**CITY OF SHAKOPEE**
**PURCHASING POLICY**
34.06.02.P
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## A. SCOPE

This policy applies to all employees of the City of Shakopee, as well as representatives, contractors, consultants, or others who may be authorized to make purchases on behalf of the City of Shakopee.

## B. PURPOSE

These purchasing procedures are intended to provide a consistent manner of purchasing goods and services citywide. Employees should secure the best balance between quantity, quality, and price when purchasing for the city.

## C. POLICY

Goods and services required by the city are to be obtained using established procedures that comply with all legal requirements for public purpose expenditures while promoting fair and open competition. This policy is intended to ensure public confidence in the procurement process, fair and equitable treatment of vendors who transact business with the city and provide safeguards for the maintenance of a procurement system of quality and integrity.

Violations of this policy may result in discipline up to and including termination.

## D. LEGALITY

In order for an expenditure of public funds to represent a lawful expenditure, it should meet both of the following standards:

- Public purpose. A public purpose for the expenditures must exist.
- Authority. Specific or implied authority for the expenditure must arise out of a statute.

## E. CONFLICTS OF INTEREST

Minnesota Statutes §471.87, §471.88 and federal uniform grant guidance prohibit the purchase of goods and services wherever a conflict of interest may exist. Authorized purchasers must be exceedingly careful to avoid a conflict of interest or even the appearance of a conflict of interest. An authorized purchaser acting in the employee's official capacity, may not transact official city business with a family member, or with a business or person with whom that employee has a financial interest or involvement.

Furthermore, authorized purchasers shall not enter into a relationship with a vendor where the employee's actions are, or may reasonably be viewed as, not in the best interests of the city.

An employee who becomes involved in a possible conflict situation must report the possible conflict to the employee's supervisor and department head.

## F. ACCEPTANCE OF GIFTS

Pursuant to Minnesota Statute §471.895, no local official shall request, solicit, or accept a gift from any person or representative of a person or association that has a direct financial interest in a decision that the employee is authorized to make. Local official includes elected and appointed positions within the city.

## G. BACKGROUND

The City of Shakopee has a "decentralized" purchasing program. Purchasing is the responsibility of each department director in order to support flexibility and discretion of purchasing and project management with the aid of expertise at the department level.

## H. AUTHORIZATION

The City Council approves an annual budget that allocates funds for projects and operations throughout the city. The city administrator and department directors are responsible for ensuring that projects and operations remain within the budget. The city administrator is the chief purchasing agent of the city and has the authority to approve purchases up to $25,000 per city code. The city administrator may delegate purchasing authority via administrative directive stipulating purchasers and level of authority up to $25,000. For items and services in excess of $25,000, the city administrator may authorize the receipt of bids and shall receive estimates, quotations, proposals, or sealed bids, as appropriate, and present them to the Council for official action.

Authorized purchasers are responsible to follow purchasing regulations, procedures and best practices such as, but not limited to: obtaining bids or quotes, maintaining records of bids, quotes or other legally required information in accordance with records retention requirements (i.e. bid bonds, payment bond, IC-134), placing actual orders, receiving and verifying deliveries, and approving invoices for payment.

Authorized purchasers are only allowed to authorize funds from within their home department's budget. In an instance of the need for funds outside one's department budget, the purchaser should collaborate with an approved purchaser from the necessary department/fund. Employees will not make any purchases for personal use through the city.

Certain purchases require installation, support, maintenance, etc. Most notably information technology (I.T.) purchases should be coordinated with the city's I.T. director to ensure purchases are for compatible with and supported by the city's I.T. infrastructure systems.

Department directors can delegate purchasing authority up to $10,000 to designated staff members.

| General Purchasing | | | | |
|---|---|---|---|---|
| **Purchase Level** | Value of Purchases | Quotations Needed | Required Internal Documents | Required Authorizations |
| **PL-1** | Less than $10,000 | Departmental Discretion | | Authorized Purchaser Department Director |
| **PL-2** | $10,000 to $24,999 | Two or more Quotes if practical | | City Administrator or delegated representative |
| **PL-3** | $25,000 to $174,999 | Two or more Written Quotes, Bids, or RFP's | Council Memo | City Council |
| **PL-4** | $175,000 and Greater | Sealed Bids | Council Memo | City Council |

## I. PURCHASING ALTERNATIVES

### 1. Sealed Bids

A formal sealed bid procedure is required for all purchases that are estimated to exceed $175,000, except for purchases through a cooperative purchasing contract (see below). Minnesota Statute §412.311 requires a published notice of the bid in the official city newspaper at least ten (10) days in advance of bid opening. The published notice must state where the plans and specifications can be obtained by bidders and specifically, when and where the bid opening will be held. The notice may also be published on the city's official web site; however, this publication is in addition to the official newspaper publication.

Special assessment projects, commonly referred to as 429 projects, require specific advertising requirements. Please see Minnesota Statute §429.041 or the League of Minnesota Cities Special Assessment Toolkit memo for specific requirements www.lmc.org/media/document/1/sagtext.pdf?inline=true.

All bid openings are to be administered by the originating department. The preparation of all specifications and required authorization is to be the responsibility of the originating department. The city council must formally award the contract, and the originating department then files the contract with the administration department.

Capital improvement/purchase bids should be retained permanently per the city's record retention policy.

Sealed bids are not required for the purchasing and sale of real estate or service contracts.

2. **State, County and Other Cooperative Purchasing Contracts**
   Cooperative purchasing contracts provide the opportunity for the city to purchase goods and services at reduced costs. Employees do not need to obtain bids if a purchase is made through a national municipal association purchasing alliance or a cooperative created by a joint powers agreement (of which the city is a member) that purchases items from more than one source on the basis of competitive bids or quotations that complies with State Statute.

   a) **State Cooperative Purchasing Contracts.**
      The City of Shakopee participates in the State of Minnesota Cooperative Purchasing Venture (CPV). This enables the city to buy goods and services under the terms of contracts already negotiated by the State of Minnesota. The finance department has access to the releases and listings of products/services that can be purchased on state contract. If it is determined that a product/service is on a state contract, vendors should be told that the purchase will be made using that contract. When completing the purchasing paperwork, including council actions, note that the purchase is per state contract and indicate the contract number.

      Vendors will often contend that the city can purchase from them without bidding because they are on the "state contract" or they will sell at the state contract price. Beware of these approaches. Verify both the vendor and the specific product/service is listed on the state contract. It is likely that not all of a vendor's products/services have been selected to be on the state contract. If a vendor is not on the state contract but will match the state contract price, this action does not preclude the city from avoiding the competitive bidding laws. See the finance department for further information.

   b) **U.S. Communities Government Purchasing Alliance.**
      www.uscommunities.org/

   c) **National Joint Powers Alliance (NJPA) Purchasing Program.**
      www.njpacoop.org/home.asp

d) **Houston-Galveston Area Council Buy (HGACBuy)**
www.h-gac.com/coop/hgacbuy.aspx

e) **United States General Services Administration (GSA)**
http://www.gsa.gov/buy-through-us

f) **OMNIA Partners**
www.omniapartners.com

g) **Sourcewell**
www.sourcewell-mn.gov/

h) **University of Minnesota Cooperative Purchasing Agreement**

3. **Quotes**

If a purchase is estimated to exceed $25,000 but not to exceed $175,000, the purchase may be made either by sealed bids or by direct negotiation based upon quotations. If a purchase is made in this range, authorized purchasers are required to obtain at least two written quotes. These quotes should be in writing. If the quotes are not written, the requestor who received the verbal quote must document the quote in writing. All quotes will be kept with the originating department or added to the city's accounts payable software and kept on file until the following year's financial audit is complete. In practice, retaining quotes for two years will ensure quotes are available for auditing purposes.

4. **Sole Source Purchases**

Sole source purchases may be made if they comply with at least one of the following:

a) Item or service under patent or copyright held by a single vendor and item or service possesses or has capabilities critical to use.
b) Item or service possesses a unique function or capability critical in the use of the item or service not available from any other sources.
c) The purchase is for equipment associated with the use of existing equipment where compatibility is essential for integrity of results.
d) The purchase is for replacement parts needed for repair or accessories of existing equipment where compatibility with equipment from the original manufacturer is paramount.
e) The purchase is for technical services associated with the assembly, installation, or servicing of equipment or highly technical or specialized in nature.

f) Additional item, service, or work required, but not known to have been needed when the original order was placed with vendor and it is not feasible or practicable to contract separately for the additional need.
g) The purchase must match the existing piece of brand or equipment is only available from one vendor.

When completing council actions and general ledger coding/approval, note that the purchase is sole source along with the reason.

5. **Emergency**

   Emergency situations may arise where the normal purchasing process cannot be followed for the procurement of goods and services. An emergency must be a situation arising suddenly and unexpectedly which requires speedy action essential to health, safety, and welfare of the community, and not just an inconvenience.

   In the event of a disaster and when it is impossible or impractical to first seek City Council approval, the mayor or the mayor's designee is authorized to exercise discretion and to use city equipment, supplies, and personnel and to expend city funds as necessary to preserve and maintain the operation of the city government and the safety and security of the public. See City Code and/or MN Statutes for specific guidance.

6. **Professional Services**

   Contracts for professional services in excess of $25,000 annually shall be submitted to the city council for approval. Multi-year professional service contracts with annual caps of less than $25,000 but with an aggregate total exceeding $25,000 may be approved the city administrator or authorized purchaser. The term "Professional Services" applies to all advisory services such as, but not limited to: auditing, engineering, financial, legal, personnel, technical, training, or other services. Contracts for professional services shall be made only with responsible consultants who have the capability to successfully fulfill the contractual requirements. Consideration shall be given to their past performance and experience, their financial capacity to complete the project, the availability of personnel, and other appropriate criteria. The nature of the professional service is typically written as a request for proposals (RFP). Contracts RFPs will generally be used to solicit proposals for professional services. In cases where the City Council has established a preapproved pool of qualified consultants (e.g. architectural, engineering, scientific, etc.), the consultant may be selected from the existing pool, without obtaining multiple quotes on proposals.

Service agreements with a contract length greater than twelve months, must allow for a no greater than a 60-day cancellation clause.

| Professional Services | | | | |
|---|---|---|---|---|
| **Purchase Level** | **Value of Contract** | **Quotations/RFP's Needed** | **Required Internal Documents** | **Required Authorizations** |
| PL-1 | Less than $10,000 | Departmental Discretion | | Authorized Purchaser Department Director |
| PL-2 | $10,000 to $24,999 | Two or more Quotes/RFP's if practical | | City Administrator or delegated representative |
| PL-3 | $25,000 and Greater | Two or more Quotes/RFP's recommended | Council Memo | City Council |

7. **Leases/Purchases**
   All lease agreements need approval through the finance department and city attorney prior to initiating any lease.

8. **On-Line Purchases**
   City employees may only purchase from vendors that use secure servers for e-commerce. If an employee makes a purchase using the city credit card that is not properly authorized by the city council, the employee will be held personally liable for the amount of the purchase. For additional information on the proper use of city credit cards, see the finance department.

9. **Federal Purchases**
   Under uniform grant guidance (2 CFR 200.317-326) there are additional procurement requirements that need to be considered when making purchases related to a federal program. Five procurement methods are identified including: micro-purchases (≤10,000), small purchase procedures (≤250,000), competitive proposal (>250,000) and noncompetitive proposal (>10,000). The general purchasing policy addresses many of these requirements and the city will also consider the full requirements in relation to each method as described in 2 CFR. The micro-purchase threshold which is set by Federal Acquisition Regulation at 48 CFR Subpart 2.1 is subject to change with inflation. The City will follow changes to thresholds as modifications occur. When practicable, micro-purchasing will be distributed among qualified suppliers.

**10. Change Orders**

As a matter of practice, construction projects are typically approved by council with a specific contingency request of 5 to 10 percent of the contract amount. This contingency approval allows for flexibility to address change orders through the course of the project. The city administrator or delegated representative may approve these change orders. Any change order that exceeds the council approved contract amount and allotted contingency by $5,000 should be presented to council for approval. A change order that materially changes the terms of a contract, so as to create a new contract, should be presented to council for approval.

**11. Wholesale Club Memberships**

The city may purchase yearly memberships at various wholesale warehouses, i.e. Sam's Club for the purchases of supplies, food, equipment, etc. Due to the manner in which these businesses issue memberships, employees with city issued membership cards are granted access and purchasing rights by these wholesale businesses for both business and personal uses. However, given membership cards are purchased with the city's public funds, employees are not entitled to purchase personal items with these purchased membership cards.

**12. Prohibited Purchases**

Purchases by employees for personal items or personal services under a city contract, quote, store account, membership and/or joint government contract are strictly prohibited. For example, utilizing the city's name, account or vendor business relationship to personally benefit is strictly prohibited.

**13. Other**

This document is not intended to cover all purchasing situations and regulations. If there are questions regarding purchasing, the should be directed to your department director or finance department.

## J. PAYMENTS

Minnesota State Statute §471.425 subd. 2 requires invoices to be paid within 35 days from receipt. For invoices not paid in a timely manner, the interest rate is 1 ½ percent per month or part of a month. The minimum monthly interest on an invoice of $100 or more is $10.00. Interest penalties do not apply to good faith disputes.

Minnesota State Statute §412.271 Subd. 8 allows for delegation of authority by the City Council for paying certain claims. Per City Code §32.15(D)(7), the City Council has delegated authority to the city administrator to purchase goods and services and to enter into contracts when the amount does not exceed $25,000.

In addition, Minnesota State Statute §412.271 Subd. 1 allows for the immediate payment of judgments, salaries and wages previously fixed by the council, principal and interest obligations, rent and other fixed charges, and the exact amount of which has been previously determined by contract authorized by the council.

Contact the finance department for a copy of the city's payment procedures.

## K. WITHHOLDING CERTIFICATES

Before the City makes a final payment to a contractor under a contract requiring employment for wages, it must make sure the contractor and any subcontractors have complied with withholding tax laws. Contractors and subcontractors must show compliance by submitting a withholding affidavit to the MN Department of Revenue. This can be done electronically or by mailing a completed Form IC134, "Withholding Affidavit for Contractors." If a contractor or subcontractor has withheld taxes as required, the Department of Revenue will return an electronic confirmation or sign and return the Form IC134, certifying compliance. The City must receive this certification of compliance before a final payment can be issued.

The Dept of Revenue requires the form IC -134 only be submitted in connection with contractors on construction projects. Covered contracts are only those under which a contractor undertakes to supply labor or a combination of labor and materials for specific construction, repairs, rehabilitation or improvements. It does not apply to contractors for maintenance services or dealers, merchants and suppliers who supply materials only.