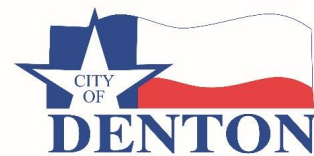


AUDIT OF PROCUREMENT PROCESS

ABSTRACT

Controls over \$168 Million resources need improvement. Recommended changes and Administration's actions during the audit will improve controls.

Umesh Dalal, City Auditor



The City of Denton Procurement Process Audit Report

June 2019

Table of Contents

<u>Description</u>	<u>Page</u>
Executive Summary	2
What Works Well?	6
Opportunities for Improvement	
Procurements exceeding \$50,000	7
Electronic Bids	10
Procurements exceeding \$3000 but less than \$50,000	11
Bid Evaluation	14
Sole Source Purchases	16

The City of Denton Procurement Process Audit Report

June 2019

Executive Summary

April 16, 2019

Honorable Mayor and members of the City Council,

The City auditor's office has completed an audit of the Procurement process. The City procures products and services for its various operations to ensure continued operation. Public procurement involves use of significant funds for the benefit of citizens. Proper accountability and controls are necessary for proper use of resources and for prevention of abuses. The government procurement process must comply with State statutes and regulations. Non-compliance with the procurement statutes may subject City employees to significant penalties. At the City of Denton, this process expended \$168 million of the City's resources.

The following are the salient findings of the audit:

- The internal controls over the City purchasing function need improvement. The audit identified non-compliance with the State statutes and City Ordinance pertaining to the purchasing of products and services. Better monitoring and follow-up of potential violations by the Purchasing personnel may result in enhanced compliance and more knowledgeable employees engaged in purchasing activity. The audit found:
 - We worked with the Purchasing Manager to identify 71 of these vendors from whom the City had made purchases totaling \$7.4 Million (Attachment A). The purchases made from each of these vendors for FY 17 and FY 18 were in excess of \$50,000. The City did not solicit sealed bids/proposals as required.
 - The City has made purchases totaling almost \$15.6 million from 867 vendors with each purchase being within a range of \$3,001 through \$49,999. Statutes require the City to obtain two quotes from Historically underutilized business (HUB). A sample of purchases within this range from 50 vendors did not have evidence of required quoted from 40 vendors. Purchasing is charged with the responsibility to monitor the City's compliance

The City of Denton Procurement Process Audit Report

June 2019

with Procurement Statutes. We did not see an evidence of monitoring of these purchases for compliance purposes.

- The City policy requires obtaining three quotes for purchases within range of \$3,001 through \$49,999. We did not observe evidence of the required three quotes from 27 or 54% of the sampled vendors.
- The State statutes provide for an exception for purchases from a single source from compliance requirements. This allows circumventing of the competitive purchasing process, in limited circumstances. The City's procedures for verifying products acquired from a single source was not adequate. In 41 (87.2%) of the 47 sole source purchases reviewed, there was no evidence that the items offered were the only products or services that could meet the City's operational need. The Purchasing staff does not verify, research or challenge the claim by the departments or vendors.
- The City electronically receives bids for its solicitations. According to the City's Technology Services Director, they cannot confirm adequacy of security that would prevent premature opening of the bids. In the City's current procedures:
 - Bids can be opened any time after they are received but before the designated day of the bid opening.
 - Bids could be altered or substituted during this time.
 - When the bid opening is not attended by bidders, the Buyers open bids without any witness. In this event, there is a potential for altering or substituting bids without being detected. Bids are submitted in Excel spreadsheets. Changes made to the Excel spreadsheet do not have an audit trail to detect alterations after the fact. In addition, some bids are not being opened at the designated place.
- The bid evaluation process for formal solicitation needs improvement. Of 57 solicitations we examined, 34 had a summary of bid evaluations, 23 were exceptions due to cooperative or sole source purchases that did not need bid evaluation. In cases where we found a summary of bid evaluations, evaluation sheets for evaluators were not available. It was not clear who compiled the evaluation summaries. Based on the available records, it is not clear if the evaluation team worked independently without any influence. Also, on a number of bid tabulation scorings, subjective criteria such as probable performance was not explained. While one of the evaluations criteria listed for a solicitation as "performance record with City of Denton as a criterion", it did not clarify how new vendors would be rated. This gives an impression that outcome of the bid process was pre-determined.

Local Government Code Section 252.042 (b) requires that discussions, in accordance with the terms of a request for proposals and with regulations adopted by the governing body

The City of Denton Procurement Process Audit Report

June 2019

of the municipality, may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Based on our inquiries with the Purchasing Division, it does not appear that the City Council has adopted any regulations related to criteria for the discussions referred to above.

The attached detailed report includes additional information. The City Auditor's Office appreciates cooperation of the City staff during this audit. The Purchasing staff has already begun addressing these deficiencies. This audit made 14 recommendations. The Purchasing Division has concurred with 8 of them and partially concurred with the remaining recommendations. If you have any questions or comments, please contact me at (940) 349-8158 or at umesh.dalal@cityofdenton.com.

Umesh Dalal,
City Auditor

The City of Denton Procurement Process Audit Report

June 2019

Introduction

The City Internal Auditor is responsible for providing: (a) an independent appraisal of City operations to ensure policies and procedures are in place and complied with, inclusive of purchasing and contracting; (b) information that is accurate and reliable; (c) assurance that assets are properly recorded and safeguarded; (d) assurance that risks are identified and minimized; and (e) assurance that resources are used economically and efficiently and that the City's objectives are being achieved.

The City Auditor's Office has completed an audit of the City's procurement process. The objectives of the audit were to evaluate internal controls in the process and verify compliance with laws, regulations and policies.

The audit was conducted in accordance with the Generally Accepted Government Auditing Standards promulgated by the Comptroller General of the United States with the exception of standard 4.18 regarding documentation of audit staff's continuing professional education.¹ Those Standards require that the auditors plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions based on the audit objectives. The auditors believe that the evidence obtained during this audit provides a reasonable basis for their findings and conclusions based on the audit objectives.

Management Responsibility

The City management is responsible for ensuring resources are managed properly and used in compliance with laws and regulations; programs are achieving their objectives; and services are being provided efficiently, effectively, and economically. Management is responsible for establishing and maintaining a system of internal accounting and management controls. In fulfilling this responsibility, management is required to assess the expected benefits and related costs of control procedures.

Background

Purchasing plays a very important role in the City. During FY18, the Purchasing Division procured products and services valued at almost \$168 million that assured continued operations of the City. The State of Texas statutes related to public procurement promotes fair and competitive purchasing of products and services. The City must comply with the City Ordinance related to procurement that has

¹ This report was amended on February 15, 2022 to disclose this exception, the details of which were communicated to the City Council in a [Staff Report](#) publicly issued on February 11, 2022.

The City of Denton Procurement Process Audit Report

June 2019

adopted state regulations by reference. Texas Local Government Code Chapter 252 and Chapter 271 and Texas Government Code Chapters 2252, 2253, 2254 and 2267 generally govern most of the procurements. In addition, for DME procurements, the City has adopted regulations as permitted by the State Codes.

The Purchasing Division performs the following tasks:

- Formal Solicitations
- Contract Management
- Processing of purchase orders for goods and services
- P-card administration.

This audit reviews the compliance with procurement regulations. Auditing the Contract Management Function is deferred as the Procurement and Compliance Department is currently working on implementation of a new software and establishing relevant policies and procedures. The P-card audit was recently completed by the City Auditor's Office.

The following is statistics showing the Purchasing Division's workload for FY 2018:

Tasks	Workload
Contracts managed	About 500
Purchase requests processed	3,147
Solicitation processed	178
P-card transactions administered	21,499

What Works Well?

Policies and Procedures:

The Division has current policies and procedures that if complied with will promote compliance with procurement regulations.

Cooperative Purchases:

The procurement regulations allow the City to purchase products and services on another jurisdiction's contract. This process saves significant time and efforts and enables departments to procure desired products and services in a timely manner. We observed that the City has taken advantage of this provision and the division had obtained the City Council approvals for the contracts for procurements over \$50,000.

The City of Denton Procurement Process Audit Report

June 2019

Processing of Emergency Purchases:

The Division had appropriately processed emergency purchases observed during the audit.

Opportunities for Improvement:

The state statutory requirements were not followed for all procurements exceeding \$50,000.

Legal Requirements:

According to the Texas State Local Government Code:

“Sec. 252.021. COMPETITIVE REQUIREMENTS FOR PURCHASES. (a) Before a municipality may enter into a contract that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must:

- (1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals...”

Section 252.043 provides that if the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

The State statutes also prescribe methods for construction contracting and Electric Operations’ purchasing.

What we found?

We found that most of the major purchases exceeding \$50,000 were handled in accordance with statutory requirements. However, when several smaller amount purchases from a vendor that cumulatively exceeded \$50,000, the Purchasing Division does not have a process to monitor and procure them competitively using sealed bids. This results in a potential violation of procurement statutes.

During the audit period, the City had procurements from 132 vendors from whom the City made separate purchases of lesser amounts that cumulatively exceeded \$50,000. We found that the City purchased products or services totaling \$22.7 million from these vendors. We worked with the Purchasing Manager to identify 71 of these vendors from whom the City had made purchases

The City of Denton Procurement Process Audit Report

June 2019

totaling \$7.4 Million (Attachment A). The purchases made from each of these vendors for FY 17 and FY 18 were in excess of \$50,000. The City did not solicit sealed bids/proposals as required.

Purchasing previously interpreted the statutes to only require sealed bids/proposals for a single purchase exceeding \$50,000. Therefore, they were not monitoring cumulative purchases that exceed \$50,000. According to the City Attorney's Office and Procurement Statutes, if separate purchases of items that in normal purchasing practices would be purchased in one purchase cumulative exceed the \$50,000 threshold, compliance with the required sealed bidding/proposals provisions is required. The Procurement statutes do not specify a timeframe for combining separate purchases in order to determine compliance with the required sealed bidding/proposals provisions.

There were three distinct issues with this situation:

1. These purchases could be treated as sequential purchases under state statutes that add up to \$50,000 or more. This practice is not in compliance with the statutes, if sealed bids/proposals are not invited.
2. The City may not get price advantage due to volume discount.
3. If there is no contract, the city doesn't have the benefit of our contractual terms dictating the liabilities and responsibilities of the vendor.

The above observations may represent non-compliance with the procurement statutes discussed in this section of the report.

The City Auditor met with the Deputy City Attorney, Director of Finance, Chief of Staff, Director of Procurement and Compliance, Purchasing Manager, and Compliance Officer on May 9, 2019 and all agreed on the following processes for compliance with the required sealed bidding/proposals provisions, which Purchasing has implemented:

- Purchasing will conduct an initial review of the past 3 years of transactions to identify purchases that should be purchased in compliance with competitive procurement requirements.
- Purchasing will monitor purchases monthly and review all purchases over a rolling one-year period to identify purchases subject to HUB and competitive bidding requirements.
- Periodic two-year reviews of purchases will also be conducted to identify purchases for compliance with competitive procurement statutes.
- Purchasing will request sealed bids/proposals when applicable.

The City of Denton Procurement Process Audit Report

June 2019

The Comptroller of the State of Texas recommends using NIGP codes for classifying purchases. Use of these codes has several other benefits such as better management and analysis of purchases. The most important benefit the City can realize is better monitoring of purchases for compliance with state statutes. Using five-digit NIGP codes would allow proper classification and control over purchases. Proper spend analysis using these codes may allow the City to consolidate purchases and get volume discounts.

The City of Frisco uses five-digit NIGP commodity codes. We were told by the Technology Services Department representative that the City's financial system J D Edwards will accommodate these codes and will allow monitoring purchases using these codes.

Why does it matter?

- According to the Texas State Local Government Code 252.062, a municipal officer or employee that fails to comply with the competitive bidding or competitive proposal procedures required by Chapter 252 may be convicted of a Class B misdemeanor. This includes a situation in which a person makes or authorizes separate, sequential or component purchases in an attempt to avoid competitive bidding requirements. A Class B misdemeanor may be punishable by a fine of up to \$2,000, confinement in jail for up to 180 days, or both the fine and confinement.
- Proper spend analysis and consolidation of purchases could allow the City to manage purchases better and take advantage of increased competition.
- Significant noncompliance with the Procurement regulations could impact the City's reputation adversely.

Recommendations:

1. Provide training to Procurement staff and departmental liaisons on purchasing regulations.
2. Use at least five-digit NIGP commodity codes for purchases after training departmental and purchasing personnel about their use.
3. Require Purchasing personnel to monitor purchases and seek sealed bidding for expenditures exceeding \$50,000 either as one purchase or cumulatively from several purchases as agreed during this audit. Using commodity codes would assist in this effort.

The City of Denton Procurement Process Audit Report

June 2019

4. Require the Purchasing Manager to conduct a periodic spend analysis to identify opportunities for consolidation of purchases to obtain volume discounts.

City management response:

Prior to December 2018, Purchasing staff were unable to aggregate expenditures by vendor in the City's accounting software, JD Edwards. Beginning in December 2018, staff has been able to report on expenditures by vendor. Monthly monitoring by expenditures is on-going and staff is working to identify contracting opportunities. However, the accounting software, JD Edwards, is not set up to review expenditures on a 12 month rolling year. The system is set up to report by fiscal year.

During the audit period, Purchasing completed transactions with 1,211 vendors during FY 2017 and 1,186 vendors during FY 2018. The seventy-one (71) vendors identified in Attachment A represent 4.34% of the vendors the City transacted with over the two year period. Additionally, the \$7.4 million of expenditures listed in Attachment A represent 1.67% of the entire spend of \$443M processed through the Purchasing department during the two year period. Twenty-nine (29) of the seventy-one (71) vendors identified in Attachment A had expenditures of less than \$50,000 in each separate fiscal year 2017 and 2018. Prior to the audit, Purchasing monitored cumulative spend during a fiscal year and not cumulatively over a 12 month rolling period or a combined period of two fiscal years. The City has already contracted with six (6) of the seventy-one (71) vendors in order to comply with procurement statutes. Purchasing will continue to review purchases made with the remaining thirty-six (36) vendors identified in Attachment A and recommend contracts as needed to comply with the procurement statutes.

City staff surveyed 10 other cities in the DFW area of similar size and found no other city that monitors cumulative purchases over a 12 month rolling period. Two cities surveyed monitor cumulative expenditures by fiscal year. The City of Denton appears to be unique in its interpretation of procurement statutes regarding cumulative purchases which creates operational challenges including educating and training staff as well as end users. Purchasing staff have agreed to monitor cumulative purchases on a 12 month rolling period moving forward.

Purchasing staff will work with Technology Services to further research the use of commodity codes in JD Edwards. Currently, it is Purchasing staff's understanding that commodity codes can only be used by purchase order and not on the individual purchase order line items. Since a variety of commodities are purchased on a single purchase order, use of commodity codes would not allow for the detailed expenditure analysis being recommended in this audit.

Auditor Comments:

The City of Denton Procurement Process Audit Report

June 2019

The City must comply with the laws. Non-compliance with only a small number of vendors purchases worth \$7.4 million compared to all the purchases of the City does not provide justification for the non-compliance. The salient point the audit made is that Purchasing Division's duty is to verify and ensure compliance with the state statutes. The Division did not have monitoring process for purchases made by the City departments, which resulted in most of the conditions observed during this audit.

In addition, the Purchasing Division did not appear to have consulted with the City Attorney's Office to understand appropriate interpretation of the statutes. The City Attorney did not agree with the Division's interpretation of the state statutes. It is difficult to determine from the response if all of the cities surveyed had the similar interpretation of the state statutes as Denton's Purchasing Division's interpretation.

Electronic Bids:

The City receives electronic bids (E-bids). City Council resolution R2105-002 dated February 3, 2015 authorized the Purchasing Division to receive e-bids. The resolution stated in part, "...as authorized in a 'Materials Management Division — Electronic Receipt of Bids and Proposals Policy' as permitted by Texas Local Government Code, Section 254.0415, as a rule to ensure the identification, security and confidentiality of electronically transmitted bids or proposals; and to ensure that such bids or proposals remain effectively unopened until the proper time."

What we found?

The City's adopted policy reads, "The Purchasing Manager of the City of Denton or his/her designee shall serve as the City's administrator over electronic bids and proposals. The Technology Services Department Head for the City of Denton, or his/her designee, shall ensure technical components of the identification, security, and confidentiality of electronic bids and proposals are maintained within the City of Denton's Electronic Procurement Submittal System (EPSS)."

The City does not have an Electronic Procurement Submittal System. In addition, according to the City's Technology Services Director, they cannot confirm adequacy of security that would prevent premature opening of the bids. We were informed that an Assistant Buyer receives all e-bids. These e-bids are in the form of emails to which Excel spreadsheets containing bids are attached. When the bids are due to be opened the Assistant Buyer forwards the file folder containing emails to the Buyer. State statute requires these bids to be opened at the designated place, which is the Purchasing conference room, and should be read aloud. Many times, no one attends bid openings. In this event, the buyers open bids at their own desks. The City's processes can be challenged as the above process provides several opportunities for manipulation of bids as follows:

The City of Denton Procurement Process Audit Report

June 2019

- Bids can be opened any time after they are received but before the designated day of the bid opening.
- Bids could be altered or substituted during this time.
- When bid opening is not attended by bidders, the Buyers open bids without any witness. In this event bids could be altered or substituted without being detected. Changes in Excel spreadsheet do not have an audit trail to detect changes after the fact. In addition, the bids are not being opened at the designated place.

Why does it matter?

The integrity of bidding process may be questioned. If the City is not able to defend its process, the contract may not be valid, and the City will have to procure it again. In addition, the City's reputation may be impacted adversely.

Recommendations:

5. Require Purchasing to implement an electronic solution to secure electronic bids prior to the bid opening date. If this cannot be accomplished, require all bids to be submitted to a person/unit not involved in purchasing activity and forward bids to the buyer on bid opening day.
6. Ensure that the bids, once submitted, cannot be changed.
7. Require witnessing of the bid opening, which must be conducted at the designated place.

City management response

The Purchasing department purchased an electronic bidding software as approved by Council on November 6, 2018. The purpose of the software is to ensure compliance with bidding policies and procedures as well as maintain security of all electronic bids received by the City. The software has been implemented as of June 2019 and staff is working to communicate the process changes to vendors and potential bidders.

Procurements exceeding \$3,000 but less than \$50,000

The City's Purchasing Manual requires the departments to obtain at least three quotes when possible for purchases in this range. In addition, Sec. 252.0215 of the State Local Government Code states, "A municipality, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the

The City of Denton Procurement Process Audit Report

June 2019

comptroller pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.”

What we found?

The City has made purchases totaling almost \$15.6 million with each purchase within a range of \$3,001 through \$49,999, from 867 vendors. An analysis of purchases made from a sample of 50 of these vendors indicated that purchases from 40 vendors or 80% of the sample did not have two quotes from historically underutilized businesses (HUB). These records did not indicate if a search for such businesses in Denton County was conducted as required by the statutes.

In addition, the required three quotes were not obtained from 27 or 54% of the sampled vendors. These observations are as follows:

Vendor	Spending	Evidence of Three Quotes?	Evidence of HUB Quotes?
123 Security Products	\$3,652.00	Yes	No
Action Target	\$5,850.00	No	No
Active Network Inc	\$6,526.91	No	No
Ace Golf Netting LP	\$7,500.00	No	No
Ironsmith Inc	\$7,749.00	No	No
Aerowave Technologies	\$11,394.33	No	No
C C Creations- Po	\$11,693.54	No	No
Ace Air Conditioning & Heating	\$12,626.04	No	No
ADB Safegate America Holding Inc	\$14,005.61	No	No
Spectracom Corporation	\$14,278.00	Yes	No
A Star Renovation	\$15,940.00	No	No
Hanes Geo Components	\$18,535.27	No	No
Forterra Pressure Pipe Inc	\$21,471.00	No	No
AGM Airfield Guidancesign Manufacturers	\$26,480.00	No	No
Barco Well Service LP	\$28,826.22	Yes	No
RCS Inc	\$33,215.00	No	No
Advanced Rescue Systems	\$38,040.00	No	No
A Closer Look Inc	\$43,000.00	No	No
Acme Fence Services Inc	\$47,350.00	Yes	No
Fluid Components International LLC	\$23,260.00	No	No
Gabriel Roeder Smith & Company	\$17,000.00	No	No

The City of Denton Procurement Process Audit Report

June 2019

Game Court Services Inc	\$11,995.00	Yes	No
Galls LLC	\$27,706.00	Yes	No
Genes Paint & Body Shop	\$7,121.50	No	No
Geoshack	\$8,812.25	Yes	No
Global Rental Company Po	\$26,428.57	No	No
Herc Rentals Inc	\$4,208.00	No	No
Irrigators Supply Inc	\$17,761.04	Yes	No
Isco Industries	\$33,920.80	Yes	No
Jamar	\$3,803.00	No	No
Jessica Adamson LLC	\$7,140.00	No	No
JIFCO Inc Of Texas	\$10,325.00	No	No
Kaspar Ranch Hand Equipment LLC	\$13,702.50	Yes	No
Knox Company	\$29,542.00	No	No
Lantek Communications Inc- Remit	\$16,331.59	Yes	No
Leum Engineering Inc	\$45,200.00	Yes	No
Life Fitness	\$16,742.68	Yes	No
LSC Trailer Sales LLC	\$16,140.00	Yes	No
Maglo Sports LLC	\$24,375.00	No	No
Magnus Industries LLC	\$36,000.00	Yes	No

As described before, Purchasing interpreted statutes to only require two or more HUB quotes with a single purchase of \$3,000 or more. According to the City Attorney's Office, if separate purchases of items that in normal purchasing practices would be purchased in one purchase cumulative exceed the \$3,000 threshold, compliance with the required HUB provisions is required. Purchasing will conduct the same review process as described above and comply with HUB statutory requirements when applicable.

The Purchasing Division did not have a process or a way to monitor these purchases for compliance. As stated in the previous observation, use of commodity codes would enable the purchasing staff to monitor purchases.

Why does it matter?

The situation cited in the observation represents non-compliance with procurement regulations.

The City of Denton Procurement Process Audit Report

June 2019

Recommendations:

8. Require Purchasing staff to monitor purchases made to ensure that three quotes and the quotes from HUB vendors are obtained for total purchases over \$3,000 but less than \$50,000.
9. Documentation must be maintained on the record if HUB vendors providing desired product or services are not available from a HUB vendor in Denton County.

City management response:

During the audit period, the City's purchasing policies did not require documentation verifying HUB vendors were given the opportunity to quote, if a HUB vendor was available in Denton County. As of March 2019, Purchasing implemented a new process to standardize requisition requests and document HUB compliance. Every requisition processed by Purchasing requires documentation verifying HUB compliance, where applicable. Monitoring of cumulative purchases will be challenging given that the current policy does not require departments to obtain quotes or comply with HUB requirements for purchases less than \$3,000. Purchasing does not currently have a mechanism to inform departments of when non-contract expenditures with a particular vendor reach a certain dollar amount (e.g. \$3,000).

Bid Evaluation

In order for the City to have an objective evaluation of bids received for solicitations, the following condition needs to exist:

- A team of evaluators must be assembled,
- Specific evaluation criteria must be established with guidelines for consistent evaluation
- The team members must be independent and not influenced by others
- The reasoning for scoring is documented

What we found?

Of 57 solicitations we examined:

- Thirty-four had a summary of bid evaluations. In these cases, evaluation sheets for evaluators were not available. It was not clear, who compiled the evaluation summaries. There were no minutes of the evaluation meeting. Based on the available records, it is not clear if the evaluation team worked independently without any influence. Also, on a number of bid tabulation scorings, subjective criteria such as probable performance was not explained.

The City of Denton Procurement Process Audit Report

June 2019

While the evaluation criterion listed for a solicitation as “performance record with City of Denton” it does not clarify how new vendors would be rated. This gives an impression that outcome of the bid process was pre-determined.

- The remaining 23 were exceptions due to cooperative or sole source purchases.

Local Government Code Section 252.042 (b) requires that discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Based on our inquiries with the Purchasing Division, it does not appear that the City Council has adopted any regulations related to criteria for discussions referred above.

We also observed the following during our review:

Solicitations where awards were not made to the vendor(s) with favorable pricing	Vendor with Lower Price
Techline, Inc. (contract # 6778) Evaluated Bid: \$13,303,491	<u>Competing Bids</u> Three Vendors had evaluated bids below Techlines’ Evaluated bids. (This was an IFB, which means that lowest price decides the award)
Rental One Bid: \$27,500	<u>Competing Quote</u> Dyson Equip. LLC Bid: \$25,950

In the above contract with Techline, no explanation was available as to why the contract was not awarded to the vendors quoting lower price. For the purchase from Rental One, three quotes were received. Rental one had the highest quote. It is not clear why purchase was not made from the vendor submitting the lowest quote.

The records did not have any documentation describing the reasoning for not awarding bids to the lowest price vendor(s). This above situation can lead to manipulation and selection of favored vendors.

Why does it matter?

The City of Denton Procurement Process Audit Report

June 2019

The Local Government Code requirements related to competitive bidding have not been complied with. In this situation, the City will not have a good defense if the bid award is contested. This could impact the City's reputation adversely.

Recommendation:

10. The Director of Purchasing and Compliance must ensure that criteria for best value are included in the request for bids/proposals.
11. The City Council needs to adopt criteria for discussions with offerors submitting qualified proposals in accordance with the Local Government Code 252.042 (b).
12. Require retention of all bid evaluation sheets along with detailed explanation of the scores assigned to each bid. Ensure proper documentation is maintained on the record justifying awarding contracts to the vendor other than the vendor offering the lowest price. If these reasons cannot be documented; the contract must be awarded to the lowest bidder in compliance with the procurement regulation.

City management response:

As of January 2018, evaluation team members are required to sign a non-disclosure agreement and affirm no known conflict of interests exists before meeting with the evaluation team. Signed agreements are saved in the solicitation files as a record of employees' involvement on the evaluation team. The evaluations sampled in the audit report were conducted prior to January 2018. Any indication of bias regarding evaluations, unfair treatment of vendors or conflicts of interests during the procurement process are referred to the Director of Procurement and Compliance Officer for review and determination.

Contract # 6778 was awarded to the lowest responsible bidder. The lowest bid received did not meet the technical specification requirements as stated in the solicitation documents. The original bid tabulation noted the disqualification in Purchasing's files. Disqualified bids are not included in the final bid tabulation when taken to Council for consideration and award. Disqualifications are noted in the agenda information sheet provided to Council. Purchasing staff have standardized the documentation requirements for bid files and disqualifications are clearly noted.

Purchasing staff are currently updating the Purchasing Manual which will include evaluation criteria in accordance with Local Government Code 252.042 (b). Council is scheduled to review and adopt the Purchasing Manual updates in August 2019.

The City of Denton Procurement Process Audit Report

June 2019

Sole Source Purchases:

Sec. 252.022 of the Local Government Code exempts a procurement of items that are available from **only** [emphasis added] one source, including:

- (A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
- (B) films, manuscripts, or books;
- (C) gas, water, and other utility services;
- (D) captive replacement parts or components for equipment;
- (E) 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
- (F) 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.

What we found?

In 41 (87.2%) of the 47 sole source purchases reviewed, there was no evidence that items offered are the only products or services that can meet the City's operational need. Twenty-nine (61.7%) of these purchases were supported by letters from vendors promoting their product's superiority and stating that they are the only one that can provide their own proprietary product. Although, it is conceivable that other products in market can serve the same purpose. There was no evidence that the staff conducted research to verify if other products were available. The Purchasing staff has been accepting these letters as a conclusive proof of the products being sole-source and authorizing non-competitive purchases. There was no evidence on record indicating the Purchasing staff's verification, researching or challenging of the claim by the departments or vendors.

On the remaining exceptions, the Division accepted the department's notification showing their preference due to their past positive experience with the product they are recommending. Some correspondence infers that there are other vendors that can provide services. One of the examples is procurement of HVAC system, where the department indicated positive experience with the system and vendor certified that they are the only provider of that system. However, it is common knowledge that there are several vendors who would offer different HVAC systems. The Purchasing Division personnel did not question the sole source claim and approved the purchase. Also, these

The City of Denton Procurement Process Audit Report

June 2019

procurements did not fall within categories listed in exemption from competitive bidding under State statute.

A Purchasing staff member indicated that since these agreements are approved by the City Council, there was no need for further explanation. However, it should be noted that the City Council approves the sole-source agreement upon management recommendation.

Purchasing recently introduced a form to be signed by both the Department Head and Purchasing Manager as a solution for justifying why the items or service are the only ones suitable and necessary for the City. The form also requires a statement that the research was performed to ensure that no other source can fulfill the requirement. It should be noted that while this is a step in the right direction, Purchasing will have to perform its own due diligence to verify the validity of statements made by the departments.

Why does it matter?

It appears that the City has not complied with the Local Government Code provisions related to municipal procurement. The Purchasing Division is expected to operate as the City's control mechanism for detecting and preventing violation. This mechanism needs to be improved through better scrutiny of sole source purchases.

Recommendations:

13. Require the Department Directors to ensure that the products or services requested for sole-source procurement are not available from any other source.
14. Require the Purchasing Division to conduct due diligence to research and obtain all pertinent information related to the sole-source purchase request for analysis and determine if the request complies with the state regulations. The following procedures may also be used to determine if the request for the sole-source is valid:
 - i. Advertise in the newspaper the City's intention to procure a product or service as sole-source and invite proposals/information from potential vendors related to the procurement.
 - ii. Consult the City Attorney's office to verify if any additional inquiries or information is necessary to justify the sole-source procurement.

City management response:

The City of Denton Procurement Process Audit Report

June 2019

As stated in the audit, Purchasing staff recently introduced a sole source justification form requiring departments to explain the selection process for products and any research conducted by departments in order to justify sole source exemption status. In addition to the justification form, Purchasing staff check cooperative agreements for the desired product or service as well as check with other municipalities who have recently made similar purchases. Purchasing also utilizes GovSpend, which allows members to research how other entities procure goods and services, to further research and verify sole source claims. For sole source purchases greater than \$50,000, Purchasing staff consult with the City Attorney's Office in order to ensure the purchase meets exemption status in the procurement statutes.

The City of Denton Procurement Process Audit Report

June 2019

Appendix I:

The following summarizes the recommendations issued throughout this report. The auditors found that staff and the Division was receptive and willing to make improvements to controls where needed. Management has provided their response to each recommendation.

1	<i>Provide training to Procurement staff and departmental liaisons on purchasing regulations.</i>	Concur	Expected Completion: In progress; on-going
	Comments: Training is provided quarterly to department liaisons and as requested for department users, Purchasing staff training is budgeted annually and attended as relevant training is available.		Responsibility: Purchasing
2	<i>Use at least five-digit NIGP commodity codes for purchase after training departmental and purchasing personnel about their use.</i>	Partially Concur	Expected Completion: Unknown
	Comments: Use of commodity codes will be researched further in partnership with Technology Services; commodity codes are likely not a viable option due to system constraints		Responsibility: Purchasing/TS
3	<i>Require Purchasing personnel to monitor purchases and seek sealed bidding for expenditures exceeding \$50,000 either as one purchase or cumulatively from several purchases as agreed during this audit.</i>	Partially Concur	Expected Completion: In progress; on-going
	Comments: Monthly monitoring of expenditures is on-going however, the reviews will be retrospective and will not necessary prevent future purchases from taking place especially if solicitations and contracts cannot be established in a timely manner.		Responsibility: Purchasing
4	<i>Require the Purchasing Manager to conduct a periodic spend analysis to identify opportunities for consolidation of purchases to obtain volume discounts.</i>	Concur	Expected Completion: On-going
	Comments: Beginning in December 2018, staff has been able to report on expenditures by vendor. Monthly monitoring by expenditures is on-going and staff is working to identify contracting opportunities.		Responsibility: Purchasing Manager
5	<i>Require Purchasing to implement an electronic solution to secure electronic bids prior to the bid opening date.</i>	Concur	Expected Completion: Effective 6/12/19
	Comments: As of 6/12/19, the City has implemented an electronic bidding software.		Responsibility: Purchasing
6	<i>Ensure that the bids, once submitted, cannot be changed.</i>	Concur	Expected Completion: 6/12/19
	Comments: As of 6/12/19, the City has implemented an electronic bidding software.		Responsibility: Purchasing
7	<i>Require witnessing of the bid opening, which must be conducted at the designated place.</i>	Concur	Expected Completion: On-going
	Comments: Purchasing staff will require witnessing of the bid opening, as stated in the solicitation documents.		Responsibility: Purchasing

The City of Denton Procurement Process Audit Report

June 2019

8	<i>Require Purchasing staff to monitor purchases made to ensure that three quotes and the quotes from HUB vendors are obtained for total purchases over \$3,000 but less than \$50,000.</i>	Partially Concur	Expected Completion: On-going
<p>Comments: Monitoring of cumulative purchases will be challenging given that the current policy does not require departments to obtain quotes or comply with HUB requirements for purchases less than \$3,000. Purchasing does not currently have a mechanism to inform departments of when non-contract expenditures with a particular vendor reach a certain dollar amount (e.g. \$3,000).</p>			Responsibility: Purchasing
9	<i>Documentation must be maintained on the record if HUB vendors providing desired product or services are not available from a HUB vendor in Denton County.</i>	Partially Concur	Expected Completion: 3/1/19; On-going
<p>Comments: Purchasing implemented a requisition information form that requires documentation of HUB compliance. Certain purchases are exempt from HUB compliance, these purchases will not have documentation of HUB compliance.</p>			Responsibility: Purchasing
10	<i>The Director of Purchasing and Compliance must ensure that criteria for best value are included in the request for bids/proposals.</i>	Concur	Expected Completion: On-going
<p>Comments: Evaluation criteria are stated in solicitation documents when City issues a Request for Proposal (RFP). Bids are required to meet specifications & minimum qualifications as stated in solicitation documents when City issues Invitation to Bid (IFB) to be considered for award.</p>			Responsibility: Purchasing Director
11	<i>The City Council needs to adopt criteria for discussions with offerors submitting qualified proposals in accordance with the Local Government Code 252.042 (b).</i>	Concur	Expected Completion: September 2019
<p>Comments: Purchasing staff are currently updating the Purchasing Manual which will include evaluation criteria in accordance with Local Government Code 252.042 (b). Council is scheduled to review and adopt the Purchasing Manual updates in August 2019</p>			Responsibility: Purchasing
12	<i>Require retention of all bid evaluation sheets along with detailed explanation of the scores assigned to each bid.</i>	Partially Concur	Expected Completion: On-going
<p>Comments: Purchasing will maintain bid evaluations with explanations of the scores for the evaluation team, individual notes from each evaluation team member will not be maintained.</p>			Responsibility: Purchasing
13	<i>Require the Department Directors to ensure that the products or services requested for sole-source procurement are not available from any other source.</i>	Concur	Expected Completion: On-going
<p>Comments: Purchasing has implemented a sole source justification form requiring Department Directors signature when requesting a sole source purchase.</p>			Responsibility: Purchasing
14	<i>Require the Purchasing Division to conduct due diligence to research and obtain all pertinent information related to the sole-source purchase request for analysis and determine if the request complies with the state regulations.</i>	Partially Concur	Expected Completion: On-going
<p>Comments: Purchasing staff check cooperative purchase agreements, other municipalities, and consult with the City Attorney's Office when verifying sole source claims. Not all research is documented in a central location.</p>			Responsibility: Purchasing