

CHAPTER FOUR

Public Purchasing and Materials Management

A major consideration of every municipality is the acquisition of materials, supplies, equipment, and services. The goal of any municipal purchasing operation should be to add value to the acquisition process. Since these acquisitions may account for over one-fourth of all municipal expenditures annually, sound and effective purchasing and materials management policies and procedures are important to the financial integrity of the city, to its administration, and, ultimately, to the taxpayers.

This chapter contains a brief overview of the elements of effective purchasing and an outline of the purchasing program, as well as purchasing-related resources and some sample purchasing forms. For a more detailed guide, the *Model Purchasing Manual*, published by the Local Government Assistance Division of the Office of the Comptroller of Public Accounts (<http://www.window.state.tx.us/lga/index.html>), is recommended.

Elements of Effective Purchasing

Effective purchasing has been defined as buying the right quality, in the right quantity, at the right price, at the right time, from the right source. The key word here is “right” or appropriate. Taken in this context, “right” means the:

- *Quality* is the appropriate level that fulfills all necessary requirements to meet the end user’s needs for a particular item at the lowest overall cost. The right *quality*, for instance, is not always the best or highest quality, nor is it always the lowest or cheapest. Specifying more quality than needed may drive up the cost and limit competition. Specifying less runs the risk of interruption in the delivery of city services, and increased operating costs.
- *Quantity* that will ensure an adequate inventory of supplies and material at the most reasonable, or optimum “total cost of ownership,” to the city. When quantities ordered are too small, the price per unit is usually higher; time must be spent on redundant paperwork re-ordering stock, and the risk of running out of critical supplies and material increases. When orders are too large, inventory “carrying costs” are higher, extra warehouse space may be needed, and expensive stock may become “spoiled” or obsolete on the shelf.
- *Price* is fair and reasonable to both the buyer and seller. It is determined through competitive bidding or other procedures designed to permit cost comparisons and hold costs to reasonable levels. The goal of every procurement solicitation, whether competitive or not, should be that the buyer and seller both realize a “win” as a result of the transaction (e.g., win-win versus win-lose).
- *Time* is adequate for the solicitation process to be utilized and still have the goods or services delivered when the end user needs them. Lack of planning may result in rushed procurements where a premium is paid to secure the needed goods or services, or the quality specified does not meet the user’s needs; or, even worse, both.
- *Source* selected is a responsible and responsive supplier who can provide the best combination of quality, quantity, and price, at the proper time. Delays in delivery, lost time due to malfunctioning equipment, and inadequate service can all contribute to higher municipal operating costs. Strategies should be developed to reduce or mitigate the

possibility of this occurring. Often these and other “value-added” factors are as important in determining the lowest and best bid as the original purchase price.

State Statutes Affecting Municipal Purchasing

Most Texas municipal procurement statutes may be found in the *Texas Local Government Code (LGC)*¹. Chapter 252 of the LGC is the primary source for municipal purchasing statutes. It mandates that a purchase resulting in the award of a contract of more than \$25,000 is to be awarded through the use of competitive sealed solicitations, either on a best value, bid, or proposal basis.

There are some exceptions, such as:

- Recently passed legislation allows the use of “reverse” auctions in lieu of competitive sealed solicitations.
- A municipality of less than 25,000 population must use competitive sealed bidding to purchase insurance requiring the expenditure of more than \$5,000 from municipal funds; and
- A municipality may use competitive sealed proposal procedure for high technology procurements and, in a municipality with a population in excess of 25,000, the purchase of insurance.

It should be noted that a municipality, in making an expenditure of more than \$3,000 but less than \$25,000, is required to attempt to contact at least two “Historically Underutilized Businesses” (HUB’s), based on information provided by the Texas Building and Procurement Commission (formerly known as the Texas General Services Commission) pursuant to Chapter 2161, *Texas Government Code*. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this requirement.

Beyond the above, there are other specific exemptions to the competitive solicitation requirements. These include a procurement or purchase:

- Made because of a public calamity that requires immediate appropriation of money;
- Necessary to preserve or protect the public health or safety of the municipality’s residents;
- Necessary because of unforeseen damage to public machinery, equipment, or other property;
- For personal, professional, or planning services;
- For work that is performed and paid for by the day as the work progresses;
- Of land or a right-of-way;
- Of certain items that are available from only one source;
- Of rare books, papers, and other library materials for a public library;
- Of 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 improvement;

¹ All citations in this chapter are to Vernon Texas Codes, Annotated

² Additionally, an extensive variety of janitorial supplies, uniforms, furniture, vehicle repairs and other items are available from the Texas Department of Corrections.

- For a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;
- With a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, chapter 212, *Local Government Code*;
- Under an interlocal contract for cooperative purchasing administered by a regional planning commission established under chapter 391 of the *Texas Local Government Code*;
- Of services provided by blind or severely disabled persons; or
- Of goods purchased by a municipality for subsequent retail sale by the municipality.

Additionally, competitive solicitation requirements do not apply to personal property sold:

- At an auction by a state licensed auctioneer;
- At a going out of business sale in compliance with Subchapter F, Chapter 17, *Business and Commerce Code*; or
- By a political subdivision of this state, a state agency of this state, or an entity of the federal government.

Other state statutes relating to public purchasing by municipalities include:

- *Texas Government Code*, Chapter 2175 - prescribes procedures for the disposition of surplus state property and goods by the Texas Building and Procurement Commission.
- *Texas Government Code*, Chapter 2254 - (also known as the “Professional Services Procurement Act”) prohibits cities and other governmental units from contracting for architectural, engineering, accounting, or other professional services on a competitive bid basis.
- *Texas Local Government Code*, Chapter 271 - establishes specific requirements for public works contracts; for participation in the state’s “Cooperative Purchasing Programs”; purchases from Federal Schedule Sources of Supply; and awarding contracts in the event of receipt of identical bids, as well as consideration of location of a bidder’s principal place of business in a contract award.
- *Texas Local Government Code*, Subtitle C “Acquisition, Sale or Lease Provisions Applying to More Than One Type of Local Government.”

Types of Purchases

The three basic types of purchases a municipal Purchasing Agent normally makes are open market, requirements contracts, and low dollar. The first two types of purchases normally employ formal solicitation processes, while the last is usually informal. The goal of the Purchasing Agent in each of these categories should be to attempt to add value to the transaction whenever possible and practical.

The *open-market purchase* is the procurement of a single item on a one-shot, non-recurring basis. Usually, detailed specifications are included. These specifications are design, performance, or some combination of both. Specifications are developed to ensure the purchase

meets the end user's needs. Motor vehicles and office furniture, such as desks, are examples of typical open-market purchases.

The second type, requirements contracts, involves establishing blanket or scheduled orders under which purchases are made of regularly used items at a *fixed price, or a list less discount*, over an extended period of time. The benefits of establishing requirements contracts include reduction in paperwork and time in making redundant purchases, price protection for a specified period of time for the municipality, the ability to establish long-term relationships with suppliers and the possible extension of quantity discounts that would be otherwise unrealized if each purchase of a commonly used item was done independently. Examples of items purchased under blanket order or scheduled contracts include motor fuel, paper, brass goods for utility systems, fertilizer, toilet paper, janitorial supplies, water treatment chemicals, and other consumables.

The third type of purchasing involves the procurement of low dollar items, such as those costing \$100 or less, or items urgently needed. For the low dollar items, the Purchasing Agent may simply choose to buy items on an as-needed basis with a petty cash fund or procurement credit card (P-card). If the number of low dollar orders becomes excessive, one alternative would be to set aside one day of the week for making small purchases, and aggregate orders of similar items, such as office supplies, from the same vendor. A better alternative would be to consider establishing either a blanket or scheduled order, as mentioned above, for the recurring purchases. Because there is less opportunity for the Purchasing Agent to add value to these low value purchases, the authority to make these types of purchases is often delegated to user departments by the Purchasing Agent.

Competitive Solicitation Methods

The Supreme Court of Texas defines competitive purchasing as:

- Due advertisement, giving opportunity to bid, and contemplates bidding upon the same thing;
- That all bidders be placed upon the same plane of equality; and
- That all bidders bid upon the same terms, conditions, and the same or substantially similar specifications. There can be no competitive bidding in a legal sense where the terms, conditions, or specifications prevent competition, favor a vendor or manufacturer, or increase the cost of the items going into the purchase.

Further interpretations have determined that both product and price competition must be present and evident.

Regardless of the solicitation method used, purchases, whenever possible, should utilize a competitive process. Generally, two competitive solicitation methods are used for the acquisition of goods and services. In addition to legislative mandates, the amount of the award, the complexity of the purchase, and the level of risk of a "spoiled" procurement process dictate the method utilized. The first solicitation method is the formal solicitation, while the second is the informal process. Regardless of the purchase method used, goods and services should be obtained at competitive prices, whenever practical. A number of approaches, including the bidding procedures described below, can be used to accomplish that goal.

The formal solicitation process follows strict procedures, set by state statute or city policies. The Purchasing Agent, due to the complexities and the high dollar value of the procurement, normally oversees the solicitation and award process. In a formal solicitation situation, the

Purchasing Agent must ensure that all potential vendors are playing on as level of a competitive playing field as possible. In a formal solicitation process, the risks involved include potential vendor protests, due to perceived or suspected irregularities, and the length of time required to re-initiate the process. Two formal solicitation methods normally utilized are the "Invitation for Bid" (IFB) and the "Request for Proposal" (RFP). There are other variations of these two solicitation methods that may be used, depending on type of purchase and the governing statutes. These include the "Request for Offer" (RFO) for automated information systems (*i.e.* computers, software and telecommunications, etc.) and the "Request for Qualifications" (RFQ) for certain professional services (*i.e.*, engineers, architects, doctors, etc.).

The second is the informal solicitation process. The process is usually less rigid, does not require public advertisement of the solicitation, and involves minimal risk due to the low dollars involved, or, in the case of a public calamity (*e.g.*, emergency), the impact of not competing the acquisition as quickly as possible far outweighs any associated procurement process risks.

Competitive sealed bids are formal solicitations commonly used to purchase larger high dollar items on the open market. Under sealed bid procedures (described in detail in Chapter 252, *Texas Local Government Code*), notice is published that the city is inviting bids on a particular item; bid responses are submitted by potential suppliers on prescribed forms that are enclosed in sealed envelopes; and, at the appointed time and place, the bids are opened, evaluated, and an award is made by the city council to the vendor who has submitted the lowest responsible bid or that satisfies the council's pre-selected best-value criteria. The bid specifications must indicate whether the bid will be based on the lowest price or best value. Best value bidding is not allowed for many public works contracts (see amended section 252.043 *Texas Government Code*). Often the bids will be opened at the appointed time by the Purchasing Agent and city secretary along with departmental representatives, reviewed for responsiveness to mandatory provisions (*e.g.*, signatures, bonds, insurance, etc.) read openly, then referred to the departmental staff, the engineer, or other appropriate persons, so that evaluations can be made. Then the evaluations, along with recommendations, are presented to the city council at the next scheduled council meeting for consideration and to make an award. This procedure is preferable to opening the bids in a council meeting and having the staff or other appropriate persons try to complete an evaluation and make recommendations at the same meeting.

Using the *competitive sealed proposal approach*, bid invitations are not issued; rather, potential suppliers are asked to submit proposals on goods or services needed by the city. The submissions are received and then used as the basis for determining the award to obtain the needed items at the "best value," based on pre-defined evaluation and award criteria set forth in the Request for Proposal (RFP) specifications. The Texas Building and Procurement Commission has published a "Request for Proposal Handbook," available for downloading from their Web site, which should provide a good template on how to prepare and issue an RFP for anyone who is unfamiliar with the process.

Non-competitive negotiations involve the purchase of an item from a single supplier. These can only be made in compliance with Chapter 252 of the *Texas Local Government Code*, and should be used only if absolutely necessary when it is determined that competitive solicitation process is not possible or practical.

Organizing the Purchasing Function

Purchasing Policies and Procedures

Every city should have written policies to govern all purchasing procedures, activities, and responsibilities. Clearly defined and understandable policies and procedures can prevent confusion and misunderstanding between departments and aid in smooth and efficient purchasing operations.

The city's purchasing policies and procedures should:

- Designate the Purchasing Agent as the only person authorized to issue bid invitations, negotiate with suppliers, and approve the procurement of goods and services.
- Allow the Purchasing Agent to delegate limited purchasing authority in special circumstances to other non-purchasing personnel.
- Ensure that the Purchasing Agent plays a lead role in the preparation of standards and specifications for goods and services procured by the city.
- Prescribe procedures for awarding contracts.
- Establish methods for preventing the purchase of unauthorized and unbudgeted items.
- Set guidelines governing relationships between suppliers and the city.

The purchasing policies and procedures may be published as a manual, in the form of a loose-leaf notebook, containing a statement of the city's purchasing policies, samples of purchasing forms, the contacts for clarification of a purchasing policy or procedure, and steps that must be followed by city personnel to initiate a purchase.

An alternative is to prepare a "*Purchasing Guide*." The Guide would then be published and distributed to city staff, as well as made available to potential suppliers. While the Guide would not be as complete in detail as a policy and procedures manual, it should give enough information to inform city staff as to the necessary steps to follow in making a purchase and who to contact for additional guidance, as well as inform suppliers of the steps necessary to do business with the city. Many purchasing operations choose to prepare a separate "How to Do Business" for suppliers to explain how the city makes purchases, what is required to get on the city's bid or source lists, and who to contact for more information or to discuss potential business opportunities.

A recommended practice for any purchasing operation is to prepare purchasing process "flowcharts." These flowcharts should be included in the purchasing manuals, guides, and brochures, as well as the city's Web site, if available. Flowcharts often help to make complex processes and procedures more understandable to someone unfamiliar with the purchasing process and identify each major step in the process and who is responsible to perform the step.

If the municipality has a Web site, these purchasing publications should be posted to it. Some innovative purchasing operations have all but abandoned "hard copy" purchasing publications and opted to keep this information only on their Web site. This eliminates having to track who has received a manual, for the purpose distributing updates to append the hard copy versions, and to ensure that the information being viewed is the most current. If information is posted on a Web site the Purchasing Agent should ensure that the content is periodically reviewed to confirm it is current.

Standards and Specifications

Every purchase should be based on standards and specifications applicable to the particular item. A *standard* defines the minimum qualities of an item that are acceptable for purchase by the city. A *specification* describes the function, dimensions, construction materials, and minimum performance characteristics of the item to be purchased.

Standards

There are different types of systems that can be employed by the city with respect to setting minimum acceptable standards. One is to develop a list of qualified products, by manufacturer, that have been tested, evaluated, and approved for use by the city. (See Exhibit 1 for a sample qualified products list.) Whether in need of paper clips or a desk, the requesting employee simply refers to a qualified products list, references the pre-qualified product with a description on a purchase request (requisition) form, and forwards the form to the Purchasing Agent for processing.

Another method utilizes “approved equal” standards. An “approved equal” standard describes the quality and workmanship characteristics of a product and deems, as acceptable for purchase, any products that meet—or exceed—those criteria.

Specifications

The city’s product specifications should include a description of the intended use of the item, as well as minimum functional, material, and performance requirements and other “salient” characteristics. Specifications may be detailed in the actual design of the product, or performance based, or some combination of both. Care must be taken in developing specifications. If practical, a balance must be reached between designating the detail and still allowing for competition. Too much detail may drive up the cost by limiting sources, while too little may allow unacceptable products or services to be offered. (See Exhibit 2 for a sample purchase specification sheet.)

Value Analysis

In establishing standards and specifications for an item, it is important to analyze the requirements of the job to be accomplished. This analysis should include a determination of the minimum requirements necessary to meet the city’s needs in an efficient and economical manner, including on-site examinations of specific tasks—whether operating a wheelbarrow or a pickup truck. Practical knowledge is an essential part of the process for establishing standards and specifications geared to the realistic needs of the city.

Source List

A source list contains suppliers deemed qualified to provide goods and services to the city. A separate source list should be maintained for each category of items or commodities (office supplies, chemicals, etc.) purchased by the city or municipality. Before a supplier is added to the source list, a thorough background check should be conducted to ensure that the person or firm is capable of meeting the city’s needs and is financially stable and responsible. Exhibit 3 includes a form that can be used to obtain information to determine whether the firm should be added to the source list.

A recent trend in some public purchasing operations is to establish a web-based supplier “self-service” registration option. This allows interested suppliers or vendors to access “web-enabled” registration forms and provide the necessary information “on line.” The benefits for doing this should include better accuracy of the supplier/vendor information; and less purchasing resources have to be dedicated adding records to the list. If the proper security can be established, it may be desirable for the suppliers/vendors to be allowed to update the records themselves and keep the information current. A recommended practice is to allow a potential supplier to submit a registration request on line or update their information previously submitted, but require the Purchasing Agent’s review and approval prior to posting the supplier to the city’s approved source list or amending the information.

Procedures should be established for suspending or removing a supplier from a source list. Suspension or removal of a vendor should be allowed if it is determined that the firm has failed to respond to similar solicitation requests over an extended period of time, defaulted, or demonstrated poor performance in meeting contractual obligations. A supplier who is to be suspended or removed from the source list should be notified of the pending action, the reasons for the removal, and be granted access to an appeals and possible reinstatement process.

Grievance and Alternative Dispute Resolution

It is a recommended practice for a municipal purchasing operation to have a formal grievance or complaint process. It should instruct a supplier or any other interested party, the steps on how to file a protest or complaint of a procurement action. It should set forth to whom the potentially aggrieved party is to submit the grievance, the time period allowed to initiate and file a grievance, what documentation the aggrieved party must submit to back up any claims, and the grievance review and appeals process. Normally the Purchasing Agent should be the first point of contact for the filing of any grievance regarding a procurement action. After the Purchasing Agent reviews the facts presented, a written determination as to the validity of the grievance should be prepared and issued to all interested parties. If the aggrieved party wishes to appeal the Purchasing Agent’s determination, the appeals process should be spelled out. A well-written formal grievance process should discourage someone from “grousing” or “crying sour grapes” and disrupting the procurement process by claiming “foul” without any valid basis for the claim.

In addition, the municipal purchasing operation should become familiar with the various alternative dispute resolution processes available to settle conflicts arising out of contractual issues. Alternative dispute resolution (ADR) is a means of trying to settle contract problems short of going to court. ADR clauses are often incorporated into a contract’s terms and conditions as a pre-emptive measure. It would be advisable for the Purchasing Agent to meet with the city’s legal staff and determine if an ADR clause should be incorporated into the municipality’s standard terms and conditions of purchase.

Purchasing Procedures

The following steps should be completed when making a purchase requiring competitive solicitation:

1. The city employee initiating the purchase completes a purchase request (requisition) form and forwards it to the Purchasing Agent for processing.

2. The Purchasing Agent reviews the requisition for completeness, checks to be sure that the purchase is authorized by the appropriate department head and is in the budget, and prepares a solicitation request (usually an invitation to bid or request for proposal).
3. Notice must be published as per requirements in *Texas Local Government Code*, section 252.041.
4. The solicitation request and attachments are transmitted to all suppliers on the city's source list or, if required due to the dollar value or the type of purchased proposed, all suppliers responding to a public bid announcement.
5. If the purchase is particularly large, complex, or complicated, a "pre-bid" or "pre-response" conference may need to be scheduled between prospective bidders or proposers and representatives of the city. The purpose of a conference is to ensure that the requirements set forth in the solicitation document are clearly communicated and understood by all parties. Sufficient time should be allowed so that all interested parties may plan to attend. Oftentimes, the Purchasing Agent may require all questions regarding the solicitation be submitted by interested parties prior to the conference being held to allow the city staff sufficient time to review the questions raised and prepare responses.
6. Bidders or proposers return the solicitation forms and accompanying documentation. If sealed bids or proposals are involved, these responses should be stored in a secure place until the time scheduled for opening.
7. Upon expiration of the deadline for submitting responses the Purchasing Agent, along with the city secretary and representatives of the applicable city department publicly open the responses received prior to the deadline and review the response to ensure all mandatory submittals and requirements are included or met. The Purchasing Agent then prepares a tabulation of the responses and determines the best bid or response. Following a review of the tabulation by the appropriate city personnel, an award recommendation is prepared for submission to the city council.
8. The city council reviews the award recommendations, and if the council concurs with the recommendation, makes an award to the Respondent supplying the most favorable response to the city that meets the minimum mandatory requirements set forth in the solicitation documents. The council may also reject all bids and start over (*Texas Government Code*, section 252.043 (f)).
9. A purchase order is prepared and transmitted to the successful respondent as legal acceptance of the submitted response and as the official notification that the award has been made. Unsuccessful bidders should also be notified and thanked for their participation.
9. Upon delivery of the item from the supplier, it should be examined to be certain that it has arrived undamaged and that it is the item the supplier agreed to furnish. After checking for these possible problems, the responsible employee should complete and file a receiving report, and then notify the department which initiated the purchase that the item has been delivered.

With respect to the number of bids submitted to the city, as a general rule adequate competition is said to exist whenever the city receives bids from three or more responsible bidders, who are able to satisfy the city's requirements as to specifications and delivery. In determining who is a responsible bidder, the city may take into account the safety record of the bidder, or the firm,

corporation, partnership, or institution represented by the bidder, or of anyone acting for such firm, corporation, partnership, or institution if:

- (1) The governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (2) The governing body has given notice to prospective bidders in the bid specifications that the safety record may be considered in determining the responsibility of the bidder; and
- (3) The determinations are not arbitrary and capricious.

While there are perceived advantages to the city in dealing with local suppliers, such as convenience of service and doing business with known suppliers, the city must remember that the statute requires that in the competitive sealed bidding process, the bid be awarded to the “lowest responsible bidder.” While there is a tendency to want to apply local preference, the TLG severely limits this option, except as specifically set forth in Chapter 271, LGC. However, the specifications can spell out realistic conditions, such as delivery or required response time, availability of service, and other similar “value-added” factors that can be taken into consideration in the evaluation to determine the best response to which to make the award.

A bid that has been opened cannot be changed for the purpose of correcting an error in the bid price. However, the purchasing statutes do not deny the right of a bidder to withdraw a bid due to a material mistake in the bid. It should be further noted that a contract must be awarded to the “lowest responsible bidder”, or in some cases, to the bid that represents the best value. If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible respondent whose proposal is determined to be the most advantageous to the municipality, considering the relative importance of price and the other evaluation factors included in the request for proposals. However, the governing body may reject any and all bids or proposals if it is determined to be in the best interest to do so.

Purchasing Forms

An important part of the purchasing system is a standard set of forms to assure uniformity. The more commonly used forms are described below:

1. *Purchase Requisition Form (Exhibit 6)*: This form is completed by city personnel to request the purchase of the items described in the form and obtain any necessary budgetary approvals. The completed and approved form is submitted to the Purchasing Agent for processing.
2. *Invitation to Bid, Bid and Award Form (Exhibit 7)*: The Invitation to Bid is used to transmit the city’s requirements to potential suppliers. The city’s Purchasing Agent completes the top portion describing what the city desires to purchase and under what terms and conditions the purchase is to be made. It should also list or reference any attachments that will be part of a resulting award of an order or contract. The bid response, at the center of the form, is completed by the respondent and should include any exceptions taken or proposed terms or conditions the respondent wishes to include in a resulting contract or order. When the contract is awarded, the Purchasing Agent completes the bottom portion of the form to document the reason for the award.

3. *Bid Sheet for Equipment, Materials, and Supplies (Exhibit 8)*: Provides suppliers with more details regarding the items for which bids are invited.
4. *Bid Sheet for Service*: Similar to the bid sheet for equipment, materials, and supplies, except that it applies to bids for services.
5. *Standard Bidding Instructions (Exhibit 9)*: Provides detailed instructions to suppliers regarding the city's bidding requirements.
6. *Bid Tabulation Form (Exhibit 10)*: Used to list bids received in response to an Invitation to Bid and the prices bid.
7. *Statement of Standard Purchase Terms and Conditions (Exhibit 11)*: Identifies the city's contractual terms and conditions. Under the Texas Uniform Commercial Code, every contract for \$500 or more must be in writing in order to be enforceable in court. Consequently, the city should develop such a statement and include a copy with each bid invitation.
8. *Purchase Order Form (Exhibit 12)*: A purchase order is issued to the successful bidder or respondent in order to "officially award the contract and accept the respondent's offer".
9. *Receiving Report Form*: Upon delivery of an item, a receiving report should be completed, signed, and filed. Also, a copy should be furnished to the city employee who requested the purchase so that he or she will know that the item is available to be picked up.

Purchasing Files

An effective purchasing operation should develop a records retention policy. The Purchasing Agent should discuss with the city's legal department what documents should be included in the retention plan, the length of time each record or file should be retained, and the proper method of disposing of records or files which are no longer to be retained. Document imaging systems can automate the retention of documents and cross reference or index attachments to a source document or file can assist a purchasing operation in effectively managing files and save space. At a minimum, the following file types or records should be maintained to properly support the purchasing operation:

- (1) An open bid or solicitation file, which contains unawarded bid invitations and other documents relative to all pending purchases;
- (2) An open purchase order file of purchases made, but not yet filled, to remind the purchasing office to check periodically on deliveries that are excessively late; and
- (3) A completed order or contract file, which provides a comprehensive record of all completed purchases.

The Purchasing Agent should also keep a specification file, which contains specifications for all of the materials, equipment, and supplies used by the city, and a vendors catalog file that contains descriptions of products and product prices, by suppliers, and is used to select the firms to which bid invitations are distributed. If the city utilizes requirements contracts, a separate file should be established for these types of contracts. A good practice is that the releases or orders made against these contracts should reference the original contract, rather than including the complete contract as a part of each order or release.

Centralized Purchasing

Many cities realize great benefits from the use of a centralized purchasing department. In addition to savings estimated to range from 10 to 15 percent when purchasing operations are centralized, the following benefits have been recognized:

- Economies arising out of volume purchasing.
- Minimization of paper work.
- Standardized procedures.
- Elimination of overlapping and duplicative work responsibilities.
- Improved expediting and follow-up procedures.
- Having one contact point for all vendors and city personnel.
- Improved, uniform specifications.
- Experienced and knowledgeable personnel managing the process.

In dealing with suppliers, it is important that all instructions come from one source in the city. Whether a Purchasing Agent, the Finance Director, City Manager, or Mayor performs the purchasing function, is not important; what is important is that the responsibility be assigned to one individual or one department. When different officials and departments issue conflicting instructions, delay, confusion, and financial problems are inevitable. If the scope of the job is large enough to warrant a full-time employee, a Purchasing Agent should be employed.

It should be the Purchasing Agent's responsibility to determine if any portion of the Purchasing Agent's duties and responsibilities would be better served if delegated to others. If the Purchasing Agent determines that there is no "value-added," the function may be a candidate for delegation. A prime example is a Purchasing Agent delegating limited "purchasing agent" authority to certain non-purchasing personnel to purchase certain low dollar or emergency items through the use of petty cash or a procurement card (P-card). Whenever delegating authority to make purchases, the Purchasing Agent must develop a means to monitor the delegated activities. This includes making it clear that the Purchasing Agent retains the right to revoke the delegation without appeal if improprieties or abuses are uncovered in the exercise of the delegated authority.

Cooperative Purchasing

Chapter 271 of the *Texas Local Government Code* authorizes cities to enter into agreements to participate in cooperative purchasing arrangements with the Texas Building and Procurement Commission or other governmental entities. Cooperative purchasing has many benefits for a municipality, including:

- Opportunity to realize quantity discounts for the purchase of goods and services, which may otherwise be unavailable to a municipality; and
- More efficient use of available purchasing resources through reduction in non-value added activities.

Subchapter D of Chapter 271 authorizes cities to enter into a cooperative purchasing agreement with the State of Texas Building and Procurement Commission, to perform certain purchasing services for local governments. These services include:

- The extension of state term contract prices to participating local governments when the Commission considers it feasible;
- Solicitation of bids on items desired by local governments, if the solicitation is considered feasible by the Commission and is desired by the local government;
- Provision of information and technical assistance to local governments about the purchasing program; and
- Availability to the state’s “catalogue purchase procedure” for the purchase of automated information systems goods and services, (e.g., computers, telecommunications, etc.).
- Participation by cities in the State’s travel services contracts.

Under Subchapter F, cities, counties, school districts, junior college districts, regional councils and other political subdivisions of the state are authorized to participate in joint purchasing programs. A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or local cooperative organization stating the signing local government will:

- (1) Designate a person to act under the direction of, and on behalf of, that local government in all matters relating to the program;
- (2) Make payments to another participating local government or a local cooperative organization or directly to a vendor under a contract made under this subchapter, as provided in the agreement between the participating local governments and a local cooperative organization; and
- (3) Be responsible for a vendor’s compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

The local government that purchases goods or services under Subchapter D or F satisfies any state law requiring the local government to seek competitive bids for the purchase of goods or services.²

One of the most successful governmental cooperative purchasing efforts is that of the Houston-Galveston Area Council which, in 1998, regularly purchased for 864 local governmental entities from all across the state.

Payment of Taxes on City Purchases

Cities are exempt from the payment of federal excise taxes or state sales taxes, and should so advise suppliers by furnishing exemption certificates upon request. Although cities are exempt from federal motor fuel taxes, they must pay state taxes on most fuel purchases. The city can apply to the State Comptroller of Public Accounts for a refund of taxes paid on gasoline purchases for lawn mowers, bulldozers, backhoes, and other “off-highway” uses. (Each claim must be filed within one year of the date of the purchase.) Additionally, cities are totally exempt from state taxes on liquefied petroleum gas purchases.

Innovative Purchasing Trends

In recent years, in public and private purchasing operations, the processes utilized to acquire goods and services have seen considerable change. In the private sector many traditional

purchasing agents have evolved into managers of supply chain processes. Many innovative purchasing practices developed in the private sector that “add value” to the supply chain are starting to be adapted to the public sector. These include “eProcurement” systems, procurement credit cards (P-cards), desktop on-line order systems, outsourcing, and reverse auctions, to mention a few.

eProcurement

“eProcurement” is a form of electronic commerce (E-commerce) that automates the requisition to payment processes. Through the use of an integrated electronic requisitioning, sourcing, bid analysis, order award, receipting, invoicing, and payment process, a true “paperless purchasing” environment is finally being realized. In eProcurement, extensive use of electronic catalogs (e-catalogs) enable an end user to select needed items, place them in an electronic shopping cart, and submit a purchase request to be processed. The State of Texas’ eProcurement project is a good example of an eProcurement system.

Procurement Credit Cards (P-cards)

P-cards may be considered “a poor man’s electronic commerce solution.” The use of a P-card is generally considered an alternate method of payment meant to replace petty cash and other low dollar purchase methods. Properly designed the use of P-cards allows an organization to lower many of the “hidden costs” involved in acquiring goods and services. It is a good policy to issue a P-card to an individual, not establish “departmental” P-cards. Several key elements have been identified as “best practices” for a successful P-card program:

- The program should be jointly designed by the Purchasing and Accounting offices, in conjunction with key user department stakeholders, to replace or severely reduce the utilization of other existing low dollar purchasing processes, such as petty cash, department orders, check with order, etc.
- P-card policies and procedures should be developed to clearly communicate the rules and restrictions in the use of a P-card.
- Prior to issuing a P-card, compliance training should be mandatory for any personnel who will be authorized to use a P-card to make purchases.
- Prior to a P-card being issued, each cardholder, after attending compliance training, should be required to sign an agreement stating they understand the P-card policies and procedures, will use the P-card appropriately, and will not use the P-card to make any personal purchases.
- Random audit of cardholders should be done on a regular basis to ensure compliance. Any P-card issued to an employee should be required to be turned in prior to the employee terminating.
- If a cardholder is determined to have been misusing the P-card, the cardholder should be suspended or barred from using a P-card and forced to repay any disallowed P-card transactions, along with any other disciplinary actions deemed appropriate for the misuse of city property.

Desktop On-line Order Systems

Desktop on-line order systems allow end users to access electronic catalogs (eCatalog) via the Internet to purchase items. Office supplies and other consumables are good candidates for this type of requirement contracting. After a contract or agreement is established, an authorized end user shops “on line” from the supplier’s eCatalog and places desired items in an electronic

shopping cart. When finished “e-shopping,” the end user either releases the order on line to the supplier to fulfill, or electronically routes the proposed order to an approval authority that then releases the on-line order to the supplier. Normally, the supplier is required in the contract’s terms to deliver a majority of the items ordered within a specified time (*i.e.*, one to two business days after order submittal). This type of system allows the end users to order what they need and get the items in a timely fashion. It also reduces the amount of redundant paperwork, while still allowing the Purchasing Agent to monitor and manage the process.

Outsourcing

Outsourcing has become a popular means to attempt to manage costs and better allocate city resources. Outsourcing has been used to try to help cap or limit the growth of city staff dedicated to providing non-essential services. Examples of potential candidates for outsourcing include replacing a supply warehouse with a vendor managed inventory system, and hiring a contractor to maintain city grounds or provide janitorial services to facilities. While there appears to be great opportunities for outsourcing, there are risks that need to be carefully considered. An understanding of the risks in outsourcing a service or function is essential. In addition, careful analysis of any service or function being considered for outsourcing should be undertaken prior to soliciting for outsourcing proposals to identify the actual cost of the city continuing to provide the service or function. Many early attempts at outsourcing were not very successful. Reasons for failure included not realizing the total “true costs” involved in providing a service or function, lack of understanding of what outsourcing entails, and resistance by employees. Careful planning and analysis should help to mitigate the chances of this occurring.

Reverse Auctions

Reverse auctions have recently gained favor as a means of reducing the cost of goods and diversifying the vendor base. A reverse auction is where an entity sets forth a requirement, generally on a Web site, and allows suppliers to submit offers to furnish the item. While the names of the bidders are kept confidential, all interested parties have access to the last price offered. After a specified time, the reverse auction is closed and the lowest responsible offer is selected for award. While a municipality may choose to run a reverse auction itself, there are many third party vendors, as well as purchasing cooperatives, that are starting to offer this service.

Materials Management

Materials management involves the proper administration of facilities, where stocks of goods are stored; protection of the city’s inventory of equipment and materials; and the disposal of surplus supplies and equipment. A well designed materials management system provides accountability for materials consumed, tracking of city assets, and potential revenue in the sale of surplus materials and equipment.

Storage Facilities

With respect to storage facilities, it is recommended that:

- The city should maintain as few storerooms as feasible in order to minimize overhead, construction, and operating costs. One should bear in mind that storerooms must be conveniently located to users of the materials; otherwise, “bench stock” or “ghost” inventory

systems may arise, which generally tie up resources with little accountability and very few of the necessary material controls in place.

- All purchases should be received, stored, and distributed from centralized locations by materials management staff.
- All materials should be stored in a closed or controlled-access area, and distributed by authorized employees according to a written materials requisitioning system.
- Only equipment, materials, and supplies that are necessary to have available on a continuing basis, or which can be economically purchased in volume and kept in inventory, should be stored at city facilities.
- The use of forklifts and other labor saving materials handling equipment should be maximized.
- Some sort of inventory analysis system should be employed to optimize the costs associated with storing and maintaining the inventory.

Stock or Materials Inventory Controls

All stored items must be identified in accordance with some sort of a stock, commodity, or materials classification numbering system. An example of a materials inventory system for identifying motor oil would be:

- The stock number should begin with two or three numbers that identify the basic product class (e.g. lubricants);
- The next three digits identify the particular type of product (e.g., motor oil);
- Followed by two numbers that identify the size, color, and other distinguishing characteristics of the product (e.g. 30-weight); and
- Additional digits can be added to identify the warehouse location of the item, though this may change from time to time.

At a minimum, a stock record card should be kept for each product stored, with dates and quantities of deliveries to the city, distributions of the product to the various departments, and balances on hand noted on the cards at all times. Space should be provided on the card to show the minimum and maximum quantity of the item that should be constantly available, and when the supply nears the minimum, the storekeeper should send a requisition to the Purchasing Agent, requesting replenishment of the stock. Finally, the record card should provide a clear description of each product, its location in the warehouse, the supplier, and unit prices previously paid. There are numerous software solutions that may be able to replace or supplement a manual system

Asset or Property Inventory Controls

A system of procedures should be established to protect and control the city's assets or property. As a beginning point, an inventory record should be maintained for each item with a value exceeding a certain amount, such as \$100, or due to its inherent characteristics (i.e., firearms). At the time an item is received by the city, a pre-numbered tag is permanently affixed to the item, and the number of the tag is entered on an inventory form. Then additional information regarding the property or asset is recorded, including a description of the item, the department to which the item was assigned, and the place where the item is to be used or stored.

Property should never be relocated or transferred to another department, or disposed of, without notifying the person responsible for maintaining asset or property inventory records. Whenever a change occurs, the record should be immediately amended to record the change.

A complete physical inventory of all city property should be conducted at least once per year. Discrepancies between inventory records and the findings of the physical inventory should be investigated and documented, and adjustments made, to bring the book inventory back into line with the actual properties on hand. Whenever possible, if there is a change in a department head or supervisor, it is highly recommended that a physical inventory be done prior to, or shortly after, the old supervisor's departure to ensure the inventory records for the incoming supervisor are complete, current, and accurate.

Bar code enabled inventory tags with portable bar code readers linked to an automated asset management system, can assist in efficient asset inventory management. Use of bar code tags has been found to speed up the task of physically inventorying assets, while maintaining, or even improving, the accuracy of the task. Some suppliers of equipment may even agree to attach pre-numbered, bar code enabled inventory tags prior to shipping and have available information on the equipment shipped available to download into a municipality's automated asset management system.

Disposition of Surplus Items

Pieces of equipment and supplies that are no longer needed should be disposed of through surplus or scrap procedures. Many surplus items retain a certain amount of market value, and their proper disposition can result in economic financial gains for the city. A number of disposition options exist, including the following:

- The city can dispose of the items at a public auction or sale.
- Other units of government may be interested in buying the items.
- The surplus equipment or supplies can be transferred to another department, thus avoiding the necessity of purchasing new items.
- If there is no other alternative, the surplus items can be sold to scrap dealers.

Following the disposition of a surplus item, the city's inventory records should be modified to reflect the change.

Sources of Purchasing Information

State of Texas Information:

<i>Agency:</i>	<i>Web site</i>
Comptroller of Public Accounts	http://www.cpa.state.tx.us
• Local Government Assistance	http://www.cpa.state.tx.us/lga/
• Surplus Property	http://www.window.state.tx.us/localinf/surpintro.html
Texas Building and Procurement Commission	http://www.tbpc.state.tx.us/
• Cooperative Purchasing	http://www.tbpc.state.tx.us/stpurch/coopmain.html
• State Surplus	http://www.tbpc.state.tx.us/surplus/index.html
• Centralized Master Bidders List	http://www.tbpc.state.tx.us/cmb1/cmb1hub.html
• Historically Underutilized Businesses (HUB)	http://www.tbpc.state.tx.us/hubbid/hubindex.html
• RFP Handbook	http://www.tbpc.state.tx.us/stpurch/rfptoc.html
• Electronic State Business Daily	http://esbd.tbpc.state.tx.us/1380/sagency.cfm
Texas Statutes	http://www.capitol.state.tx.us/statutes/statutes.html
• Government Code	http://www.capitol.state.tx.us/statutes/gvtoc.html
• Local Government Code	http://www.capitol.state.tx.us/statutes/lgtoc.html
Texas Legislature On line	http://www.capitol.state.tx.us/capitol.htm
Texas Attorney General Opinions	http://www.oag.state.tx.us/opinopen/opinhome.htm
Texas Register	http://lamb.sos.state.tx.us/texreg/index.html
Texas Ethics Commission	http://www.ethics.state.tx.us/

Purchasing and Related Professional Organizations:

<i>Organization:</i>	<i>Telephone:</i>	<i>Web site:</i>
Institute for Supply Management (formerly National Assn. of Purchasing Management or NAPM)		http://www.ism.org/
National Institute of Governmental Purchasing (NIGP)		http://www.nigp.org/

• Texas Assn. of Public Purchasers (TAPP) Chapter of NIGP		http://www.austinontapp.org/
• San Antonio Public Purchasing Association (SAPPA) Chapter of NIGP		http://www.sappa.org/
• Southeast Texas Association of Public Purchasing of NIGP	281.341.8640	
• Dallas Ft. Worth Metroplex Chapter of NIGP	972.205.3403	
• El Paso del Norte Chapter of NIGP	915.594.5628	
National Purchasing Institute (NPI)		http://www.nationalpurchasinginstitute.org
National Association of Purchasing Card Professionals		http://napcp.org/
National Association of State Purchasing Officials (NASPO)		http://www.naspo.org
National Contract Management Association (NCMA)		http://www.ncmahq.org/

Other Useful Purchasing Resources

<i>Organization</i>	<i>Web site:</i>
Buy Board On Line Purchasing	http://www.buyboard.com
Houston-Galveston Area Council Cooperative Purchasing Program	http://www.hgac.cog.tx.us/intro/introcoop.html
Texas Cooperative Purchasing Network (TCPN)	http://esc4coop.home.texas.net/About%20TCPN_web.htm
Find Law - State Resources	http://www.findlaw.com/11stategov/index.html
Uniform Commercial Code Locator	http://www.law.cornell.edu/uniform/ucc.html
Guide to Computer Vendors	http://guide.sbanetweb.com/
Chemical On line	http://www.chemicalonline.com/content/homepage/

Industrial Network	Resource	http://www.powersourcing.com/
FindMRO.com		http://www.findmro.com/
Laboratory Equipment		http://www.labequipmag.com/scripts/default.asp
TechSavy.com		http://www.techsavvy.com/
American Arbitration Association		http://www.adr.org/index2.1.jsp
The Outsourcing Institute		http://www.outsourcing.com/
Thomas Register		http://www.thomasregister.com/
Sweets Group		http://www.sweets.construction.com/
Industry Link		http://www.industrylink.com/
SciQuest		http://www.sciquest.com/
American City and County Magazine		http://industryclick.com/magazine.asp?magazineid=115&SiteID=17
Government Procurement Magazine		http://subscribe.penton.com/gpro/

Figure 4-1

Sample Qualified Products List

City of _____
Using Department _____ Date _____
Prepared by _____ City Stock No. _____
Description of Product _____

Note: Only manufacturer's catalog numbers indicated shall be used. Use of other items must have prior approval by the using department and purchasing agent.

Date	Mfr. Name and Address	Mfr. Cat. No.	Department Approval
8-15-98	ABC Company 1234 Way St. Austin, Texas 78701	A-43210	J. Jones or R. Smith

Figure 4-2
Sample Purchase Specification Sheet

Specification No: _____

Sheet _____ of _____

City Stock No.: _____

Revised Date: _____

City of _____

Brief Description of equipment, material, or supplies: _____

Date: _____ *Prepared by:* _____ *Department:* _____

Approval: _____

This specification, until revised or rescinded, shall apply to each future purchase and contract for the commodity described herein. Retain for future reference.

1.0 Scope and Classification

1.1 Scope

(Mention basic requirements included in the specifications: e.g., functional, performance, material, testing, packaging, etc. Reference any qualified product or source list or domestic manufacture requirement when applicable.)

1.2 Classification

(Briefly describe the equipment, material, or supplies and its application and use. Mention provisions of the specification where deviations may be considered.)

2.0 Applicable Specifications

(List or refer to provisions of any trade, government, or other specifications that are applicable.)

3.0 Functional Requirements

(Itemize and describe in detail features or functions you expect the equipment, materials, or supplies to perform.)

4.0 Performance Requirements

(Itemize and describe in detail any performance parameters that the equipment, materials, or supplies must meet.)

Figure 4-2 Continued

Sample Purchase Specification Sheet

5.0 Material Requirements

(Itemize and describe any types of materials required including chemical compositions, construction or design features, components that must be used, finishes required, etc.)

6.0 Samples, Inspection, and Test Requirements

(Itemize and describe or refer to any procedures to be followed by the supplier in establishing quality assurance. Also itemize and describe inspection or test procedures to be performed to determine product acceptability. Include minimum inspection or test results that will be considered acceptable. Include requests for any physical or chemical test reports or samples to be submitted with bid or shipments.)

7.0 Ordering Data

(Itemize such variables as color, size, grades needed to order the material.)

8.0 Other Requirements

(Itemize all other requirements, such as requests for descriptive data to be submitted by supplier or manufacturer; minimum warranty; packaging, labeling, or marketing; etc.)

Instruction Note: In preparation of specification, above sections are to be listed in numerical sequence and shall be subdivided as applicable by using paragraphs, as follows:

<i>Section</i>	<i>3.0</i>
<i>First paragraph</i>	<i>3.1</i>
<i>First Subparagraph</i>	<i>3.1.1</i>
<i>First sub-subparagraph</i>	<i>3.1.1.1 etc.</i>

Figure 4-3

Sample Supplier Information Summary Form

City of _____

The information requested below must be furnished before your firm can be added to the city's Approved Bidder's List. Please complete this application at your earliest convenience and return it to: Purchasing Agent, City of _____, 1200 Main Street, P.O. Box XXX, _____, Texas _____.

Company Name _____ Date _____

Company Physical Address _____

Company Mailing Address _____

City/State/Zip _____

Telephone _____ FAX _____ E-Mail _____

List name and address of all Principals of your firm

Name	Title	Address
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

Type of Organization _____

If incorporated, when _____ and which state _____? As Individual _____, Partnership _____, or Corporation _____?

How long in present business? _____

Gross sales during previous fiscal year _____

Number of persons employed? _____

Minimum order value? ___ Yes ___ No

If yes, state Amount: \$ _____

Name and address of company representative who would service the City's account:

List three cites (local or otherwise) which have been and are now your customers.

Name	Address	Telephone No.	No. of years
------	---------	---------------	--------------

Name of Applicant and Title	Address
-----------------------------	---------

Signature _____

Figure 4-4
Sample Purchase Requisition Form

Department: _____ Date: _____

Account No: _____ Requisition No.: _____

Date Required: _____ Purchase Order No.: _____

Prepared by: _____ Telephone No.: _____

Suggested Source: _____ Telephone No.: _____

Quantity	Full Description of Requested Purchase	Unit Price	Total
----------	--	------------	-------

Purpose of this Order: _____

Ship Prepaid to: _____

Address: _____

The items listed above are a proper charge against the appropriation shown hereon, and the services or materials are to be used exclusively for the purpose against which said items are charged.

Approved _____
(Department Head or authorized representative)

Figure 4-5

Sample Invitation, Bid, and Award Form

City of _____
Return form with bid response to: _____
Invitation No. _____
Purchasing Agent: _____ (Must appear on bidder's return envelope)
City of _____ COMMODITY: _____
1200 Main Street REQUISITION NO.(s): _____
P.O. Box XXX DATE ISSUED: _____
_____, Texas CLOSING TIME: _____
BID OPENING TIME: _____

Invitation to: (name of bidder) _____
FOR INFORMATION, CONTACT: _____
(City employee, name and telephone number)

This invitation includes the following forms:

- (1) Invitation, bid, and award
- (2) Bid sheet(s) _____
- (3) BID (To be completed by bidder)

The undersigned agrees, if this bid is accepted within _____ Calendar days (90 days *unless a different period is inserted*) after the date of opening to fully comply in strict accordance with the invitation bid specifications and provisions attached thereto for the amounts shown on the accompanying bid.

Signature of Person Authorized to sign bid: _____
Signer's Name and Title: _____
(Please print or type.) Date: _____

AWARD (This section for City of _____ use only)

Date of Award: _____ Contract No.: _____
The above bid is accepted as to: Dollar value: _____
By: _____, City Purchasing Agent

Figure 4-6

Sample Bidding Instructions

City of _____

Re: BID INVITATION NUMBER _____

1. Preparation of Bids

- (a) Bidders are expected to examine the specifications, standard provisions, and instructions. Failure to do so will be at the bidder's risk.
- (b) Each bidder shall furnish the information required by the invitation. The bidder shall sign the bid. Bids signed by an agent are to be accompanied by evidence of his or her authority unless such evidence has been previously furnished.
- (c) Bids for supplies, services or items other than those specified will not be considered unless authorized by the invitation.
- (d) Time, if stated as number of days will include Saturdays, Sundays and holidays.
- (e) Bids submitted on other than the attached forms or with different terms or provisions may not be considered as responsive bids.

2. Explanation to Bidders.

Any explanation desired by a bidder regarding the meaning or interpretation of the invitation, specifications, etc. must be requested in writing and with sufficient time allowed for a reply to reach bidder before submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning an invitation, will be furnished to all prospective bidders as an amendment of the invitation, if such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to the uninformed bidders.

3. Acknowledgment of Amendments to Invitations.

Receipt of an amendment to an invitation by a bidder must be acknowledged (a) by signing and returning the amendment or (b) by letter or FAX. Such acknowledgment must be received prior to the hour and date specified for receipt to the bids, or accompany the bid.

4. Submission of Bids

- (a) Sealed bids should be returned in an envelope marked on the outside with bidder's name and address and the bid number.
- (b) Sealed bid must be returned in sufficient time so as to be received on or before the closing date and time shown on the invitation. Bids received after the specified time, regardless of method of submission, will be returned unopened.
- (c) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the City Purchasing Agent or representative of the purchasing office, at no expense to the City. They must be identified as to supplier, manufacturer, part number, model number, type, grade, applicable specifications, etc. If not destroyed by testing, samples will be returned only at bidder's request and expense.

5. Failure to Submit Bid.

Failure to bid and to advise the City in writing that future invitations for bids are desired, may result in the removal of your name from the City's bidder's lists covering this category of items.

6. **Modification or Withdrawal of Bids.** Bids may be modified or withdrawn by letter, written telegraphic notice, FAX, or other written communication received by the City Purchasing Agent, or representative, prior to the exact date and hour specified for receipt of bids. A bid may also be withdrawn in person by a bidder or his/her authorized representative, provided his/her identify is name known and he/she signs a receipt for the bid, but only if the withdrawal is made prior to the exact hour and date set for the receipt of bids. (Relating to withdrawal of bids, please refer to Chapter 252.043(a), Texas *Local Government Code*, concerning the common law rights of a bidder.)
7. **Contract Awards**
 - (a) The City will accept the bid an/or request approval of the bid received from the best responsible bidder, price and other factors considered.
 - (b) The City of _____ expressly reserves the right to:
 - (1) Waive any defect or informality in any bid or bidding procedure;
 - (2) Reject any or all bids;
 - (3) Reissue a bid invitation;
 - (4) Procure any item by any other means;
 - (5) Increase or decrease the quantity specified herein.
 - (c) A written award or acceptance of bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall be deemed to result in a binding contract without further action by either party.
8. No additional copies of bid will be furnished after the initial bid invitation.

Figure 4-7

Sample Statement of Standard Purchase

Terms and Conditions

City of _____

Seller and Buyer agree as follows:

1. **SELLER TO PACKAGE GOODS.** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Seller's name and address; (b) Consignee's name and address and purchase order or purchase release number and the supply agreement number if applicable; (c) Container number and total number of containers; e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear the cost of packaging and shipping unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied with packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED.** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS.** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES.** Delivery terms shall be F.O.B. Destination, Freight Prepaid unless delivery terms are specified otherwise in bid, and Buyer agrees, as a condition of the bid, to reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower. If the quoted delivery terms do not include transportation costs and Buyer is obligated to pay such costs, Buyer shall have the right to designate what method of transportation shall be used to ship the goods.
5. **NO REPLACEMENT OF DEFECTIVE TENDER.** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach, and Seller shall not have the right to substitute a conforming tender, provided where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time, but not afterward.
6. **PLACE OF DELIVERY.** The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by modification as provided in Section 16 of the Statement of Standard Purchase Terms and Conditions. The terms of this agreement are "no arrival, no sale."

7. INVOICES AND PAYMENTS

- A. Seller shall submit separate invoices, in duplicate, on each purchase or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, should be attached to the invoice. Mail to: (Name of purchasing agent and address). Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Purchasing Office and Finance Office advised of any changes in your remittance addresses.
- B. Buyer's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid goods will be returned to Seller by Buyer.
- C. Do not include federal excise, state or city sales taxes. The city shall furnish tax exemption certificates.

8. GRATUITIES. The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the City of _____ with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost by Seller in providing such gratuities.

9. WARRANTY-PRICE

- A. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices or orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.
- B. The Seller warrants that no person or selling agency has been approved or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right, in addition to any other rights or remedies, the right to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage fee or contingent fee.

10. WARRANTY-PRODUCT. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a

conflict between the specifications, drawings, and description, the specifications shall govern.

11. SPECIAL TOOLS AND TEST EQUIPMENT. If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by Seller as such.
12. SAFETY WARRANTY. Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction may be made by Buyer at Seller's expense.
13. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS. As a part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specifications will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringements or the like. If Seller is of the opinion that an infringement or the like will result, he/she will notify Buyer to this effect in writing within two weeks after the signing of the agreement and prior to delivery of goods. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void, except that Buyer will pay Seller the reasonable cost of his search as to infringements.
14. RIGHT OF INSPECTION. Buyer shall have the right to inspect the goods at delivery before accepting them.
15. CANCELLATION. Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes in-solvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies, which Buyer may have in law or equity.
16. TERMINATION. The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Section 15 above.

17. **FORCE MAJEURE.** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carryout its obligations under this Agreement, the such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of government of the United States or of the State of Texas or any civil or military authority, insurrections, riots epidemics, land-slides, lightning, fires hurricanes, storms, floods, wash-outs, droughts, arrests, restraint o government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control o the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to the party having difficulty.

18. **ASSIGNMENT-DELEGATION.** No right or interest in this contract shall be assigned, or delegation of any obligation made, by Seller without the written permission of Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

19. **WAIVER.** No claim or right arising our of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

20. **MODIFICATIONS.** This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

21. **INTERPRETATION- PAROL EVIDENCE.** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance of acquiescence in a course of performance rendered under this agreement shall not be relevant to determine meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and has an opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to Control.

22. **APPLICABLE LAW.** This agreement shall be governed by the Uniform Commercial Code. Whenever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

23. ADVERTISING. Seller shall not advertise or publish without Buyer's prior consent, the fact that Buyer has entered into this contract except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
24. RIGHT TO ASSURANCE. Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his/her intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
25. VENUE. Both parties agree that venue for any litigation arising from this contract shall lie in _____ (Home County of City, County.)
26. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS. Any elected or appointed official which has any substantial interest, either direct or indirect, in any business entity seeking to contract with the City, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of the interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, the member is not required to abstain from further participation.

Figure 4-8

Sample Purchase Order Form

SHOW ORDER NO. ON ALL INVOICES, DELIVERY SLIPS, CASES, PACKAGES, ETC.

To: (Name and address of supplier)

Date _____ Requisition Order No. _____

Wanted _____ Purchase Order No. _____

Appropriation _____

Please furnish the following to:

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	AMOUNT
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Please sign the attached voucher and return voucher only for payment.

Send voucher to: _____

SHIP TO: _____

1. Please make deliveries between 8:30 a.m. and 4:00 p.m.
2. Enclose shipping memo with each delivery. Do not make "COLLECT" shipments. Prepay cartage and include on bill.
3. All goods received with subsequent privilege to inspect and return at Vendor's expense if defective or not in compliance with our specifications.
4. Purchase order number must appear on all packages.
5. Make a separate invoice for each purchase order enclose with our invoice voucher.
6. The attached invoice voucher must be signed and returned before payment is made.

IMPORTANT:

NO PURCHASES ARE VALID UNLESS COVERED BY THIS FORM SIGNED BY THE PURCHASING OFFICER. SUBMIT INVOICE ON ACCOMPANYING-VOUCHER FORM, WHICH MUST BE SIGNED AND SWORN TO. ADDRESS ALL CORRESPONDENCE TO PURCHASING OFFICER.

Signed (Purchasing Officer) _____

F.O.B. TERMS _____