

TOWN OF PROSPER ADMINISTRATIVE REGULATIONS

CHAPTER 11: PURCHASING

The Purchasing Division will serve as the central procurement office of the Town, and will have the right to determine which method of procurement provides the best value for the Town, adopt operational procedures consistent with sound business practices and state law, governing the procurement and management of all materials, services, and construction to be procured by this Town, and to manage disposal of materials no longer needed by the Town.

The purpose of the Purchasing Policy is to provide the Town with the requisite parameters for purchasing goods and services under applicable state statutes. More specifically, the purposes are:

- to simplify and clarify the laws governing purchasing by the Town
- to permit the continued development of purchasing policies and practices
- to provide consistency in the purchasing practices of the Town with regard to pertinent purchasing laws
- to increase public confidence in public purchasing
- to ensure the fair and equitable treatment of all persons who participate in the purchasing process
- to provide increased economy and efficiency in purchasing activities by avoiding unnecessary, unwarranted, and duplicative purchases
- to foster free and open competition
- to provide safeguards for the maintenance of a purchasing system of quality and integrity
- to ensure that full accounting is available and given for all purchases.

SECTION 11.01: ORGANIZATIONAL RESPONSIBILITIES

A. Town Council

The Town Council shall be responsible for:

1. considering all purchases exceeding \$50,000, or the amount set for competitive bidding pursuant to current state law;

2. considering all written contracts and agreements exceeding \$25,000;
3. considering all change orders exceeding \$25,000, provided the change order does not increase the original contract price by more than twenty-five percent (25%), or decrease the original contract price by more than 25% without the consent of the contractor;
4. adopting rules for electronic receipt of bids or proposals (Resolution No. 13-52); and
5. approving the alternative bidding method to be used for the construction of a facility, as described by Chapter 2269, Government Code, after determining it to be a better value than competitive bidding.

B. Town Manager

The Town Manager shall be responsible for:

1. approving and executing change orders up to \$25,000, provided the change order does not increase the original contract price by more than 25%, or decrease the original contract price by more than 25% without the consent of the contractor (Ordinance No. 13-53);
2. approving and executing all contracts and agreements up to \$25,000 (Ordinance No. 13-53);
3. approving and executing interlocal agreements entered into pursuant to Chapter 791 of the Texas Government Code, up to \$25,000, including purchasing agreements and agreements with other governmental entities relative to authorized governmental functions and services, as defined in Section 791.003(3) of the Texas Government Code (Ordinance No. 13-53); and
4. approving requisitions over \$10,000.

C. Town Department Heads

Town Department Heads, or an authorized designee, shall have authority to approve requisitions up to \$10,000, and be responsible for:

1. complying with existing purchasing policies and procedures;
2. reviewing and approving proposed purchasing actions to avoid unnecessary or duplicative purchases;
3. ensuring that the item to be purchased has monies available in the budget;
4. determining whether a contract exists for the item to be purchased;
5. verifying that the items received are sufficient and in good condition, and authorizing payment of the invoice; and

6. ensuring that all paperwork is forwarded to the purchasing and finance offices for recordation and payment.

D. Purchasing Agent

The Purchasing Agent shall be responsible for:

1. developing and administering the Town's purchasing policy and procedures;
2. managing the Town's purchasing program to include compliance with all statutory and internal policies;
3. developing and maintaining a purchasing procedures manual;
4. determining the best method of procurement (excluding alternative construction methods) (Resolution No. 13-51);
5. processing purchasing requests;
6. executing and issuing purchase orders;
7. identifying, soliciting, and evaluating competitive offerings to select vendors or contractors;
8. monitoring the terms and conditions of purchases;
9. ensuring complete and accurate documentation of all purchases;
10. administering contracts and agreements for goods and services;
11. administering the requisition/purchase order module of the financial system;
12. administering the electronic procurement (e-procurement) system;
13. administering the Town's procurement card program;
14. disposing of surplus and obsolete property; and
15. maintaining all purchasing files and records.

SECTION 11.02: ETHICS

A. Standard of Conduct

Each officer, employee, or agent acting under the authority of this Section shall at all times adhere to and comply with the Town's Code of Ethics, set forth in Article 1.10 of Chapter 1 of the Town's Code of Ordinances, and Chapter 171 of the Texas Local Government Code.

No officer, employee, or agent of the Town shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Chapter 1, Article 1.10 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest exists. An officer, employee or agent of the Town shall at all times avoid the appearance of impropriety.

A conflict arises when a Town employee, officer or agent, or any relative thereof, a partner or a person or an organization that employs or may employ in the near future any of these individuals, has a financial or other interest in any entity that may be considered for the award.

B. Course of Conduct in the Event of a Conflict or Substantial Interest

In the event of a conflict of interest or substantial interest, as set forth in subpart A, the affected officer, employee or agent must adhere to the following procedures:

1. sign a declaration of possible conflict of interest or affidavit of a substantial interest; and
2. if applicable, abstain from any participation in any procurement action:
 - a. where the officer, employee or agent directly represents an organization or may receive an economic benefit;
 - b. where the officer, employee or agent is in direct competition with a proposal or bid which would provide a direct financial benefit; or
 - c. as required by Chapter 171 of the Texas Local Government Code and the Town's Code of Ethics.
3. abstain from participating in the procurement process, which includes, but is not limited to, discussions, lobbying, rating, scoring, recommending, explaining or assisting in the design or approval of the procurement process or the award of the contract:
 - a. on contracts with the organization he/she represents or from which he/she receives an economic benefit;
 - b. on contracts with organizations in which a relative might realize an economic benefit; or
 - c. as required by Chapter 171 of the Texas Local Government Code and the Town's Code of Ethics.

C. Violations and Remedies

Violations of policy may constitute misconduct, subjecting the violator to any and all penalties prescribed by state law, the Town's Code of Ethics, and/or the Town's Charter.

Penalties, sanctions or other disciplinary actions, to the extent permitted by state or local law, rules or regulations, shall be imposed for violations of the code of conduct/conflict of interest

standards, by Town officer, employees or agents or by persons, contractors or their agents, when the procurement involves state or federal programs and/or funds.

Appropriate sanctions, penalties or disciplinary actions shall be applied for violations. Violations of state or federal law shall be referred to the proper authority having jurisdiction over same.

SECTION 11.03: REQUISITION REQUIREMENTS

Requisitions are required for all procurements in excess of \$3,000, unless otherwise exempt as indicated in the Exemptions section below. Requisitions may be submitted for purchases less than \$3,000, but are not required. Requisitions shall be submitted to the Purchasing Office for processing after obtaining all appropriate approval signatures, and with all supporting documentation attached.

A. Exemptions

Items that do not have to be submitted on a requisition and can be paid with a procurement card, by completing a check request, or approved for payment in the manner prescribed by the Accounting Division are:

- catered event fees
- election fees
- insurance premiums
- membership or professional association dues and fees
- periodicals
- postage
- registration fees
- regulatory fees
- subscriptions
- travel expenses
- tuition
- utilities
- other fees as approved by the Purchasing Agent.

B. Emergency Requisition

1. Conditions

In order to qualify as an emergency purchase, one of the following conditions must exist, as identified in Section 252.022 of the Texas Local Government Code, as amended:

- a. a purchase necessary because of a public calamity that requires the purchase of goods or services to relieve the necessity of the municipality's residents, or to preserve the property of the municipality;
- b. a purchase necessary to preserve or protect the public health or safety of the municipality's residents; or
- c. a purchase necessary because of unforeseen damage to public machinery, equipment, or other property.

2. Process

If a condition qualifies as an emergency purchase, the emergency requisition process shall be followed, as outlined in the Purchasing Procedures Manual that has been provided to each department/division.

C. Requisition Processing

Upon receipt of a requisition, the Purchasing Office shall process the requisition and procure goods and services utilizing the best method of procurement, to include the following:

- check the requisition for completeness;
- comply with State of Texas Historically Underutilized Business (HUB) law, as identified in Section 252.0215 of the Texas Local Government Code, as amended, and with internal policies and procedures;
- verify contract provisions, if purchasing goods or services from an existing contract;
- verify signature authorization;
- verify that sufficient funds are available to purchase goods or services; and
- prepare and issue a purchase order.

SECTION 11.04: PURCHASING THRESHOLDS

A. Purchases \$3,000 and under

1. Competitive quotes are not required for purchases \$3,000 or under, but may be obtained for any purchase. Procurement cards should be utilized for these purchases when possible.

B. Purchases Over \$3,000 and up to \$50,000

1. Competitive written quotes will be solicited by the department, from an adequate number of vendors to ensure competition, including at least two Historically Underutilized Businesses (HUBs), if available, as required in Section 252.0215 of the Texas Local Government Code, as amended. HUBs should be contacted on a rotating basis, based on information provided by the comptroller. If the list fails to identify a HUB in the county, the Town is exempt from this requirement. All purchases within this dollar threshold will be processed through the Purchasing Office, except for exempt purchases defined above.

C. Purchases Over \$50,000

1. Unless otherwise specified by law, all purchases in excess of \$50,000 shall be awarded by competitive bidding or reverse auction procedures, pursuant to current state law. All competitive bids and reverse auctions will be issued by the Purchasing Office.
2. Change Orders shall not exceed 25% of the original contract amount, or decrease the original contract price by more than 25% without the consent of the contractor, except for exempt purchases as defined above.

The Town may not split purchases to circumvent the competitive requirements or the \$50,000 limit. Split purchases are defined as follows:

1. Component Purchases: Purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
2. Separate Purchases: Purchases made separately of items that in normal purchasing practices would be purchased in one purchase.
3. Sequential Purchases: Purchases made over a period, of items that in normal purchasing practices would be purchased in one purchase

SECTION 11.05: METHODS OF PROCUREMENT

A. Methods of Procurement

The Purchasing Agent will determine the best methods of procurement (excluding alternative construction methods), based on the purchasing threshold as identified above, and the nature of goods or services required. The methods of procurement utilized by the Town include, but are not limited to, the following:

- Competitive Sealed Bids (CSB)
- Competitive Sealed Proposals (CSP)

- Request for Proposals (RFP)
- Request for Statements of Qualifications (SOQ)
- Request for Quotes (RFQ)

B. Exemptions

Exemptions from the methods of procurement listed above, as identified in Section 252.022 of the Texas Local Government Code as amended, include, but are not limited to, the types of purchases listed below.

1. Emergency Purchases: An emergency purchase that qualifies under one of the conditions defined above.
2. Personal Services: Services involving the personal, intellectual or manual labor of an individual; a service performed personally by a particular individual for the benefit of another.
3. Professional Services: Services performed within the scope of practice (or provided in connection with the employment of a licensed person in the areas of practice) of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising or professional nursing. Methods for procuring these services are set forth in the Texas Government Code, Chapter 2254, also known as the Professional Services Procurement Act.
4. Planning Services: Services primarily intended to guide governmental policy to ensure the orderly and coordinated development of land uses.
5. Consulting Services: Service of studying or advising the Town under a non-employee/ employer type contract.
6. Sole Source Purchases: The item is available from only a single source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts, or rare books; electricity, gas, water and other utility services; captive replacement parts or components for equipment.
7. Cooperative Purchases: Supplies, equipment or services purchased through an approved cooperative purchasing program which meets all applicable laws and regulations.
8. Personal Property: 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, Local Government Code.

9. Retail Sale: Goods purchased for subsequent retail sale by the Town.
10. Advertising: Advertisements, other than legal notices.

C. Professional Services

Although Professional Services are exempt from competitive bid laws, the Town will utilize the SOQ process for the selection of firms as follows:

1. Architectural, Engineering, or Land Surveying Services: The Town will utilize the SOQ process for the selection of the most highly qualified firms providing Architectural, Engineering, or Land Surveying services, for any dollar amount.
2. All Other Professional Services: The Town will utilize the SOQ process for the selection of firms, on the basis of demonstrated competence and qualifications to perform the services; and for a fair and reasonable price, for professional services other than those identified above, if the expenditure for services is anticipated to be in excess of \$25,000.

SECTION 11.06: PROCUREMENT CARD PROGRAM

The procurement card (p-card) program is a payment mechanism designed to reduce the administrative costs associated with processing small purchases under \$3,000. The p-card program is not intended to avoid or bypass appropriate purchasing or payment procedures. The intent of the p-card program is to complement the existing purchasing processes available.

A. Obtaining Procurement Cards

The Procurement Card Application Form is available from the Purchasing Office. Upon Department Head signature of approval, the completed application form should be submitted to the Program Administrator (Purchasing Agent or designee). P-cards will not be issued to cardholders until each cardholder:

1. has received the appropriate level of training from the Program Administrator;
2. has received program hand-outs; and
3. has signed the Cardholder Agreement confirming receipt of p-card, understanding of agreement, and acknowledgment that improper use of the p-card may result in disciplinary action, up to and including termination of employment.

B. Cardholder Limits and Commodity Restrictions

Monthly dollar limits and commodity restrictions will be assigned to all Town p-cards. The monthly billing cycle runs from the 6th of the month, to the 5th of the following month. If the 5th falls on a weekend, the billing cycle will be extended until midnight on the first business day following the 5th.

Some restrictions will apply to the entire program, such as cash advances, alcohol, cigar/tobacco products, and casinos/gambling facilities, while others are determined based upon the cardholder's job position and responsibilities. If a purchase is declined due to Merchant Category Code (MCC) exclusion, and you have reason to believe that the MCC is valid, contact the Program Administrator to discuss.

The Program Administrator will assign one of the authorization levels listed below to each p-card. Variations must be approved in advance by the Town Manager. This is not meant to be an all-inclusive list, and the Town reserves the right to impose other limitations and restrictions.

1. Executive: \$5,000
2. Supervisory or Administrative Support: \$3,000
3. General: \$1,000 (additional exclusions may apply, including any travel related expenses)

C. Duties and Responsibilities

1. Program Administrator

The Purchasing Agent will serve as the Program Administrator for the Town's p-card program. The responsibilities of the Program Administrator include:

- a. serving as the official Town liaison with the credit card processing company;
- b. determining appropriate MCC exclusions to minimize risk to the Town;
- c. maintaining online p-card system, to include cardholder database, department assignments, hierarchy levels, and accounting codes;
- d. processing p-card applications;
- e. issuing p-cards and related program information;
- f. maintaining inventory of p-cards and authorization level assignments;
- g. providing training to all cardholders;
- h. securing revoked/cancelled p-cards;
- i. handling disputed charges/discrepancies not successfully resolved between cardholder and merchant;
- j. assisting departments with merchant declines and emergency transactions;
- k. handling re-issuance of expired cards;
- l. handling replacement of p-cards after notification of lost/stolen/fraudulent activity; and

m. handling any and all issues related to the p-card program not specifically mentioned.

2. Cardholder Responsibilities

P-cards will be assigned to individual cardholders, and should not be shared. Although the cardholder's name is printed on the card, the card is issued to the Town of Prosper and will have no impact on the cardholder's personal credit. However, Town funds are committed each time the p-card is used, and each individual cardholder is responsible for all charges made to their p-card. Therefore, by participating in the p-card program, all cardholders are responsible for the following:

- a. not allowing other individuals to use their p-card;
- b. determining if the transaction is an acceptable use of the p-card, and if the total expenditure, including delivery or freight charges, is within the cardholder's spending limit;
- c. ensuring p-card is utilized for legitimate Town business only;
- d. ensuring transactions are not split to avoid the \$3,000 threshold that requires a requisition to be submitted to the Purchasing Office;
- e. ensuring that the Town is not charged sales tax - inform the merchant of tax exempt status **prior** to placing the order;
- f. ensuring that transactions are not processed through PayPal;
- g. obtaining an itemized invoice or receipt for every p-card transaction - the credit card charge slip is not considered adequate documentation;
- h. for business meals, include the purpose of the business meal, and the names of those in attendance on the receipt;
- i. completing transaction review and coding transactions in the online p-card system after the end of each billing cycle;
- j. submitting Expense Report, with detailed receipts attached, to the assigned supervisor for review, reconciliation, approval, and submission to the Accounting Division by the 15th of each month;
- k. maintaining p-card in a safe and secure location at all times;
- l. attempting to resolve disputes or billing errors directly with the merchant;
- m. notifying the Program Administrator of any disputes that cannot be resolved with the merchant, and following JPMorgan Chase's dispute process;

- n. immediately informing the bank, at the phone number indicated on the p-card, your Department Head, and the Program Administrator of lost or stolen p-cards, or of fraudulent charges; and
- o. surrendering p-card to the Program Administrator upon separation from the Town, or on demand at any time.

D. Missing Receipts

It is the responsibility of the cardholder to obtain an itemized receipt/invoice for each transaction. If a receipt/invoice is missing, the cardholder will make every effort to obtain a duplicate receipt/invoice from the merchant. However, if obtaining a duplicate receipt is not possible, a Missing Receipt Form will be completed and attached to the Expense Report, and approved by the supervisor. Contact the Program Manager to obtain the form. Habitual use of the Missing Receipt Form may be grounds to revoke p-card privileges.

E. Returns, Credits, and Disputed Charges

Should a problem arise with a purchased item, or with billing, every attempt should be made by the cardholder to resolve the issue directly with the merchant. Review of future statements is vital to ensure that the account is properly credited for returns, credits, and disputed charges. It is the cardholder's responsibility to ensure credits are processed in a timely manner.

If you are unable to resolve the issue directly with the merchant, please notify the Program Administrator, and follow the credit card processing company's dispute resolution process. The Program Administrator is available to assist with this process.

During the investigation, a credit will be issued to the cardholder's account for the amount in question. Upon completion of the investigation, the cardholder will be notified of resolution. If the dispute is not settled in the cardholder's favor, the account will be charged for the disputed transaction amount.

Failure to take immediate and appropriate action could result in a loss to your department's budget, and your p-card privileges may be revoked.

F. Lost, Stolen, or Misplaced Cards

If your p-card is lost or stolen, immediately contact the credit card processing company at the number below. Representatives are available 24 hours a day, 7 days a week. Also contact the Program Administrator and your Department Head during normal business hours. Prompt action can reduce the Town's liability for fraudulent activity. The credit card processing company will be responsible for all transactions made after the card has been reported lost/stolen. The Town is liable for all charges prior to that time.

Lost or Stolen Card: (800) 890-0669

When reporting a lost or stolen card, the cardholder should tell the representative the call is regarding a company procurement card.

G. Violations and Remedies

Violations to the p-card program may result in disciplinary action, up to and including termination of employment. At a minimum, violations to the p-card program will result in the following remedies:

1. First Offense: Written warning of infraction.
2. Second Offense: P-card privileges suspended for thirty (30) days, and cardholder will surrender p-card to the Program Administrator for the duration of suspension period.
3. Third Offense: P-card privileges suspended permanently. Cardholder will surrender p-card to the Program Administrator.

SECTION 11.07: RECEIPT OF GOODS/SERVICES

A. Inspection

Upon receipt of goods or services, it is the department's responsibility to ensure that the order is complete as to quality and quantity, and to report any discrepancies to the Purchasing Office or directly to the vendor.

If the shipment is complete and undamaged, the packing slip or delivery ticket should be signed and retained until the invoice for payment is received.

Should the department receive only a partial shipment, or return part of a shipment due to damage or delivery of the wrong items, this must be noted on the packing slip or delivery ticket, and noted on the invoice in order to prevent improper payment.

B. Damages/Defects

Goods and services should be checked at the time of receipt to detect any damages or defects. This inspection should also include assuring that the material is in compliance with the specifications. When it is apparent that the extent of the damage causes the goods to be of little worth, they should not be accepted.

1. Visible Damage: One of the major reasons for inspection at the time of receipt is to detect any visible damage. It is important that all damage be completely described on the receiving paperwork.
2. Concealed Damage: Any evidence of concealed damage should be documented to support the filing of damage claims against the carrier. The carrier should be notified immediately, and a joint inspection should be scheduled with the carrier's representative.

3. Claims: If the shipment is “F.O.B. destination” the vendor is responsible for assisting with the settlement of the claim and for full replacement of the damaged items. Payment should be withheld until the claims are settled.

SECTION 11.08: DISPOSAL OF SALVAGE/SURPLUS PROPERTY

The Purchasing Agent or designee shall be responsible for the disposal of salvage/surplus personal property. Personal property that has been deemed salvage or surplus may be disposed of by one the following methods, as deemed appropriate by the Purchasing Agent:

- sold at a public auction
- sold by soliciting competitive bids
- sold or donated to a political subdivision of this state, a state agency of this state, or an entity of the federal government
- sold or donated in accordance with any other approved personnel policy
- traded-in on new property of the same type
- destroyed or donated to a civic or charitable organization, if such property has a value of less than \$500

The Town of Prosper Purchasing Policy was revised and adopted the 11th day of July, 2017.



Harlan Jefferson, Town Manager