\_ Do Not Concur

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Purchasing Officer or Designee      Date

## It's a Wrap

It is important that you make sound, objective decisions when deciding whether or not to sole source a purchase. As agents of the City, it is very important that you work with the purchasing office to make certain that State laws, the City Code, and City policies and procedures associated with sole-source contracting and procurement are followed.

Ensuring fair competition and proper allocation of City assets should be your goal. Moreover, it is important that you follow the proper laws and policies associated with City contracts and procurements.

If you have questions about a specific purchase or City purchasing policies, contact the City's purchasing office. If you see or suspect any violations of State laws, the City Code, or City policies and procedures, contact the City Auditor's Integrity Unit.

“We make Austin City Government  
better and more accountable”

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OCA's Fraud, Waste, and Abuse Hotline: (512) 478-1101

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**OFFICE OF THE CITY AUDITOR**

**AUSTIN, TEXAS**