



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: [Neighborhood Services Department]

Name of Contract Manager: [Terrance Jones]

Department's Attorney: [Taylor Paris]

Item or Service sought:

Goods: ☐

Service: ☒

Anticipated Amount: [300,000]

Vendor: [Benevate Neighborly Software]

Current/Prior Agreement for item/service: Yes ☒ No ☐

CSC or Purchase Order #: [53499]

Amount: [37,800.00]

Projected M&C Date: [2/8/2022]

How will this item or service be used? [Software will be used to manage and administer several grant programs such as CDBG, ESG, HOPWA, ERAP and LEAD safe programs]

Has your department started a requisition or otherwise contacted the Purchasing Division related to obtaining this good/service? Yes ☐ No ☒

If yes, please provide requisition number or brief explanation of contact with Purchasing Division: [DETAILED DESCRIPTION]

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. NSD uses this software to facilitate the following programs: ERAP, HOPWA, LEAD, CDBG, ESG and the RFP process. These programs directly assist the public and are designed to protect their health and safety. If NSD is unable to complete this purchase, or is required to use another software after performing a competitive procurement, many of the programs would be jeopardized in the process.

Housing Opportunities for Persons with AIDS (HOPWA) – This program pays for rental and mortgage assistance for persons with HIV or AIDS. Pausing this program would leave tenants at risk of eviction and a breach of their leases. Being at risk of eviction could potentially risk their eligibility for the program resulting in the client being homeless, or not being able to afford living essentials due to having to pay an additional amount for rent that would no longer be covered by the program.

Lead-Safe Program – This program provides rehabilitation services to FW citizens who need urgent fixes in their homes. Some of the services include removing lead base paint and window. Pausing these services would put people at risk of being further exposed to lead which is deemed to be hazardous for humans.

Priority Repair Program – This program provides rehabilitation services to FW citizens who have an urgent need in their homes. Some of the services include the following:

- Roof replacement
- Water Leaks
- Plumbing pipe replacements
- House Sheathing
- Insulation
- AC Repair
- Hot Water Heater Replacement

Pausing the PRP program would put families at health risk by not having access to water, adequate plumbing and waste drainage. This would be a health hazard for the homeowners directly and indirectly impacted by not receiving services.

Community Development Block Grant (CDBG) – This program provides an array of services to the community through several non-profits and partners. Some of those services include:

Single Family Home building
Multi-Family Development projects
Educational Services
Daycare Services
Financial Empowerment Services

We also manage all draw request with subrecipients in this software. Changing to a different software would result in staff manually transferring all data and would prolong processing

applications for our citizens who are in urgent need of assistance for all of the programs mentioned above. The software has allowed NSD to streamline our intake process to better serve our citizens and sub-recipient partners. Going to another software would put citizens of our community at risk of being homeless due to the high rate of evictions as this would slow down our processing time. Evictions would result in citizens being in unsafe environments by being homeless or on the street as landlords are not giving tenants any additional time to find rental assistance. We have over 6000 pending applications for rental assistance and it would be very difficult to transfer this information over to a new system and would put us at high risk of losing data during the transfer. We would also have to train staff on the new system which would cause us to pause all of our programs that aid Fort Worth citizens. The Priority Repair program handles services such as water leaks that need to be fixed urgently and pausing the program to switch over to a new software would definitely put our citizens at risk.

Emergency Rental Assistance Program (ERAP) – This program provides emergency rental and utility assistance to Fort Worth citizens who are facing eviction due to the pandemic. The program pays water and utility bills to prevent disconnection for citizens. Pausing or delaying implementation of this program could potentially leave citizens without water and electricity along with accruing late fees that would make it difficult to reestablish connection.

Emergencies Solutions Grant – This program provides rapid rehousing to Fort Worth citizens that are homeless and need immediate shelter. Pausing this program to switch to another software would put the homeless at risk of not having access to immediate shelter.

Pausing these programs due to having to switch over to a new software would leave Fort Worth citizens without access to these programs. The system is used to also create draw request from our sub-recipients to be reimbursed after providing services. There will be a delay in providing services if reimbursements cannot be submitted and paid. Switching to a new or different software also poses a risk of data and application loss. The City, and the public it serves, cannot afford to take that risk or any further delay in processing applications for these programs. It is critical, in the interest of public health, that this software is maintained.

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?
[EXPLAIN HOW YOU DETERMINED EXCEPTION APPLIES (RESEARCH, COMMUNICATIONS, DOCUMENTATION)]

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.).
[DESCRIBE THE UNIQUENESS OF THE ITEM/SERVICE THAT QUALIFIES IT AS A SOLE SOURCE]

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:[DESCRIBE ATTACHMENTS CONSIDERED]

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

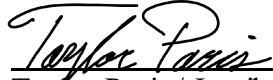
☒ No.

Will the contract require review by the department attorney?

☒ Yes

☐ No.

Approved By:



Taylor Paris / Jessika Williams
Assistant City Attorney

Date: 1.21.22

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.