

# CITY OF PHILADELPHIA PENNSYLVANIA

OFFICE OF THE CONTROLLER

SPECIAL REPORT ON  
EXEMPT CONTRACTS  
AND  
UNDER-ENCUMBERING PRACTICES  
SEPTEMBER 2024



City Controller  
**Christy Brady, CPA**

*Ensuring transparency, accountability,  
and fiscal integrity in city government*





# CITY OF PHILADELPHIA

OFFICE OF THE CITY CONTROLLER  
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CHRISTY BRADY  
City Controller

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Deputy City Controller

September 3, 2024

Honorable Cherelle L. Parker, Mayor  
City of Philadelphia  
City Hall, Room 215  
Philadelphia, PA 19107

Dear Mayor Parker,

In accordance with the Philadelphia Home Rule Charter, the Office of the City Controller conducted a review of the city's exempt contracts. Our objective was to determine whether contracts exempt from public bidding process were being awarded properly and fairly as stipulated in Charter. Additionally, we evaluated whether the contractual amounts encumbered in the city's accounting system were reasonable and accurate.

Our office found that departments without the exemption can add encumbrances to a contract initiated by a department with a non-profit exemption under Philadelphia Code § 17-1406, enabling them to bypass the city's contracting process. Additionally, in the city's accounting system, our office found instances where encumbrances were improperly recorded and significantly under-encumbered.

We believe that, if implemented properly, the findings and recommendations contained in this report will help ensure that contracts exempt from the public bidding process will be awarded properly and fairly and strengthen the city's budgetary controls to mitigate the risk of overspending.

We would like to express our thanks to the management and staff of the city for their courtesy and cooperation in the conduct of our review.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christy Brady".

CHRISTY BRADY, CPA  
City Controller

CC: Honorable Cherelle Parker, Mayor  
Honorable Members of City Council  
Tiffany W. Thurman, Chief of Staff, Mayor's Office  
Rob Rubow, Director of Finance  
Adam Thiel, Managing Director, MDO  
Dr. Frank A. Franklin, Interim Health Commissioner, Department of Public Health  
Jill Bowen, Commissioner, DBHIDS  
Susan Slawson, Commissioner, Parks and Recreation  
Kimberly Ali, Commissioner, Department of Human Services  
Michael Resnick, Commissioner, Philadelphia Prison System  
David Holloman, Executive Director, Office of Homelessness Services  
Renee Garcia, City Solicitor  
Honorable Larry Krasner, District Attorney  
John Mondlak, Interim Director, Department of Planning and Development



# CITY OF PHILADELPHIA OFFICE OF THE CITY CONTROLLER SPECIAL REPORT ON EXEMPT CONTRACTS AND UNDER-ENCUMBERING PRACTICES

## EXECUTIVE SUMMARY

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### Why the Controller's Office Conducted the Review

The Office of the City Controller (Controller's Office) conducted a review of the bidding process for contracts that were awarded under the special exemption to determine whether contracts exempt from the public bidding process were being awarded properly and fairly as stipulated in the Charter. Additionally, we evaluated whether the contractual amounts encumbered in the city's accounting system were reasonable and accurate.

### What the Controller's Office Found

We found that:

- Our review of 85 professional services contracts identified three departments – the Department of Aviation, the Managing Director's Office, and the Office of the Chief Administrative Officer (CAO) – procured services under seven contracts initiated using the non-profit exemption, despite not being listed as exempt under Philadelphia Code § 17-1406 from the non-competitive bidding process. Between fiscal years 2021 and 2024, these departments spent over \$15 million without adhering to the non-competitive bidding process.
- Encumbrances were improperly recorded in the city's accounting system. The encumbrances were initially recorded as one dollar rather than the contract amount.
- For four out of 10 contracts tested for the Department of Behavioral Health and Intellectual disAbility Services (DBHIDS), DBHIDS encumbered almost \$85 million less than total amount of the contracts.

### What the Controller's Office Recommends

We recommend the following:

- The Procurement Department should establish a control procedure in ACIS to prevent non-exempt departments from creating encumbrances under contracts with a non-profit exemption.
- City departments without a non-profit exemption should follow the non-competitive bidding process when procuring services from non-profit entities.
- Departments should stop the practice of recording one-dollar encumbrances and instead encumber the full amount of potential expenditures once the contract is conformed.
- The Procurement Department should establish control procedures in ACIS to prevent the practice of recording one-dollar encumbrances and require departments to fully encumber funds up to the contract amount.

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## **PURPOSE**

On May 17<sup>TH</sup> of this year, the Office of the City Controller (Controller's Office) notified the Mayor that we would be commencing a review of the contracting and encumbering processes for the departments listed under section § 17-1406 of the Philadelphia Code regarding Sole Source Contracts, Emergencies, and Other Exceptions. We also included the Office of the Managing Director and the Law Department where we have seen these types of practices being utilized over the past several years.

The objective of this review will be to determine whether contracts exempt from the public bidding process are being awarded properly and fairly as stipulated in the Charter. Additionally, the audit will review the contractual amounts encumbered in the city's accounting system for reasonableness and accuracy.

## **BACKGROUND**

Philadelphia Code § 17-1402 requires an open and public process for non-competitively bid contracts. Philadelphia Code § 17-1406, Sole Source Contracts, Emergencies, and Other Exceptions, states that certain city departments and offices are exempt from this non-competitive bidding process when awarding contracts to non-profit entities. The exempt city departments and offices are the Division of Housing and Community Development in the Department of Planning and Development, the Department of Human Services, the Department of Public Health, the Department of Parks and Recreation, the Office of Homeless Services, the Department of Behavioral Health and Intellectual disAbility Services, the Office of Adult Services, the Mayor's Office of Community Empowerment and Opportunity, the Philadelphia Prisons, the Commission on Disabilities, the Commission on Aging, and the Office of the District Attorney.

The professional service contracts are processed through the city's Automated Contract Information System (ACIS)<sup>1</sup> which is managed by the Contracts Legislation Unit of Procurement. In ACIS, departments can fill out an award tab to show the reasons why the vendor was selected. ACIS allows a user to verify the contract amounts against the department's budget and then route the contract through the approval/rejection process. If the obligated amount in a contract exceeds planned funding, ACIS will not allow a contract to be routed to the next department for review and approval in the contract conformance process. ACIS interfaces with the city's accounting system FAMIS<sup>2</sup>. Once the contract is conformed, the entries in ACIS will be uploaded to FAMIS to ensure that all the encumbrances are accounted for.

In FAMIS, there are built in budgetary controls to prevent city departments from overspending when used correctly. The department's authorized budget is set up through an Appropriations general ledger account. Appropriations establish a department's spending limits. While departments can compare appropriations to actual expenditures,

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<sup>1</sup> ACIS is designed to accommodate the General Provisions and the Cost Principles and Guidelines as laid out in the Policies and Procedures Manual.

<sup>2</sup> Financial Accounting and Management Information System

this alone does not fully capture the available funds for existing obligations. Encumbrances play a crucial role in the accounting system by ensuring that available funds are accurately reflected, considering existing obligations. Encumbrances act as “virtual” expenditures in the interval between the issuance of a contract or purchase order and its fulfillment.<sup>3</sup> While appropriations are funds set aside for budgetary line items, encumbrances are reserves for a specific item. Once an expenditure is posted, it will reduce the encumbrance by the amount of the expenditure. This is why comparing appropriations to encumbrances provides management with a more accurate financial picture. Please refer to the scenarios below for illustrative examples of this process.

**Scenario 1: Illustration of Encumbrances**

The city appropriated \$10 million for the department. The city has expended \$6 million to date and has a signed contract with a vendor for \$3 million.

**Comparison without Encumbrances**

| <u>Appropriations</u> | <u>Expenditures</u> | <u>Unspent Appropriations</u> |
|-----------------------|---------------------|-------------------------------|
| \$10,000,000          | \$6,000,000         | \$4,000,000                   |

**Comparison with Encumbrances**

| <u>Appropriations</u> | <u>Expenditures</u> | <u>Encumbrances</u> | <u>Unspent Appropriations</u> |
|-----------------------|---------------------|---------------------|-------------------------------|
| \$10,000,000          | \$6,000,000         | \$3,000,000         | \$1,000,000                   |

When encumbrances are used in the comparison, \$3 million will be accounted for and would help prevent overspending.

**Scenario 2: Illustration of under-encumbering in the accounting system**

The city appropriated \$5 million for the department. Vendor A signed Contract 1 for \$5 million with the city. The city incorrectly only encumbered \$3 million in the accounting system.

|                   | <u>Appropriations</u> | <u>Encumbrances</u> | <u>Unencumbered Appropriations</u> |
|-------------------|-----------------------|---------------------|------------------------------------|
| <b>Contract 1</b> | \$5,000,000           | \$3,000,000         | \$2,000,000                        |

The city’s accounting system will show that department has Unencumbered Appropriations of \$2 million to spend on other contracts. So, if a department enters into

<sup>3</sup> 2024 Governmental Accounting, Auditing, and Financial Reporting (GAAFR, also known as the 2024 Blue Book)

another contract (Contract 2) for \$2 million and encumbers the contract amount, the department will have no appropriations left to spend on the remaining Contract 1 amounts.

|                   | <b><u>Appropriations</u></b> | <b><u>Encumbrances</u></b> | <b><u>Unencumbered<br/>Appropriations</u></b> |
|-------------------|------------------------------|----------------------------|---|
| <b>Contract 2</b> | <b>\$2,000,000</b>           | <b>\$2,000,000</b>         | <b>\$0</b>                                    |

If Vendor A expended the full contract amount, the department would have exceeded their appropriations by \$2 million.

## **FINDINGS**

### **BYPASSING BIDDING PROCESS BY CERTAIN DEPARTMENTS**

We found that departments without the exemption can add encumbrances to a contract initiated by a department with a non-profit exemption, enabling them to bypass the city’s contracting process. The Procurement Department has not established a control procedure in ACIS to prevent this process from occurring.

Specifically, our testing of 85 professional services contracts revealed three departments – which were not among the departments listed under the Philadelphia Code § 17-1406 as being exempt from the non-competitive bidding process, procured services under seven contracts that were originated by departments using the non-profit exemption. These three departments were the Department of Aviation, Managing Director’s Office, and Office of the Chief Administrative Officer (CAO). From fiscal years 2021 to 2024, these three departments spent over \$15 million without going through the non-competitive bidding process. See Table 1 on the next page for the breakdown of spending by these departments.



**SPECIAL REPORT ON EXEMPT CONTRACTS**

**Table 1: Total amounts awarded by non-exempt departments using Non-profit exemption**

| <u>Department</u>        | <u>Non-profit Entity</u>                           | <u>Total Encumbered</u> | <u>Total Vouchers</u>  |
|--------------------------|--|-------------------------|------------------------|
| <b>Aviation</b>          | Mental Health Partnerships, Inc                    | \$921,917.24            | \$697,194.97           |
| <b>Managing Director</b> | Catholic Social Services                           | \$981,831.42            | \$722,065.39           |
|                          | Centralized Comprehensive Human Services Inc       | \$45,000.00             | \$45,000.00            |
|                          | Citizens Acting Together Can Help - CATCH          | \$138,925.00            | \$72,795.00            |
|                          | Community Legal Services                           | \$3,555,667.00          | \$1,620,955.00         |
|                          | Elwyn of Pennsylvania and Delaware                 | \$45,000.00             | -                      |
|                          | Gaudenzia Inc                                      | \$850,137.00            | \$763,334.00           |
|                          | Health Federation of Philadelphia, Inc             | \$133,750.00            | \$106,461.12           |
|                          | JEVS Human Services                                | \$12,300.00             | -                      |
|                          | Merakey Parkside Recovery                          | \$6,533,001.00          | \$3,564,823.00         |
|                          | NorthEast Treatment Centers, Inc                   | \$639,322.00            | -                      |
|                          | Path (People Acting to Help), Inc                  | \$729,562.00            | \$404,680.00           |
|                          | Pathways To Housing PA                             | \$499,000.00            | -                      |
|                          | PMHCC, Inc   | \$7,317,640.82          | \$3,674,085.00         |
|                          | Prevention Point Philadelphia                      | \$2,582,795.50          | \$2,070,889.70         |
|                          | Project HOME Inc                                   | \$409,057.00            | -                      |
|                          | The Council of Southeast Pennsylvania, Inc         | \$488,384.05            | \$472,640.05           |
|                          | Urban Affairs Coalition                            | \$1,746,198.35          | \$711,431.14           |
|                          | WES Health Centers, Inc                            | \$20,000.00             | -                      |
|                          | West Phila Community Mental Health Consortium, Inc | \$176,856.00            | \$131,856.00           |
|                          | <b>CAO</b>   | PMHCC, Inc              | \$254,635.00           |
| <b>Grand Total</b>       |  | <b>\$28,080,979.38</b>  | <b>\$15,178,134.37</b> |

**Procurement policies for the top 5 cities in U.S.**

The Controller’s Office reviewed the procurement policies of the five largest U.S. cities, which are New York, Los Angeles, Chicago, Houston, and Phoenix. None of these cities have an exemption for non-profits. See the chart below for a summary of each city’s common contract exemptions and Appendix B for their procurement policies.

| <b>Table 2: Comparable Cities’ Contract Exemptions</b> |   |   |   |
|--|---|---|---|
| <b>Cities</b>  | <b>Sole Source</b>  | <b>Emergencies</b>  | <b>Non-profits</b>  |
| <b>New York City</b>                                   | <b>Yes – Must file the determination of the sole source</b>   | <b>Yes – Requires competition as is practicable under the circumstances and a written justification memo</b>                    | <b>No</b>   |
| <b>Los Angeles</b>                                     | <b>Yes – Must provide detailed answers to the eight questions on the justification checklist</b>                                | <b>Yes – Written justification required</b>   | <b>No</b>   |
| <b>Chicago</b>   | <b>Yes – Requests are reviewed by the Non-Competitive Review Board (NCRB)</b>   | <b>Yes – No mention of written justification but only allows emergency contracts up to \$500,000</b>                            | <b>No</b>   |
| <b>Houston</b>   | <b>Yes – Written justification is required, and city council approval required if in excess of the established dollar limit</b> | <b>Yes – Written justification is required, and city council approval required if in excess of the established dollar limit</b> | <b>No</b>   |
| <b>Phoenix</b>   | <b>Yes – Only if the Procurement Officer issues a determination describing a lack of resources</b>                              | <b>Yes – Only if the Procurement Officer issues a determination describing the emergency</b>                                    | <b>No</b>   |
| <b>Philadelphia</b>                                    | <b>Yes – If it is certified in writing by the Finance Director</b>  | <b>Yes – If it is certified in writing by the Finance Director</b>  | <b>Yes – Only for certain departments and no justification for vendor selection is required</b> |

The Philadelphia Code § 17-1402 requires an open and public process for non-competitively bid contracts. Philadelphia Code § 17-1406, Sole Source Contracts, Emergencies, and Other Exceptions, states that certain city departments and offices are exempt from this non-competitive bidding process when awarding contracts to non-profit entities. See Appendix A for the applicable Philadelphia Code sections.

When non-exempt departments use the non-profit exemption, those departments are bypassing the non-competitive bidding process for professional services and violating the Philadelphia Code. It could also lead to the city overspending for such services because the lowest bid was not determined.

**SIGNIFICANT UNDER-ENCUMBERING OF CONTRACTS IN THE CITY'S ACCOUNTING SYSTEM**

Our testing found that encumbrances were not correctly recorded in the city's accounting system (FAMIS). The encumbrances were all initially recorded for only one dollar in the accounting system rather than the contract amount. These encumbrances pertained to the following departments: Mayor's Office of Community Empowerment and Opportunity, Office of the Managing Director, Department of Public Health, Department of Parks and Recreation, and Office of Homeless Services.

We found the posting of encumbrances with an initial value of one dollar has been a common practice amongst certain city departments that was passed down for years. Also, the Procurement Department has not implemented control procedures in ACIS that would prevent this practice and require departments to fully encumber up to the contract amount.

Additionally, out of 12 departments tested, we identified one with significant under-encumbered amounts. In 4 out of 10 contracts tested for the Department of Behavioral Health and Intellectual disAbility Services (DBHIDS), we found that DBHIDS encumbered \$85 million less than the total contracted amounts. (Refer to Scenario 2 on pages 2 and 3, for an illustration of how under-encumbering can lead to overspending.)

Encumbrances are a budgetary tool used to compare anticipated spending against the city's appropriated budget. They represent outstanding purchase orders and contracts, so the difference between a department's appropriations and its encumbrances indicates the funds available for new spending. When departments enter into contracts with vendors, they should encumber the maximum potential expenditure to ensure budgetary compliance.

If encumbrances are not accurately recorded in the city's accounting system, there is a risk that a department could spend more than its allocated budget.

## **RECOMMENDATIONS**

We recommend the following actions:

- The Procurement Department should establish a control procedure in ACIS to prevent non-exempt departments from creating encumbrances under contracts with a non-profit exemption.
- City departments without a non-profit exemption should follow the non-competitive bidding process when procuring services from non-profit entities.
- Departments should stop the practice of recording one-dollar encumbrances and instead encumber the full amount of potential expenditures once the contract is conformed.
- The Procurement Department should establish control procedures in ACIS to prevent the practice of recording one-dollar encumbrances and require departments to fully encumber funds up to the contract amount.

## **CONCLUSION**

The contracting and encumbering processes have been improperly used. Certain city departments are bypassing the non-competitive bidding process for professional services violating the Philadelphia Code, while other departments are failing to encumber the full amount of a contract. Both processes lack transparency and could lead to overspending.

The Mayor and City Council should work collaboratively to assess the need for the non-profit special exemption for certain city departments to ensure transparency and compliance with city regulations. This report includes the practices of other jurisdictions, which can serve as a foundation for these discussions.

Furthermore, the Controller's Office will conduct a deeper review of the city's overall contracting processes and the potential obstacles to doing business with the city.

## Appendix A – Philadelphia Code

### **§ 17-1402. Open and Public Process Required For Non-Competitively Bid Contracts.**

(1) The Procurement Commissioner shall develop procedures to ensure that Non-Competitively Bid Contracts are advertised, awarded and approved in a timely, efficient and coordinated manner in the best interest of the City; in a manner that maximizes accessibility by vendors and maximizes transparency to the public; and in compliance with all applicable provisions of this Chapter. A Non-Competitively Bid Contract shall be awarded in compliance with the following:<sup>137</sup>

(a) A City Agency that seeks to enter into a Non-Competitively Bid Contract shall so notify the Procurement Department, and shall coordinate with the Procurement Department in carrying out the requirements of this Chapter. The Procurement Commissioner shall develop applications, disclosure forms, and procedures and guidelines to assist Applicants, Contractors and Disadvantaged Business Enterprises in complying with the provisions of this Chapter. The City Agency that seeks to enter into a Non-Competitively Bid Contract shall publish on the City's official website and file with the Procurement Commissioner, the Finance Director and the Commerce Director a notice of the availability of such contracting opportunity, and shall award such contract only to a party that completes an application form supplied by such City Agency, which application form shall contain all disclosure forms required by subsection (1)(b) and shall include a summary of the provisions and requirements of this Chapter. The required notices shall appear on the City's official website for at least fourteen days before the time by which application forms must be filed. The Procurement Commissioner, the Finance Director and the Commerce Director shall each keep a printed copy of all required notices in a registry organized by the date application forms must be filed, and make such registry available for public inspection during regular business hours. The required notices must be available for public inspection in such registries at least fourteen days before the time by which application forms must be filed. The required notices shall set forth:<sup>138</sup>

- (1) The City Agency seeking to enter into the contract;
- (2) The nature of the goods or services being sought;
- (3) The requirement that no party may be awarded the contract unless it files an application form provided by the City Agency, and the manner and time by which such application forms must be filed;
- (4) The requirements of subsection (1)(b) that the Applicant disclose the names of subcontractors the Applicant intends to use on the contract, the names of Consultants used to assist in securing the contract, certain contributions made by the Applicant and such Consultants, and the continuing disclosure requirements of subsection (1)(e) concerning such contributions made during and after the term of the contract; and
- (5) The criteria by which the selection will be made.

(b) *Mandatory Disclosures.*

- (1) An Applicant must disclose, by completing and signing disclosure forms attached to the application:

(a) The names, business addresses and phone numbers of all Consultants used by the Applicant with respect to the contract at issue within the year prior to the date the application must be filed, and the amount paid or to be paid to each such Consultant for such services, or certify that no Consultants were so used;

(b) All contributions of money or in-kind assistance made by the Applicant or by a Consultant during the two years prior to the date the application must be filed to any candidate for nomination or election to any elective City office or to an Incumbent, or to any political committee or party in the City of Philadelphia, or to any group, committee or association organized in support of any such candidate, office holder, political committee or party in the City of Philadelphia, or any contribution covered by subsection (3) or (4) of Section 17-1405 ("Attribution Rules"), and the date and amount of each such contribution, or certify that no such contributions have been made. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed as contributions of the Applicant or of a Consultant under this subsection (1)(b).<sup>139</sup>

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(c) The names, business addresses and phone numbers of all subcontractors the Applicant intends to use on the contract, and the amount or percentage to be paid to each such subcontractor.

(d) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, asked the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any Person in response to any such request. The Applicant shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

(e) The name and title of each City officer or employee who, within two years prior to the date the application must be filed, directly or indirectly advised the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant that a particular Person could be used by the Applicant to satisfy any goals established in the contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Applicant shall also disclose the date the advice was provided, and the name of such particular Person.

(2) The City Agency awarding the contract shall forward a copy of all disclosure forms it receives to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(3) No Non-Competitively Bid Contract shall be awarded unless all disclosure forms required by subsection 17-1402(1)(b)(1) are completed, signed and attached to the application for such contract and on file with the Mayor, Finance Director, Procurement Department, and the Department of Records. <sup>139.1</sup>

(4) No Non-Competitively Bid Contract valued above the formal bidding threshold shall be entered with a prospective Contractor who does not agree to disclose the following prior to execution of the contract and such other related disclosures as may be required by the Finance Department by regulation: <sup>139.2</sup>

(a) The prospective Contractor's prior years of experience performing on City contracts in any capacity during the five calendar years prior to the date the application must be filed.

(b) Demographic Data on all individuals employed by the Applicant on the Report Date; and

(c) Demographic Data on all individuals serving as board members of the Applicant on the Report Date.

(c) After the City Agency has selected the Applicant with which it intends to contract, the City Agency shall publish a notice on the City's official website setting forth the names of all Applicants, the Applicant to which the contract will be awarded, and the basis for the award, including a statement as to whether the Applicant to be awarded the contract was the lowest bidder and if not, why the applications of all lower bidders were rejected. Such notice shall also contain a copy of the notice of the availability of such contracting opportunity (including any Request For Proposals or other related documents) previously published pursuant to subsection (a). All information published to comply with this subsection (c) shall appear on the City's website for at least one week before the contract is executed, and shall remain on the website for at least five years. No later than the date the notice first appears on the City's website, the City Agency shall file a copy of the notice with the President and Chief Clerk of Council, and the Mayor, Finance Director, Procurement Department, and Department of Records. <sup>140</sup>

(d) If Council approval of a Non-Competitively Bid Contract is required under Section 2-309 or other provision of the Charter, then such contract must be specifically approved by ordinance. An ordinance approving a Non-Competitively Bid Contract shall include as exhibits:

(1) A copy of the notice required by subsection (1)(a);

(2) A copy of the application form submitted by the Applicant to whom the contract is proposed to be awarded, together with a copy of all disclosure forms required to be submitted by such Applicant under subsection (1)(b); and

(3) A copy of the notice required by subsection (1)(c).

(e) Every Non-Competitively Bid Contract shall include the following provisions: <sup>141</sup>

(1) For contracts in an amount greater than the amount set forth in subsection 17-1404(1)(a) (where the Contractor is an individual) or the amount set forth in subsection 17-1404(1)(b) (where the Contractor is a business): The Contractor shall covenant that during the term of the contract, contributions will not be made that would render the Contractor ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of subsection 17-1404(1). Breach of such covenant shall render the contract voidable at the City's option, and shall make the Contractor liable for liquidated damages to the City in an amount up to ten percent (10%) of the maximum payments to the Contractor allowed under the contract, regardless whether actually paid.

(2) The Contractor shall, during the term of such contract and for one year thereafter, disclose any contribution of money or in-kind assistance the Contractor or any Consultant has made during such time period to a candidate for nomination or election to any elective City office or to any political committee or party in the City of Philadelphia, or to any group, committee or association organized in support of any such candidate, office holder, political committee or party in the City of Philadelphia, or any contribution covered by subsection (3) or (4) of Section 17-1405 ("Attribution Rules"), and the date and amount of such contribution. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency on the schedule set forth in subsection (.5) below. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Contractor or of a Consultant.

(3) The Contractor shall, during the term of such contract and for one year thereafter, disclose the name and title of each City officer or employee who, during such time period, asked the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any Person in response to any such request. The Contractor shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency on the schedule set forth in subsection (.5) below. The City Agency receiving the disclosure

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form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(4) The Contractor shall, during the term of such contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any Person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the City Agency awarding the contract, and the form shall be signed and filed with such agency within the schedule set forth in subsection (5) below. The City Agency receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

(5) The disclosure forms required by subsections (2), (3) and (4), above, shall be filed by each of the following dates, provided that no form need be filed if no contributions, requests, payments or advice was made during the relevant filing period: January 15 (for the period November 1 through December 31 of the immediately preceding year), March 15 (for the period January 1 through the last day of February), May 15 (for the period March 1 through April 30), July 15 (for the period May 1 through June 30), September 15 (for the period July 1 through August 31), and November 15 (for the period September 1 through October 31).

(f) Every Non-Competitively Bid Contract shall include a representation and covenant by the Contractor that the Contractor's disclosures required by subsection (1)(b) contain no material misstatements or omissions. Material misstatements or omissions in disclosures pursuant to subsection 17-1402(1)(b)(4) under two or more contracts shall constitute a breach of such representation and covenants. Breach of representation and covenant under this subsection shall render the contract voidable at the City's option, and shall subject the Contractor to liquidated damages to the City in the amount of ten percent (10%) of the total value of the payments to be made to the Contractor under the contract. [141.1](#)

(g) Every Non-Competitively Bid Contract shall be approved in writing by the Procurement Commissioner, the Finance Director, and the City Solicitor prior to execution, except that Non-Competitively Bid Contracts entered into by Council shall require only the approval in writing of the Council President prior to execution.

(h) No Non-Competitively Bid Contract shall be amended to increase the amount to be paid under the contract by more than twenty percent (20%) or by more than twenty-five thousand dollars (\$25,000), whichever is greater, unless such amendment is approved in writing by the Procurement Commissioner, the Finance Director, and the City Solicitor prior to execution, except that such amendments to Non-Competitively Bid Contracts entered into by Council shall require only the approval in writing of the Council President prior to execution. The City Agency seeking to amend the contract shall publish on the City's official website a notice identifying the contract and explaining the need for the amendment. Such notice shall appear on the City's website for at least one week prior to execution of the amendment, and no later than the day the notice first appears on the City's website, the City Agency shall send a copy of the notice to the President and Chief Clerk of Council, and to the Mayor and Department of Records.

(i) No later than October 1st of each year, the Finance Director or such other officer as designated by the Mayor shall provide an annual report to the Mayor and the Clerk of Council summarizing the disclosures received under subsection 17-1402(1)(b)(4) during the previous fiscal year. Further, for purposes of improving the City's capacity in terms of businesses and workforce diversity, the Finance Director shall also provide copies of the report to area organizations that specialize in business growth and workforce development, including but not limited to: [141.2](#)

- (1) Philadelphia Industrial Development Corporation;
- (2) The Enterprise Center;
- (3) Urban Affairs Coalition;
- (4) The Chamber of Commerce for Greater Philadelphia;
- (5) African American Chamber of Commerce for PA, NJ and DE;
- (6) Greater Philadelphia Hispanic Chamber of Commerce;
- (7) Asian American Chamber of Commerce for Greater Philadelphia;
- (8) University City District;
- (9) Delaware Valley Regional Planning Commission; and
- (10) Urban League of Philadelphia.

(2) *Failure to Disclose Consultant Contributions.*

(a) It shall not be a violation of subsection (1)(b)(1)(b) if an Applicant fails to disclose a contribution made by a Consultant because the Applicant was unable to obtain such information from the Consultant, provided the Applicant demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

- (1) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the contract, and before the Consultant communicated with a City Agency, official or employee on behalf of the Applicant;
- (2) Including in such agreement a provision requiring the Consultant to provide the Applicant in a timely manner with all information required to be disclosed under the provisions of this Chapter, and providing, in effect, that the agreement will be terminated by the Applicant if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Applicant as of the date of such termination;
- (3) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Applicant to comply with all provisions of this Chapter; and
- (4) Invoking the termination provisions of the written agreement in a full and timely manner.

(b) The contract provision required by subsection (1)(e)(2) shall include provisions excusing the failure to disclose a Consultant's contributions during the term of the contract under the same terms and conditions set forth in subsection (2)(a).

(3) Nothing in this Chapter shall be construed to require the award of a Non-Competitively Bid Contract to the lowest responsible bidder, nor shall this Chapter be construed in any other way to limit the discretion of a City Agency in awarding or not awarding a Non-Competitively Bid Contract if the procedures required by this Chapter have been followed.

**§ 17-1406. Sole Source Contracts, Emergencies, and Other Exceptions.**

(1) Any provision of this Chapter may be waived if the Finance Director certifies in writing that compliance with such provision may lead to the loss of federal, state or similar grant funds, or if the City Solicitor certifies in writing that application of such provision would violate federal or state law.

(2) The provisions of subsections 17-1402(1)(a), (1)(c) and (1)(e).1, and the provisions of Section 17-1404, shall not apply with respect to contracts the Finance Director certifies in writing are for the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, provided that this exception shall not apply to Professional Services Contracts. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by subsection 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(3) The provisions of subsections 17-1402(1)(a) and (1)(c) shall not apply to a Non-Competitively Bid Contract if the Finance Director, or the Council President for contracts entered into by Council, certifies in writing that delay in the award of such contract would cause a material threat to public health or safety. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by subsection 17-1402(1)(b) need not be filed until fourteen days after a contract is executed. <sup>148.1</sup>

(4) The provisions of subsections 17-1402(1)(a), (1)(c) and (1)(g) shall not apply to a Non-Competitively Bid Contract if the City Solicitor certifies in writing that such contract must be awarded immediately to avoid material damage to the legal interests of the City. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by subsection 17-1402(1)(b) need not be filed until fourteen days after a contract is executed.

(5) The provisions of subsections 17-1402(1)(a) and (1)(c) shall not apply to: <sup>149</sup>

(a) Non-Competitively Bid Contracts in an amount less than that set forth in subsection 8-200(2) of the Home Rule Charter, as such amount is adjusted from time to time, provided that such contracts are awarded only after the contracting agency conducts a competitive process established by the Procurement Commissioner and designed to maximize competition without imposing an administrative burden more costly than appropriate given the size of the contract.

(b) Non-Competitively Bid Contracts in an amount less than the amount set forth in subsection 8-200(2.1)(a) of the Charter (relating to local business contracts), as such amount is adjusted from time to time, provided that:

(.1) The contract is awarded to a Local Business Entity (as that term is used in Section 17-109).

(.2) All applicants are required to submit, with their applications, all of the material required by Code subsection 17-109(5)(a) ("Award of City Contracts"), including, but not limited to, certification that the majority of the work will be performed, and inventory will be maintained, in the City.

(.3) Such contracts are awarded only after the contracting agency conducts a competitive process established by the Procurement Commissioner and designed to maximize competition without imposing an administrative burden more costly than appropriate given the size of the contract.

(5.1) The provisions of subsection 17-1402(1)(h) (relating to amendments) also shall not apply to contracts excepted under subsection (5), above (relating to small dollar value contracts), provided that no amendment shall increase the total amount owing under the contract to an amount that would have made the contract ineligible for the exception that was used pursuant to subsection (5). All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by subsection 17-1402(1)(b) need not be filed until fourteen days after a contract is executed. <sup>150</sup>

(6) The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract with a governmental agency or with a not-for-profit corporation established by the City, or to Financial Assistance provided to such agencies or corporations, except that all such contracts and provisions of Financial Assistance shall be included in the reports required by Section 17-1403. <sup>151</sup>

(7) All written certifications required under this Section shall set forth the basis for such certification, and shall be filed with the Department of Records.

(8) The provisions of subsections 17-1402(1)(a) and (1)(c) shall not apply to contracts with not-for-profit entities awarded by the Office of Housing and Community Development, the Department of Human Services, the Health Department, the Recreation Department, the Office of Emergency Shelter and Services, the Office of Behavioral Health and Intellectual Disability Services, the Office of Adult Services, the Mayor's Office of Community Services, the Philadelphia Prisons, the Commission on Disabilities, the Commission on Aging, or the Office of the District Attorney. All other provisions of this Chapter shall apply to such contracts, except that the disclosures required by subsection 17-1402(1)(b) need not be filed until fourteen days after a contract is executed. <sup>152</sup>

(9) The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract if the City Solicitor certifies that it is for a service the primary purpose of which is creative expression or entertainment, including public speakers, artists and musicians, except that all such contracts shall be included in the reports required under Section 17-1403. <sup>153</sup>

(10) The provisions of this Chapter, other than the reporting requirements of Section 17-1403, shall not apply to a Non-Competitively Bid Contract for the services of a rating agency in connection with bond or similar financing; or for the purchase of liability insurance (City as named insured). <sup>154</sup>

(11) The provisions of this Chapter shall not apply to a Non-Competitively Bid Contract awarded by the Law Department, the District Attorney's Office or counsel for a City-Related Agency, whether awarded directly or through outside counsel, for the procurement of an expert opinion for purposes of litigation, except that all such contracts shall be included in the reports required under Section 17-1403 except to the extent inclusion in a report would disclose privileged material or jeopardize the City's or the agency's litigation interests. <sup>155</sup>

(12) The provisions of subsections 17-1402(1)(a), (b) and (c) but not (d) except subsections (d)(.1), (.2), and (.3) shall not apply to the following forms of renewal of a Non-Competitively Bid Contract: <sup>156</sup>

(a) A renewal pursuant to an option to renew contained in a Non-Competitively Bid Contract.

(b) A renewal of a Non-Competitively Bid Contract, which contract contains an option to renew, so long as the City Solicitor certifies that the renewal is on substantially similar terms to those set forth in the contract prior to the renewal.

(c) A renewal of a Non-Competitively Bid Contract, so long as (i) the Director of Finance certifies that the City is working diligently pursuant to this Chapter to award a contract for similar services or materials and that the renewal is for no longer than necessary to complete such award; and (ii)



## **Appendix B – Procurement policies for the top 5 cities in the U.S.**

### **New York City**

#### **Section 315. Emergency procurement.**

Notwithstanding the provisions of section three hundred twelve of this chapter, in the case of unforeseen danger to life, safety, property or a necessary service, an emergency procurement may be made with the prior approval of the comptroller and corporation counsel, provided that such procurement shall be made with such competition as is practicable under the circumstances, consistent with the provisions of section three hundred seventeen of this chapter. A written determination of the basis for the emergency and the selection of the contractor shall be placed in the agency contract file, and shall further be submitted to the council no later than fifteen days following contract award, and the determination or summary of such determination shall be included in the notice of the award of contract published pursuant to section three hundred twenty-five of this chapter.

#### **Section 321. Sole source.**

a. In accordance with section three hundred seventeen, a contract may be awarded for a good, service or construction without competition when an agency determines, pursuant to rules promulgated by the procurement policy board, that there is only one source for the required good, service or construction. The agency contract file shall contain the agency's determination that only a single source is available for the required good, service or construction, including the process by which the agency made such determination. Copies of such notice shall be filed with the comptroller.

b. Whenever an agency determines that there is only a single source for a good, service or construction, an agency shall give immediate notice in the City Record of such determination and shall in such notice solicit the application of vendors qualified to provide such good, service or construction, or interested in providing such good service or construction in the future. The procurement policy board shall by rule define the timing and duration of such notification to ensure that vendors

### **Los Angeles**

#### **6.7 Sole Source Purchases**

Generally, the County solicits the maximum number of bids/proposals for a commodity or service from the largest relevant market and selects vendors on a competitive basis via various purchasing methods. Certain acquisitions, however, when determined to be in the best interest of the County based on regulatory, qualified, measurable or quantifiable criteria, may be obtained from a sole source. Sole source purchases can be awarded without bidding when the item can be obtained from only one source, and the item does not economically lend itself to substitution.

**In all cases, sole source acquisitions must be justified in sufficient detail to explain the basis for suspending the competitive procurement process.**

##### **6.7.1 Approval and Reporting**

Any sole source purchase over \$5,000 must be approved by the Purchasing Agent and reported to the Board of Supervisors on a monthly basis. Sole source purchases under \$5,000 may be processed directly by the individual County department under their delegated purchasing authority.

##### **6.7.2 Commodities General Considerations**

When requesting the sole source of a commodity purchase, the Department must demonstrate that the commodity:

- Is available from only one source (e.g., proprietary to a manufacturer, distributor, and/or reseller, etc.)
- Is the only brand that meets the qualifications or specifications of the requisitioning department
- Is a brand that must match or inter-member with an existing system, and cannot be substituted without replacing the system, resulting in significant costs to the County
- If purchased, will avoid other costs (e.g., data conversion, training, purchase of additional hardware, etc.)

##### **6.7.3 Sole Source Services**

General considerations for justifying sole source services are more complicated than for commodities. The following factors are used to justify sole source services.

1. No other vendor offers a service or employs personnel meeting the minimum requirements.
2. The department's required timeframe for project completion is critical and cannot be exceeded without extreme hardship.

3. The cost to continue with the same service provider is less than the cost for any other vendor due to the time necessary to get "up to speed" (learning curve) with the project.
4. A unique and proprietary solution has been offered which is determined to be in the best interest of the County.

The Purchasing Agent designee must follow the guidelines under *Checklist for Sole Source Service Requisitions* (see Section 19.3) before processing service-related requisitions.

### **6.7.3 Justification**

For all sole source acquisitions, departments must submit adequate documentation with their requisition, explaining the basis for a sole source purchase. Inadequate information may result in the automatic processing of a competitive bid solicitation.

Departments must provide ISD Purchasing with a *sole source justification checklist* (see Section 19.4), which includes detailed responses to the following questions/statements:

1. Describe in detail the product/service that is being requested.
2. Explain why the product/service is needed and how it will be used?
3. Is this brand of product or service the only one that meets the user's requirements? If **yes**, explain what is unique about this product/service? If **no**, explain why other products/vendors were not considered.
4. Have other products/vendors been considered? If **yes**, which products/vendors were considered and how did they fail to meet the user's requirements?
5. Will purchase of this product/service avoid costs, e.g. data conversion, training, purchase of additional hardware, etc.?
6. Is the product/service proprietary or is it available from various dealers/providers? Provide verification.
7. Reasonableness of Price: Does the County obtain a special discount or pricing not available to the private sector? How does County pricing compare with other governmental entities?
8. What is the dollar value of existing equipment, software, and/or service? Provide the Purchase Order Number for existing equipment, software, and/or service. (Applicable to sole sources based on match and inter-member requirement, i.e. maintenance of proprietary computer software or purchase of a part/component designed for a specific piece of equipment).

### **6.9 Emergency Purchases**

An "emergency" is defined as a sudden, unexpected occurrence or set of circumstances demanding action in order to maintain essential or critical services and/or to protect public health and immediate safety. In general terms, emergency equipment or services are only authorized to repair or address the immediate need.

#### **6.9.1 Emergencies During ISD Purchasing's Regular Operating Hours**

If an emergency occurs during ISD Purchasing's regular operating hours and the department has an immediate need to procure goods and/or services in order to address such emergency, the following guidelines shall apply:

1. Department shall call or email to alert the Purchasing Agent of the urgent purchase order request. Departments requiring the immediate or same day purchase of goods or services shall prepare a requisition and justification and forward to the Purchasing Agent, if the purchase exceeds their delegated authority.
2. The Purchasing Agent will review the request and, if acceptable, will process within the timeframe required by the department.
3. If sufficient time does not permit for the submittal of a requisition, the Department may provide a written justification\* of the emergency and vendor quotation to the Purchasing Agent to request pre-approval to proceed with the immediate purchase. If pre-approval is granted, the Department must submit the requisition, formal justification, vendor quotation, and pre-approval notice to ISD Purchasing immediately thereafter, so that the proper purchase order may be issued and provided to the vendor.

\*Written justification shall include:

- Explanation/details of the emergency purchase and consequences if not immediately addressed
- Evidence of any competitive quotes or address reasonableness of price
- Signature authorization and approval by a Division Chief Level or higher authority.

**SPECIAL REPORT ON EXEMPT CONTRACTS**

Section 19.2

To: For the Record

Date: \_\_\_\_\_

From: \_\_\_\_\_

Subject: DOCUMENTATION FOR NEGOTIATED PURCHASE TRANSACTION – OVER \$1,500

- Includes transactions not based on competitive bid solicitation – i.e. "Monopoly"

- All negotiated transactions exceeding \$5,000 must be reported to the Board of Supervisors.

1. Requisition # \_\_\_\_\_

Dept.: \_\_\_\_\_

2. Commodity: \_\_\_\_\_

3. Vendor: \_\_\_\_\_

4. Total Amount of this purchase (incl. freight and sales tax): \$

Check applicable sole source category below. Provide explanation for Item 7.

5.  Monopoly purchase (i.e. utilities, subscription, bills from a legislative bill, room, etc.)

6.  Required to maintain or upgrade existing software.

7.  An integral part of existing equipment that is available from the only manufacturer and is therefore not biddable, as follows: \_\_\_\_\_

8.  Emergency – describe nature of emergency and the consequences if supplies, equipment or service is not immediately obtained: \_\_\_\_\_

9. JUSTIFICATION: Describe all actions you have taken to reach your conclusion. Explain potential consequences for substitution of product/service. Include basis used to determine reasonableness of price and, if applicable, efforts to develop additional sources. Provide complete, brief, clear explanation. *(Use reverse side of this sheet or attached additional sheet(s)).*

10. Board Summary:

**APPROVAL:**

Section Mgr. - \$4,999.99 and under -----

Division Mgr. - \$5,000.00 and above -----

(Rev. 3/08)

**SOLE SOURCE REQUEST QUESTIONNAIRE**

It is the policy of the County to solicit the maximum number of bids/proposals for a commodity or service from the largest relevant market and to select vendors on a competitive basis.

There are certain acquisitions which, when in the best interest of the County, can only be obtained from a sole source. Sole source acquisitions must be justified in sufficient detail to explain the basis for suspending the usual competitive procurement process.

**NOTE:** Please refer to Procedure P-3700 of the ISD Purchasing Policies and Procedures Manual.

**DOCUMENTATION FOR SOLE SOURCE JUSTIFICATION MUST INCLUDE RESPONSES TO THE FOLLOWING QUESTIONS:**

1. What is being requested?
  
2. Why is the product needed – how will it be used?
  
3. Is this "brand" of product the only one that meets the user's requirements? If yes, what is unique about the product?
  
4. Have other products/vendors been considered? If yes, which products/vendors have been considered and how did they fail to meet the user's requirements?
  
5. Will purchase of this product avoid other costs, e.g. data conversion, etc. or will it incur additional costs, e.g. training, conversion, etc.?
  
6. Is the product proprietary or is it available from various dealers? Have you verified this?
  
7. Reasonableness of Price: Does the County obtain a percentage discount or special discount not available to the private sector?
  
8. What is the dollar value of existing equipment and the Purchase Order No. for the existing equipment?

(Rev. 03/08)

Section 19.4

**PURCHASING ANALYST CHECKLIST**  
**FOR**  
**SOLE SOURCE SERVICE REQUISITIONS**

Before processing a sole source service-related requisition, the Purchasing Analyst must complete the following checklist:

|  | <b>YES</b> | <b>NO</b> |
|--|------------|-----------|
| 1. At least one of the following conditions must exist:  |            |           |
| a. The service cannot be performed adequately, competently, or satisfactorily by the County of Los Angeles.  |            |           |
| b. The service is of an extraordinary professional or technical nature, and is temporary in nature.  |            |           |
| c. The service is required on a part-time or intermittent basis.   |            |           |
| d. The service is needed to provide an independent audit, evaluation, or analysis of County programs (Auditor-Controller's approval is required).  |            |           |
| 2. Has the department ordered the service prior to this request?<br>If YES, answer the following:  |            |           |
| a. How did the department pay for the prior services?<br>_____   |            |           |
| b. What is the total aggregate cost of the prior services/purchase orders? \$ _____  |            |           |
| c. Has a copy of the eCAPS expenditure report been attached? (i.e., on a year-to-year basis or in various project phases)  |            |           |
| d. Has a copy of the prior purchase order(s) been attached?  |            |           |
| 3. Will the service be required on an on-going basis?<br>(i.e., on a year-to-year basis or in various project phases).   |            |           |
| 4. Is an adequate Statement of Work (SOW) included with the request?   |            |           |
| 5. Has Board approval been obtained for the service?<br>If YES, obtain and attach a copy of the Board Contract or Board adopted letter and forward the request to Purchasing Management. |            |           |

\_\_\_\_\_  
Purchasing Analyst Name

\_\_\_\_\_  
Date

Rev 05/18

## **Chicago**

### 8. Sole Source Contracts - Non-Competitive Review Board ("NCRB")

The NCRB is a five-member panel that reviews requests by City Departments that seek to procure goods and/or services outside of the standard competitive bid processes, which by their nature, are not adapted to award by competitive bidding because there is only one unique and exclusive source. City Departments making such a request are required to provide detailed supporting documentation and are given the opportunity to appear before the NCRB to present the rationale for requesting the non-competitive procurement. All requests to award sole source contracts must be reviewed and approved by the NCRB prior to entering into a contract.

### 9. Emergency Procurements

When bona fide emergencies arise, or where there is a credible, identifiable, and imminent threat to public health, public safety, or City property or operations, the Act and the MCC allow DPS to enter into emergency contracts up to \$500,000 with one or more vendors for the provision of any particular goods, work, or service to address that emergency or threat.

## **Houston**

### 5.1. Emergency Purchases

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

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

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

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

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

5.2.1.1.1. The cause of the emergency.

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

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

5.2.3. For EPOs over \$50,000, the Strategic Procurement Division (SPD) shall obtain city council approval before issuing the EPO, if at all possible. If time does not allow for city council approval, SPD must obtain city council approval as soon as possible after issuing the EPO.

5.3 Sole Source Purchases

5.3.1 Sole source purchases are permissible under the following circumstances:

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

5.3.1.2 An existing equivalent product does not exist;

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

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

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

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

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

## **Phoenix**

D. Procurements of goods or services otherwise subject to competitive methods under this chapter may be procured without competition or using an alternative competitive method, in the following circumstances:

1. The procurement of goods or services without competition is authorized when there is only one source for the required goods or services if the Procurement Officer issues a determination describing the lack of other sources.

2. The procurement of goods or services without competition is authorized when there exists a threat to public health, welfare, safety, or other conditions, if the Procurement Officer issues a determination describing the emergency.

3. The procurement of goods or services without competition, or under an alternative method of competition, is authorized when special circumstances exist in accordance with the regulations. Any procurement under this subsection shall be made with as much competition as is practicable under the circumstances. The Procurement Officer will issue a determination describing the special circumstances that justify the alternative procurement. (Ord. No. G-5953, 2014; Ord. No. G-6038, 2015; Ord. No. G-6310, 2017; Ord. No. G-7125, § 1, 2023)