

TITLE II
ADMINISTRATIVE REGULATIONS

CHAPTER 12

PURCHASING POLICY

12.01 **Purpose**

The purpose of the Purchasing Policy is to provide the Town with the requisite parameters for purchasing goods and services under applicable state statutes. More specifically, the purposes are:

- A. to simplify and clarify the laws governing purchasing by the Town;
- B. to permit the continued development of purchasing policies and practices;
- C. to provide consistency in the purchasing practices of the Town with regard to pertinent purchasing laws;
- D. to increase public confidence in public purchasing;
- E. to ensure the fair and equitable treatment of all persons who participate in the purchasing process;
- F. to provide increased economy and efficiency in purchasing activities by avoiding unnecessary, unwarranted and duplicative purchases;
- G. to foster free and open competition;
- H. to provide safeguards for the maintenance of a purchasing system of quality and integrity; and
- I. to ensure that full accounting is available and given for all purchases.

12.02 **Organizational Responsibilities**

- A. Town Council
 - 1. Considers for award all contracts for goods or services to which the competitive sealed bidding requirement applies.
 - 2. Considers all written contracts exceeding \$15,000 or the amount set for contract approval pursuant to the Town Charter.
 - 3. Adopts rules for electronic receipt of bids or proposals.
 - 4. Approves the alternative bidding method to be used for the construction of a facility, as described by Texas Government Code §2269.056, after determining it to be a better value than competitive bidding.
 - 5. Approves the competitive sealed proposal method to be used for the purchase of goods and services, after determining it to be a better value than competitive bidding, or delegates authority to approve the competitive sealed proposal method as stated above, to a designated representative.

B. Town Manager

1. Approves change orders up to \$15,000 (Ord. 08-07).
2. Approves contracts not to exceed \$15,000 (Ord. 37-06).
3. Approves interlocal agreements (Ord. 07-11).

C. Town Department Heads

Has the authority or may delegate this authority (in whole or in part) in writing to one or more managers or supervisors within their department, to approve requisitions up to \$50,000 and be responsible for:

1. compliance with existing purchasing policies and procedures;
2. reviewing and approving proposed purchasing actions to avoid unnecessary or duplicative purchases;
3. ensuring the budget is available for the item to be purchased
4. determining whether a contract exists for the item to be purchased;
5. verifying that the items received are sufficient and in good condition and authorize payment of the invoice; and
6. ensuring that all paperwork is forwarded to the purchasing and finance offices for processing and payment.

D. Purchasing Manager

Is responsible for, and may delegate this responsibility to any staff member in the Purchasing Office in whole or part:

1. developing and administering the Town's purchasing policy and procedures;
2. managing the Town's purchasing program to include compliance with all statutory and internal policies;
3. developing and maintaining a purchasing procedures manual;
4. determining the allowable methods of procurement, subject to legal review and determination as necessary;
5. administering the Town's procurement card program;
6. maintaining requisition approval paths in financial system;
7. processing purchasing requests;
8. identification, solicitation and selection of vendors or contractors;
9. executing purchase orders;
10. monitoring the terms and conditions of purchases;

11. ensuring complete and accurate documentation of all purchases;
12. disposing of surplus and obsolete property; and
13. maintaining all purchasing files and records.

12.03 Ethics

A. Standard of Conduct

Each officer, employee or agent acting under the authority of this Section shall, at all times, adhere to and comply with the Town's Code of Ethics, set forth in Chapter 2 Article VIII of the Town's Code of Ordinances and Chapter 171 of the Texas Local Government Code.

No officer, employee or agent of the Town shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Chapter 2 Article VIII of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest. An officer, employee or agent of the Town shall, at all times, avoid the appearance of impropriety.

A conflict arises when a Town employee, officer or agent, or any relative thereof, a partner or a person or an organization that employs or may employ in the near future any of these individuals, has a financial or other interest in any entity that may be considered for the award.

B. Course of Conduct in the Event of a Conflict or Substantial Interest

In the event of a conflict of interest or substantial interest, as set forth in subpart A, the affected officer, employee or agent must adhere to the following procedures:

1. sign a declaration of possible conflict of interest or affidavit of a substantial interest;
2. if applicable, abstain from any participation in any procurement action:
 - a. where the officer, employee or agent directly represents an organization or may receive an economic benefit;

- b. where the officer, employee or agent is in direct competition with a proposal or bid which would provide a direct financial benefit; or
 - c. as required by Chapter 171 of the Texas Local Government Code and the Town's Code of Ethics.
- 3. abstain from participating in the procurement process, which includes, but is not limited to, discussions, lobbying, rating, scoring, recommending, explaining or assisting in the design or approval of the procurement process or the award of the contract:
 - a. on contracts with the organization he/she represents or from which he/she receives an economic benefit;
 - b. on contracts with organizations in which a relative might realize an economic benefit; or
 - c. as required by Chapter 171 of the Texas Local Government Code and the Town's Code of Ethics.

C. Violations and Remedies

Violations of this policy may constitute misconduct, subjecting the violator to any and all penalties prescribed by state law, the Town's Code of Ethics, and/or the Town's Charter.

Penalties, sanctions or other disciplinary actions, to the extent permitted by state or local law, rules or regulations, shall be imposed for violations of the code of conduct/conflict of interest standards, by Town officer, employees or agents or by persons, contractors or their agents, when the procurement involves state or federal programs and/or funds.

Appropriate sanctions, penalties or disciplinary actions shall be applied for violations. Violations of state or federal law shall be referred to the proper authority having jurisdiction over same.

12.04 Requisition Requirements

Requisitions are required for all procurements in excess of \$3,000, unless otherwise exempt as indicated in the Exemptions section below. Requisitions may be submitted for purchases less than \$3,000 but are not required. Requisitions shall be submitted to the Purchasing Office for processing with all supporting documentation attached.

A. Exemptions

Items that do not have to be submitted on a requisition and can be paid with a procurement card, by completing a check request, or approved for payment in the manner prescribed by Accounting Services are:

- when prepayment is required
- maintenance fees paid on an annual basis
- catered event fees
- election fees
- insurance premiums
- membership or professional association dues and fees
- periodicals
- postage
- referee fees
- registration fees
- regulatory fees
- subscriptions
- travel expenses
- tuition or training fees
- utilities such as gas, electric, water, etc.
- other fees as approved by the Purchasing Manager

B. Emergency Requisition

1. Conditions

In order to qualify as an emergency purchase, one of the following conditions must exist, as identified in Section 252.022 of the Texas Local Government Code, as amended:

- a. a purchase necessary because of a public calamity that requires the purchase of goods or services to relieve the necessity of the municipality's residents, or to preserve the property of the municipality;
- b. a purchase necessary to preserve or protect the public health or safety of the municipality's residents; or
- c. a purchase necessary because of unforeseen damage to public machinery, equipment, or other property.

2. Process

- a. Notify the Purchasing Office of the emergency as soon as possible.

- b. Enter a requisition into the financial system for \$1.00, place the requisition on hold and provide the purchase order number to the supplier.
- c. Proceed with the work.
- d. After work is completed, revise the requisition accordingly and attach a copy of the invoice.
- e. Once the requisition is approved at the appropriate levels, the Purchasing Office will issue the purchase order to the department.
- f. The Department will code and submit invoice for payment after receipt of the purchase order.

C. Requisition Processing

Upon receipt of a requisition, the Purchasing Office shall:

- verify completeness, including but not limited to ensuring all supporting documentation is attached;
- verify compliance with State of Texas Historically Underutilized Business (HUB) law, as identified in Section 252.0215 of the Texas Local Government Code, as amended, and with internal policies and procedures;
- verify pricing for accuracy;
- verify contract provisions, if purchasing goods or services from an existing contract; and
- prepare a purchase order after all required approvals are received

12.05 Purchasing Thresholds

A. Purchases \$3,000 and under

Competitive quotes are not required for purchases under \$3,000 but may be obtained for any purchase. Procurement cards should be utilized for these purchases when possible.

B. Purchases Over \$3,000 and up to \$50,000

Competitive written quotes should be solicited from an adequate number of vendors to ensure competition, including at least two Historically Underutilized Businesses (HUBs), if available, as required in Section 252.0215 of the Texas Local Government Code, as amended. HUBs should be contacted on a rotating basis, based on information provided by the comptroller. If the list fails to identify a HUB in the county, the Town is exempt from this requirement.

All purchases within this dollar threshold require the department to enter a Purchase Requisition and obtain appropriate approvals within the Town's Financial System, except for exempt purchases as defined in Section 12.04.A.

C. Purchases Over \$50,000

Unless otherwise specified by law, all purchases in excess of \$50,000 shall be awarded by competitive bidding or reverse auction procedures, pursuant to current state law. All competitive bids and reverse auctions will be issued by the Purchasing Office.

Change Orders shall not exceed 25% of the original award amount, except for exempt purchases as defined in Section 12.06.B.

D. Applicable to all Purchasing Thresholds

The Town may not split purchases to circumvent the competitive requirements or the \$50,000 limit (including Procurement Card purchases).

Split purchases are defined as follows:

1. Component Purchases: Purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
2. Separate Purchases: Purchases made separately of items that in normal purchasing practices would be purchased in one purchase.
3. Sequential Purchases: Purchases made over a period, of items that in normal purchasing practices would be purchased in one purchase.

12.06 Methods of Procurement

A. The Purchasing Manager will determine the allowable methods of procurement, based on the purchasing threshold as identified in Section 12.05, and the nature of goods or services required. The methods of procurement utilized by the Town are as follows:

- Competitive Sealed Bids (CSB)/Request for Bids (RFB)
- Competitive Sealed Proposals (CSP)
- Request for Proposals (RFP)
- Request for Statements of Qualifications (SOQ)
- Request for Quotes (RFQ)

- B. Exemptions from the methods of procurement listed in Section 12.06 A, as identified in Section 252.022 of the Texas Local Government Code as amended, include but are not limited to the types of purchases listed below.
1. Emergency Purchases: An emergency purchase that qualifies under one of the conditions defined in Section 12.04 B 1.
 2. Personal Services: Services involving the personal, intellectual or manual labor of an individual; a service performed personally by a particular individual for the benefit of another.
 3. Professional Services: Services performed within the scope of practice (or provided in connection with the employment of a licensed person in the areas of practice) of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising or professional nursing. Methods for procuring these services are set forth in the Texas Government Code, Chapter 2254, also known as the Professional Services Procurement Act.
 4. Planning Services: Services primarily intended to guide governmental policy to ensure the orderly and coordinated development of land uses.
 5. Consulting Services: Service of studying or advising the Town under a non-employee/employer type contract.
 6. Sole Source Purchases: The item is available from only a single source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts, or rare books; electricity, gas, water and other utility services; captive replacement parts or components for equipment.
 7. Cooperative Purchases: Supplies, equipment or services purchased through an approved cooperative purchasing program which meets all applicable laws and regulations.
 8. Personal Property: Property sold a) at an auction by a state licensed auctioneer; b) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; c) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or d) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391, Local Government Code.
 9. Retail Sale: Goods purchased for subsequent retail sale by the Town.
 10. Advertising: Advertisements, other than legal notices.

12.07 Procurement Card Program

The procurement card (p-card) program is a payment mechanism designed to reduce the administrative costs associated with processing small purchases under \$3,000. The p-card program is not intended to avoid or bypass appropriate purchasing or payment procedures.

The intent of the p-card program is to complement the existing processes available.

A. Obtaining Procurement Cards

The Procurement Card Application Form is available on the Town's Intranet under the forms section. The completed application form must have the Department Head's signature for approval before being submitted to the Program Administrator (Purchasing Manager or designee). P- cards will not be issued to cardholders until each cardholder:

1. has received the appropriate level of training from the Program Administrator;
2. has received program hand-outs; and
3. has signed the Cardholder Agreement confirming receipt of p- card, understanding of agreement, and acknowledgment that improper use of the p-card may result in disciplinary action, up to and including termination of employment.

B. Cardholder Limits and Commodity Restrictions

Monthly dollar limits and commodity restrictions will be assigned to all Town p-cards. Some restrictions will apply to the entire program, such as cash advances, alcohol, cigar/tobacco products, and casinos/gambling facilities, while others are determined based upon the cardholder's job position and responsibilities.

The Program Administrator will assign one of the authorization levels listed below to each p-card. Variations must be approved in advance by the Town Manager. This is not meant to be an all-inclusive list, and the Town reserves the right to impose other limitations and restrictions.

1. Executive: \$5,000
2. Recreational Programs: \$3,000 or \$5,000
3. Supervisory or Administrative Support: \$3,000
4. General: \$3,000 (with or without travel privileges, depending on the cardholder's needs.)

C. Program Administrator/Cardholder Responsibilities

1. Program Administrator Responsibility

The Program Administrator is responsible for the overall administration of the Town's Procurement Card Program including the following:

- a. implementing temporary increases to card limits after department/division head request
- b. removing temporary increases after close of the corresponding billing cycle
- c. reviewing monthly statements and investigating any suspicious transactions

2. Cardholder Responsibility

P-cards will be assigned to individual cardholders and should not be shared. Although the cardholder's name is printed on the card, the card is issued to the Town of Flower Mound and will have no impact on the cardholder's personal credit. However, Town funds are committed each time the p-card is used, and each individual cardholder is responsible for all charges made to their p-card. Therefore, by participating in the p-card program, all cardholders are responsible for the following:

- a. determining if the transaction is an acceptable use of the p-card, and if the total expenditure, including delivery or freight charges, is within the cardholder's spending limit;
- b. requesting Department/Division head approval for temporary increases and e-mailing request to Program Administrator for consideration and action and submitting approval with expense report;
- c. ensuring p-card is utilized for Town business only;
- d. ensuring that the Town is not charged sales tax;
- e. obtaining an itemized invoice or receipt for all p-card transactions (if receipt is illegible or missing, cardholder shall complete and submit the "Missing/Illegible P-Card Receipt" form with their expense report);
- f. for business meal receipts, details indicating the name(s) of the person and business purpose should be submitted;
- g. completing transaction review and coding in the p-card system, and submitting monthly expense reports to Accounts Payable by the 15th of each calendar month;
- h. obtaining a supervisor's signature on the monthly expense report (note—Assistant Town Manager/CFO and Town Secretary expense reports shall be approved by the Town Manager; Mayor, Town Council, and Town Manager expense reports shall be approved by the Assistant Town Manager/CFO);

- i. maintaining p-card in a safe and secure location; and
- j. immediately informing the bank, at the phone number indicated on the p-card, and the Program Administrator of lost or stolen p- cards, or of fraudulent charges.

D. Violations and Consequences

Violations including but not limited to section 12.07.C.2 to the p-card program may result in disciplinary action, up to and including termination of employment. Violations will be tracked by the Purchasing Office on a rolling calendar year basis. These violations will be communicated with the cardholder's supervisor on a monthly basis.

Violations to the p-card program will result in the following remedies:

1. First Offense: Written warning of infraction.
2. Second Offense: P-card privileges suspended for 30 days, and cardholder will surrender p-card to the Program Administrator for the duration of suspension period.
3. Third Offense: P-card privileges suspended permanently. Cardholder will surrender p-card to the Program Administrator.

After one year from the date of suspension, the cardholder may reapply for a p-card following the process the section 12.07.A of this policy.

12.08 Receipt of Goods/Services

A. Inspection

Upon receipt of goods or services, it is the department's responsibility to ensure that the order is complete as to quality and quantity, and to report any discrepancies to the Purchasing Office or directly to the vendor.

If the shipment is complete and undamaged, the packing slip or delivery ticket should be signed and retained until the invoice for payment is received.

Should the department receive only a partial shipment or return part of a shipment due to damage or delivery of the wrong items, this must be noted on the packing slip or delivery ticket and noted on the invoice in order to prevent improper payment.

B. Damages/Defects

Goods and services should be checked at the time of receipt to detect any damages or defects. This inspection should also include assuring that the material is in compliance with the specifications.

When it is apparent that the extent of the damage causes the goods to be of little worth, they should not be accepted.

1. Visible Damage: It is important that all damage be completely described on the receiving paperwork.
2. Concealed Damage: Any evidence of concealed damage should be documented to support the filing of damage claims against the carrier. The carrier should be notified immediately, and a joint inspection should be scheduled with the carrier's representative.
3. Claims: If the shipment is "F.O.B. destination" the vendor is responsible for assisting with the settlement of the claim and for full replacement of the damaged items. Payment should be withheld until the claims are settled.

The Town of Flower Mound Purchasing Policy is hereby approved this 2nd day of March 2020.



Jimmy Stathatos, Town Manager