



**CITY OF FORT WORTH
CHAPTER 252 EXEMPTION FORM**

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 to determine whether an exemption to Chapter 252's bidding requirements is 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 Plant Operations]

Name of Contract Manager: [Alexander Pierce]

Department's Attorney: [Douglass Black]

Item or Service sought:

 Goods:

 Service:

 Anticipated Amount: [\$150,000.00]

Vendor: [HSQ Technoloy]

Current/Prior Agreement for item/service: Yes No

 CSC or Purchase Order #: CSCO # 52668]

 Amount: [\$150,000.00]

 Projected M&C Date: [N/A]

How will this item or service be used? [The HSQ Technology contract will be used for the purchase, repair, replacement of HSQ Technology Parts: RTU's processors, Input/Outout 9I/O and expansion boards, and supprot services.]

Section 2: Claimed Exemption and Justification (Other than sole source)

NOTE - For a claimed sole-source exemption, complete Section 3.

Please indicate the non-sole-source 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 necessary to preserve or protect the public health or safety of the City of Fort Worth'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;
- 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:
 - at an auction by a state licensed auctioneer;
 - at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;
 - by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or
 - 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.

Section 3: Claimed Sole-Source Exemption and Justification

NOTE - For any non-sole-source exemption, complete Section 2.

Please indicate the sole-source 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 of items that are available from only one source, including:

- items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
- films, manuscripts, or books;
- gas, water, and other utility services;
- captive replacement parts or components for equipment;
- books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
- management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

How did you determine that the item or service is only available from one source?

HSQ Technology is the manufacturer of the HSQ Miser SCADA (Supervisory Control and Data Acquisition) System, and Remote Terminal Units (RTU's), and all associated parts for the SCADA System and RTU's.

Attach screenshots and provide an explanation of any independent research you conducted, through internet searches, searching cooperatives, or discussions with others knowledgeable on the subject matter that corroborate that the item is available only from a single source.

[SHOW YOUR RESEARCH/WORK THAT LEAD TO YOUR CONCLUSION]

Did you attach a sole source justification letter? Yes No

Describe the uniqueness of the item or service (e.g. compatibility or patent issues, etc.). As the manufacturer, they are the only company that supports the hardware and software for this specific material. The vendor is a sole source manufacturer and does not sell or authorize support through distributors or any other agency. The Water Department will utilize this agreement to maintain the existing HSQ System that is in place at the SCADA Facility. HSQ monitors the communication and controls of the Water Plant Operations and Distribution System. If the City does not purchase what is requested, we could lose the ability to treat water and pump water into the Distribution System from various area.

Section 4: 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 No.

Was there anything attached to this form that was relied on in making this determination? Yes No.

If yes, please explain: Sole source letter from vendor

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

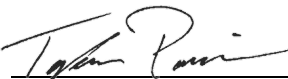
If yes, please explain: [EXPLAIN OUTSIDE SOURCE OF INFORMATION]

Will the standard terms and conditions apply? Yes No.

Will the contract require special terms? Yes No.

Will the contract require review by the department attorney? Yes No.

Approved By:



Taylor Paris / Jessika Williams
Assistant City Attorney

Date: 5.21.21

EXEMPTION FORM PRIMER

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

1. A procurement necessary to preserve or protect the public health or safety of the municipality's residents;

Examples of activities that have been found to fall within this exception include ambulance services; solid waste collection and disposal; and first-responder safety equipment such as breathing apparatus for firefighters and bullet-proof vests for police officers.

2. A procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

Examples of this type of procurement would include repairing or replacing roofs and windows damaged by hail or a tornado. But parts and services for routine maintenance or replacement of old, worn out roofs or windows would not meet this exception.

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

Personal services are ones that are unique to the individual providing them. Therefore personal services contract cannot generally be subcontracted or assigned.

Professional services are not defined under Chapter 252, so there is no precise definition to follow. There is no universal definition of this term, however, "several cases suggest that it... 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.

4. 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. A sole source does not exist solely on the basis of personal or departmental preference or a desire to keep all units the same brand or make. 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.