



CITY OF FORT WORTH
CHAPTER 252 EXEMPTION FORM

This form must be provided when requesting to make a purchase over \$50,000 without following public bidding requirements.

Instructions: Fill out the entire form with detailed information. Once you have completed this form, provide it to the Purchasing attorney for review. The attorney will review the information you have provided and determine whether using an exemption to Chapter 252's bidding requirements would be defensible. If you are printing this form to provide to Legal, please do not provide the Primer portion. Failure to provide sufficient information may result in follow up questions and cause a delay in the attorney's determination.

Section 1: General Information

Requesting Department: Water Department

Name of Contract Manager: Mark Shell

Department's Attorney: Christa Lopez-Reynolds

Item or Service sought: One Call Notification Services at a cost of \$0.95 per ticket

Vendor: Texas Excavation Safety System, Inc. DBA Texas 811

Current Agreement for item/service: Yes X No _____

CSC #: Procured through RFP 14-0146 as authorized by P-11691

How will this item or service be used:

One Call center services are used to notify utility owners of excavations planned near buried assets. The Water Department has utilized this service since 2008. The current vendor is One Call Concepts, Inc. (DBA Lone Star 811). Call centers receive calls from excavators and share the information with other call centers. Each call center notifies their paying facility owners of the excavations planned near their assets. The Water Department currently receives 14,000 to 15,000 notifications a month. The Department receives these calls through software and manages the resulting tickets. A locator then marks the ground above the assets to help excavators avoid causing damage.

Section 2: Exemption Justification

Please indicate which exemption you believe applies to the purchase and provide information to support its applicability. Please refer to the Exemption Primer for detailed information about common exemptions.

___ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

___ a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

___ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

___ a procurement for personal, professional, or planning services;

___ a procurement for work that is performed and paid for by the day as the work progresses;

___ a purchase of land or a right-of-way;

X a procurement of items that are available from only one source, including:

___ a purchase of rare books, papers, and other library materials for a public library;

___ paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

___ a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

___ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

___ personal 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;

___ services performed by blind or severely disabled persons;

___ goods purchased by a municipality for subsequent retail sale by the municipality;

___ electricity; or

___ advertising, other than legal notices.

Please provide details and facts to explain why you believe the exemption applies to the purchase. You may also attach documentation to this form.

The current vendor, One Call Concepts, Inc., has notified the Water Department of their intention to cease operations in Texas as a One Call Notification Center. This termination will take place on July 31, 2019. Notification Centers are approved to operate in accordance with Texas Utilities Code Title 5, Chapter 251. This closure will leave Texas Excavation Safety System, Inc. as the only Notification Center operating in Texas. Transitioning to a new call center will require time to complete the process and establish data connections to a ticket management software that must be tested prior to putting into production. The Department will need to utilize the vendor services prior to terminating the existing contract with One Call Concepts, Inc.

Section 3: Attorney Determination

With the facts provided by the department, is the use of the claimed exemption defensible if the City were to be challenged on this purchase? ✓ Yes or No

Was there anything not included on this form or attached hereto that was relied on in making this determination? ✓ Yes or No

If yes, please explain: Anabelle Dunn and Mark Shell provided background information.

Matthew Murray

EXEMPTION FORM PRIMER

Below are explanations and examples of common exemption that apply to municipal purchases. If you have questions about the information provided or need additional information, please contact your department's assigned attorney.

1. A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality. This is generally used in cases of public emergency.

2. A procurement necessary to preserve or protect the public health or safety of the municipality's residents. This is a factual determination that will be used when the purchase directly impacts public health and safety. Please note, this is generally a very narrow exception.

3. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property. Damage or immediately foreseeable damage that is caused by an unexpected event. This will generally be used when a natural disaster or unforeseen failure occurs that impacts other property.

4. A procurement for personal, professional, or planning services;

Professional services are not defined under Chapter 252, so there is no precise definition to follow. However, the Texas Attorney General has suggested that a professional service comprehends labor and skill that is 'predominately mental or intellectual, rather than physical or manual.'" Tex. Atty Gen Op. JM-940 (1988) (quoting Maryland Casualty Co. v. Cray Water Co., 160 S.W. 2d 102 (Tex. Civ. App.—Eastland 1942, no writ). The Texas Attorney General has also opined that "professional services" no longer includes only the services of lawyers, physicians, or theologians, but also those members of disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence. Id.

Facts needed to support a professional service exemption include the specialized requirements of that profession and the mental and intellectual skill required by the person while performing the service. Purchases of goods are not professional services.

5. A procurement of items that are available from only one source.

This exemption is commonly referred to as the sole source exemption. In determining whether a purchase is of a good or service that is available from one source, you should not consider price or time to receive the good or service. The information needed to support this exemption, is that no other provider can provide the service or category of good except for the vendor you are proposing. Some examples of sole source purchases include service agreements when only one vendor is authorized to work on the equipment by the manufacturer and allowing another vendor would void the warranty; purchase of a good that is copyrighted or trademarked and only provided by one vendor.