

# **The Power to Procure: A Look inside the City of Austin Procurement Program**

by

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## Abstract

*Purpose.* Procurement is an integral part of any organization, including public agencies. Government procurement is a highly complex and highly political issue nationwide. While contracting occurs at every level of government, municipalities appear to be in the forefront of the “contracting-out” movement. Contracting-out has both positive and negative consequences; however, there are certain characteristics required in order to administer an efficient, productive, and responsive governmental procurement program. This applied research project assesses the City of Austin’s procurement process and programs based on a practical ideal type framework developed through a literature review. A review of literature pertaining to government procurement and contracting programs reveals eight necessary elements of quality and successful programs: ethics, accountability, transparency, competitiveness; complexity, equity, quality, and monitoring and oversight. *Method.* Using the City as a case study, the eight categories are used to evaluate the City of Austin procurement program. The data collection methodology for this study includes document analysis and structured interviews. *Results.* The results of the case study reveal that quality measurement and the monitoring and oversight functions do not meet the established criteria of the practical ideal type model. The City exceeds in areas of having established written processes and procedures that address the majority of the practical ideal type categories. *Conclusion.* Recommendations for improving the City of Austin’s current procurement program are also identified in the areas of quality and monitoring and oversight.

## About the Author



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## **Chapter I: Introduction**

Suppose you were enjoying a nice walk on a lovely spring day and were unexpectedly presented with a blank checkbook connected to a billion dollar account. The presenter explains that you have authority to purchase whatever you desire, as long as you balance the checkbook. Your eyes become bright with joy and your brain begins to imagine all the things you are able to purchase. As the presenter sees the internal wheels of your mind turning, another caveat is thrown into the mix. Each purchase you make should be made public knowledge. While you think the request is a bit of an invasion of privacy, you consent and continue daydreaming about your purchases. The presenter then adds that the purchases should also be for the betterment of the citizens in the community. The game has suddenly changed. The initial sense of joy has become a feeling of trepidation and overwhelming responsibility. The agreement no longer seems like such a great deal.

In many ways government is like the individual receiving the blank checkbook, while citizens are synonymous with the individual presenting the checkbook. It is the responsibility of citizens to fund public services through fees, bonds, and taxes; however, it is the responsibility of government to provide the materials and services to operate and sustain a healthy, safe, and aesthetically pleasing community. The services that are provided should be beneficial to everyone, not just a small segment of the population. The manner in which government provides services is critical to the health and growth of the community.

### **Research Purpose**

The method of providing public services is the crux of government decision-making. Services may remain in-house, which is common for services that are difficult to monitor, difficult to audit, or are highly political in nature. For the “simpler” services, government may decide to outsource or “contract-out”. When a third-party takes on the responsibility of government service provision, many things must be considered. First, government must remain cognizant that whatever administrators deem worthy of

procuring, decisions should be made in the best interest of the citizenry, guided by management's core principles. Second, the procurement decisions should always be made with accountability, transparency, and ethical considerations. Government by nature cannot operate like the private sector. Government cannot "pass the buck" when citizens complain. There is no notion of privacy, unless protected by confidentiality statutes. Administrators may benefit in managing with the belief that everything is open to citizens' review; contracting decisions should be fair and inclusive. Everyone should have access to the same information to foster equity. Most importantly, government should act as the steward of the public's purse. It is never acceptable to squander taxpayer dollars. Some administrators lose sight of the fact that the funds they are authorized to spend, is not a personal belonging, but a fund belonging to the community's tax payers.

One of the most important responsibilities of government is to procure goods and services. The contracted providers and the contracts themselves have wide reaching effects and impacts on the community. For this reason, it is necessary to identify the key characteristics of an ideal government procurement program. Public organizations can benefit by using the ideal model to assess their current programs, as well as working to identify potential areas of improvement.

The purpose of this project is threefold. First, it will describe the ideal characteristics of an effective municipal contracting program based on a review of the literature. Second, it will assess or gauge the City of Austin's contracting and procurement processes in relation to practical ideal conceptual framework characteristics. Finally, the project offers strategies for improving the efficacy of the City of Austin's contracting and procurement processes and procedures.

## **Summary of Chapters**

The following chapters create a roadmap of the City of Austin's procurement program. Chapter Two includes a review of scholarly literature that focuses on procurement, particularly the state of government contracting, the rationale behind government contracting, and contracting advantages and

disadvantages. This chapter also identifies and organizes the ideal type characteristics for an ideal government procurement program into a conceptual framework. Chapter Three provides a discussion on the City of Austin's procurement processes and practices. The chapter also discusses the three departments responsible for administering the City's procurement program (the Contract and Land Management Department, the Purchasing Office, and Small and Minority Business Resources). This background illustrates the uniqueness of the City of Austin procurement program, as well as serving as a tool to address the research purpose. Chapter Four discusses the research methodology and explains the operationalization of the conceptual framework. Chapter Five presents the findings of this study. It points out the extent to which the City of Austin's procurement program addresses the characteristics in an ideal model. Chapter Six provides recommendations to improve the City of Austin procurement program.

## **Chapter II: Literature Review and Conceptual Framework**

### **Chapter Purpose**

The purpose of this chapter is to create a basis for understanding government contracting based on a review of the available literature. Part of the discussion includes the history of government contracting and its current trends. The research will explore why public agencies make the decision to contract-out, as well as the basic forms of competitive solicitation associated with government contracting. In addition, the benefits and deficiencies linked to public contracting are examined. The final section of the chapter describes the key characteristics of an ideal government procurement model, based on a review of the literature. The characteristics are placed and organized in the form of a practical ideal type conceptual framework.

### **State of Public Contracting**

Government contracting is massive. Based on 2006 contracting data, the federal government spent hundreds of billions of dollars on goods and services (Berrios 2006, 119; Fernandez 2007, 1119). During the 1990s, government contracting with private industry rose drastically (Auger 1999, 435). Historically, government contracted “simple” services, such as employment services and office supplies. Today, governments contract out such services as education, waste management, and even public safety (Brown and Potoski 2003, 154; Brown, Potoski, & Van Slyke 2008, 5). Contracting is a tool for public administrators “to get business taken care of [administratively] and to implement marketplace economy” (Dahl 1991, 487). At the heart of contracting is the need for public organizations to meet the increased service demands of the citizens with diminishing resources (Brown and Potoski 2003, 153; Dilger, Moffett, & Struyk et al. 1997, 21). Municipalities were the first to segue into wide-scale privatization of government services with state governments following suit (Auger 1999, 437). Local governments appear to be leading the field in public contracting with an ever increasing fervor.

## *Local Government Contracting*

Contracting occurs in greatest frequency at the local level for several reasons (Fernandez, Ryu, & Brudney 2008, 442). First, citizens have more direct access to government at this level and are more apt to demand and expect more services from local administrations. Literature suggests that the smaller the size of government, the less contracting the agency will do. Larger governmental agencies have an enormous amount of buying power and the ability to negotiate contracts (Boyne 1998, 153). Second, because municipalities are complex, multifaceted organizations operating to accomplish many different objectives, contracting is the tool government uses to meet increasing service demands and expectations (Fernandez, Ryu, & Brudney 2008, 444-45). For this reason local governments may most closely “model” the ideal procurement program. There is however, no agreement or consistent manner to handle all procurement or agreement upon what services are most qualified for outsourcing (Johnston, Romzek, & Wood 2004, 157).

Local governments are more likely to use for-profit firms to provide services such as public works, utilities, park services, and administrative support, such as clerical tasks (Siegel 1999, 366). Some services are less likely to be contracted out, such as public safety. In Texas, municipalities with a population over 10,000 whose citizens have voted to have civil service, will not contract out public safety because of the requirements for hiring, promotion, discipline, terminations, and appeals. While contracting aids governments with service delivery, administrators must also deal with the negative connotations related to contracting-out. The contracting of government services can be deemed as weakening the purpose of government.<sup>1</sup> Those opposed to contracting out public services feel that the monetary gain an individual or company acquires supersedes the concept of sacrifice for social gain. The unraveling of the concept of community and the diminished importance of responsibility to citizenry makes contracting an easier option for those with a corporate mentality of government than thinking of

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<sup>1</sup> According to literature contracting fundamentally leads to the rejection of democratic government tenets, including citizenship, civic engagement, and public interest (Morgan and England 1988, 982 and Brown and Potoski. 2003, 154).

the common good of the community (Morgan and England 1988, 982). Opponents argue that the contracting out of government services eliminates accountability. The focus of private business is to accumulate profit; it is not centered on responding to public interest. Contracting does not occur in isolation; public administrators who choose to contract government services often stress the importance of building relationships to ensure smooth and successful contracting.

### *Relational Contracting*

Since governments rely primarily on private firms to supply goods and provide certain services to the public, an amiable relationship between government and the contracting parties is essential. Present trends point toward “relational contracting”. Traditional contracting involves executing contracts for goods and services based on explicit specifications that are predetermined. The new approach emphasizes a collective behavior that is mutually beneficial to both parties (Bovaird 2006, 83; Watt 2005, 108). Relational contracting can take the form of Public-Private Partnerships (PPPs) or purchasing consortia or cooperatives. PPPs contribute certain expertise and skills in the procurement process. In purchasing cooperatives, the goal is to acquire better buying power based on bulk numbers and lowering purchasing transaction costs, thereby creating cost savings for public agencies and providing services more efficiently (Bovaird 2006, 85). For partnership contracting to be successful deliberate attention must be focused on the needs and priorities to each party on the contracting team, communication strategies, as well as how the relationships will function.

### **Rationale for Government Contracting**

When government makes the decision to contract services, the focus is typically aligned with the idea of cost savings, increased efficiency, public choice and competition. The literature suggests several advantages for contracting, with cost and efficiency at the forefront (Auger 1999, 440-41; Berrios 2006, 119; Bloomfield 2006, 400). Governments’ decision to contract out is primarily economic based. Most contracting occurs as a method of meeting service demand, while containing cost or keeping agency

budgets solvent. As a result, sometimes agencies sacrifice autonomy, in particular the ability to cater to the service needs of the community.

### *Cost Savings*

Cost-savings is the most common rationale provided for the contracting of public services (Auger 1999, 440). Microeconomic theory assumes contracting-out results in cost savings or decreasing the amount of spending on services from external providers (Brudney, Fernandez, & Ryu 2005, 395). The prevailing belief is that the contracting of public services is produced and provided at a lower cost by an outside agency (Boyne 1998b, 475). The cost savings may be realized due to “cost-of-scale”, which is the competition between the contractors and suppliers to provide services at a lesser cost than government (Denes 1997, 441; Lowrey 1982, 518). Parties in turn attempt to provide a bid or negotiate to provide services at a cost that’s less than their particular competitors. Realistically, both in-house and external contracting has an associated cost. A counter argument exists that contracting out actually increases spending over the long-term (Dilger, Moffett, & Struyk 1997, 24). Past contracting case studies reveal enormous amounts of overspending when contracting (Hefetz and Warner 2004, 173). Johnston, Romzek, and Wood challenge that “officials can rarely document cost or quality improvements or [contract] shortcomings” (2004, 181). In a discussion where cost savings is cited as a positive aspect of contracting, efficiency is never far behind.

### *Efficiency*

Efficiency is another core value many align with government contracting. In contracting, efficiency is often associated with increased speed in service provision, faster implementation times, and the possibility of less regulation (Auger 1999, 441). Public opinion does not see government or any bureaucracy as a bastion of efficiency. Most likely inefficiency and ineffectiveness comes to mind when government is discussed. Governments may, however, contract out services as a means of meeting the public expectation for responsive service (Boyne 1998, 155; Fernandez, Ryu, & Brudney 2008, 442).

Efficiency is connected to competition. Government by its very nature is a monopoly. It has no real, direct competition for its public service provision. In theory a monopoly increases budget costs, so it stands to reason that competition should decrease budgets (Boyne 1998b, 475). There is no standard definition for competition. The concept of the “competition prescription” suggests that efficiency comes from competition and is not based on whether the agency providing the service is private or public (Lamothe and Lamothe 2009, 164). Competition is usually focused on one phase of contracting—the letting of a solicitation<sup>2</sup>. Competitive bidding ideally increases efficiency by forcing bidders to keep their bids low and responders generating proposals that are highly detailed in how the firm expects to provide services. If increased efficiency is the goal of contracting-out government services, it is plausible to believe that the flexibility in service provision increases.

### *Flexibility*

Another advantage of contracting discussed in the literature is the increased flexibility contracting provides in responding to public demand. According to Auger (1999), governments contract out because of administrative utility. Contrary to the public sector, private entities are able to operate with less rigid processes and fewer regulations. As a result, a common belief is private industry can provide faster service and increased flexibility to expand, as well as the flexibility to acquire “much needed personnel and expertise” (Auger 1999, 441). Public agencies must deal with the competing values of the public’s desire for responsiveness and the political pressure to limit government expansion in size and cost (Boyne 1998a, 155). Traditionally, government is not about trendsetting or risk-taking; maintaining the status quo is par for public organizations. Governmental inertia makes it difficult to break with traditional thoughts and processes (Lamothe, Lamothe, & Feiock 2008, 28). Contracting-out may provide an avenue for the infusion of new ideas and thoughts, since non-governmental agencies are not bound by the same

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<sup>2</sup> Letting a solicitation is the issuing or advertisement of a solicitation. In government, solicitations are typically advertised in newspapers, in trade association magazines, and on government organization websites. After a solicitation is let, potential contractors and consultants are able to review the plans, specifications, scopes of work, bonding requirements, evaluation criteria (in applicable situations) and additional solicitation documentation.

legal and procedural parameters. The value in contracting-out public services is readily apparent; however, there exists several compelling reasons why public agencies may opt to keep public services in-house or scrutinize if services are contracted.

### **Concerns with Contracting-Out**

When a public organization makes the decision to use public dollars to contract public services, it is made with the belief of increasing productivity, increasing competition, increasing public choice (i.e. decreasing monopolistic contracting tendencies) and responding to increased citizen demand (Berrios 2006, 119). The decision to contract out is an important decision in the procurement process, but it is usually made in a hasty, if not inefficient manner (Dovalina 2006, 14). Contracting decisions may only take into account the advantages, without adequately addressing the disadvantages or the pitfalls in public contracting. Numerous problems can occur when the decisions are not well thought out or thoroughly vetted. If government passes the responsibility of public service provision to a third party, it may be viewed as rejecting the basic tenets of democracy, which are democratic government of citizenship, civic engagement, and public interest (Brown and Potoski 2003, 154). Ignoring these basic democratic values is frequently linked to the underbelly of contracting, which include unethical behavior in contracting, loss of public accountability, lack of transparency, poor service provision and lack of contract monitoring.

#### *Lack of Ethics*

The contracting landscape may provide the ideal environment for corruption in the form of fraud, waste and abuse, and conflict of interest. Contractors who are well connected with government agencies have the potential to influence policy as well as the award process. It is normal for past officials and previous contracting staff to get into the procurement arena after a stint in government, because they are well versed in the landscape; these previous officials possess expertise and insider knowledge (Berrios 2006, 122). These individuals have a distinct advantage over their competition. If contracts are poorly managed, price gouging and fraud may also occur (Brown and Potoski 2003, 154). Government's

ignorance on contract performance or in any facet of the procurement realm provides the opportunity for contractors to cut corners or perform below acceptable standards (Watt 2005, 111). The potential exists for government to lose sight of project activity as well as ignoring ethical mishaps as long as services are being delivered in a prompt manner. The ethical lapses act as catalysts in eroding public trust and call government's accountability to citizens into question.

### *Loss of Accountability*

The public tasks government with being the stewards of public dollars. Governments are expected to be accountable to citizens by responding to and implementing acceptable policy for citizens, interest groups, and employees, in a manner that is mutually beneficial for everyone (Fernandez, Ryu, & Brudney 2008, 455). Issues of accountability arise during the attempted alignment of values and views of public organizations and the private sector (Dovalina 2006, 10). As stewards of the public's dollars and trust, governments are held to a higher standard of accountability and transparency when compared to the private sector. Opponents of contracting feel that contracting allows governments to escape the responsibility of accountability (Alexander 2009, 19; Dovalina 2006, 20). Others argue that contracting creates a "hollow state", where public organizations are either unable to deliver public services or choose to transfer the responsibility of providing public services, thereby eliminating accountability (Brown and Potoski 2003, 154). The challenge in contracting is getting a service or good, while not losing accountability nor making decisions that affect the public without their knowledge.

### *Lack of Transparency*

Transparency is defined as the ability to know what is occurring inside the walls of government (Piotrowski and Van Ryzin 2007, 306). The public needs to know and has the right to know how government is committing and spending their tax dollars (Dovalina 2006, 22). Piotrowski and Van Ryzin reference H.L. Cross' book "*The People's Right to Know.*" It states:

Public business is the public's business. The people have the right to know. Freedom of information is their just heritage. Without that the citizens of a democracy have but changed their kings. The people are citizens, taxpayers, inhabitants, electors, newsmen, authors, research, workers, teachers, students, all persons, each of us.  
(Piotrowski and Van Ryzin 2007, 308).

There is no apparent transparency when the average citizen has no idea what is happening in government or understands the public procurement process, or is unable to interpret contracts for outsourced services. In the US, there is growing emphasis on transparency and implementing the theoretical policy (everything is open for public consumption) of transparency into realistic practice (Piotrowski and Van Ryzin 2007, 308). There are however, legal limits to transparency. For instance, the results of an investigation of a civil service employee are not open to public information requests. Transparency in policy and process also assists with the concept of contract monitoring. Access to information provides the avenue to monitor if government and contractors are actually performing as directed.

#### *Lack of Contract Monitoring & Oversight*

Contract monitoring is the most overlooked aspect of contracting, but is one of the most critical aspects. Contract monitoring and oversight is seldom emphasized because it is viewed primarily as an administrative or paper-pushing function. Most agencies provide too few resources to adequately monitor contract performance (Auger 1999, 449). At times, contract monitoring and oversight is delegated and provided by a third party that may not value contract oversight, buy into monitoring contractor performance, or understand the value government gains from performing this function. Monitoring and oversight are difficult because the associated costs are high. Monitoring requires significant resources, and monitoring sometimes requires special analytical skills (Johnston, Romzek, & Wood 2004, 162). Contract monitoring can seem punitive to contractors, rather than government's attempt to guide service delivery and performance, while remaining accountable to citizens (Auger 1999, 449). Contract monitoring is critical to contracting in demonstrating whether performance or service provision is adequate, but not the only area of knowledge citizens need regarding contracting. Citizens and staff alike should have a basic understanding of how services are procured and how the services are delivered.

## **Phases of Government Contracting**

Contracting is not simply issuing a service request, reviewing the response and writing a contract. Contracting is a dynamic process with many moving parts, often in parallel motion. The process is complex and lengthy (Brown and Potoski 2003, 155; Cooper 1980, 460). The expansive nature of government contracting dictates awarding based on “best value” to the organization (Bower 1993, 874). Best value is typically associated with cost (i.e. low bid) or qualifications (Berrios 2006, 120). Prior to contracting any form of public service or good, agencies must think about the viability of services to be “sent out” in addition to those services better kept in-house under agency control (Auger 1999, 439; Brown and Potoski 2003, 155). The decision to contract-out can be influenced by citizen expectation, the attitude of the policy makers, legal statutes, and even employee skill (Fernandez, Ryu, & Brudney 2008, 442). In-house service provision requires experienced staff well versed on procurement regulations, on mandatory timelines, on organizational processes. Procurement staff must possess the ability to efficiently execute and actively participate in each phase of the process. If contracting is an option, administrators have to determine who is best able to assume the responsibility for service provision (i.e. private industry, non-profit, quasi-governmental agency) , as well as the method to solicit the services or goods.

There are several methods used to acquire government goods and services. In municipal government, the means of procurement is usually competitive. Competitive procurement means potential vendors are asked to submit pricing or proposals for consideration of the award and contract execution (Vendor Source Guide 2009, 8). Typically governments procure services and goods using Invitation for Bids, Request for Proposals, Request for Quotes, and Request for Qualifications (Berrios 2006, 120)<sup>3</sup>.

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<sup>3</sup> Agencies may also use Alternative Delivery methods in contracting. Alternative Delivery methods include Sealed Competitive Proposals, Job Order Contracting, Design-Build, Construction Manager at Risk, and Construction Manager-Agent. Alternative Delivery methods are typically related to construction services. Although the services are different from standard design, bid, build structure, they are issued as IFBs, RFPs, and RFQs.

Understanding what types of solicitations correspond with the method of service or good assists in planning for and moving through all the phases of contracting.

### *Planning and Scoping*

The early stages of contracting include planning and scoping. Planning is the systematic process of looking at internal resources and service demand (Dovolina 2006, 14). Planning is critical in all steps of procurement, including project completion. During this phase an agency initiates “specing” or specification development. Specifications communicate what an agency needs and outline all the necessary requirements to provide the service or good in order to complete the project (Cooper 1980, 462; Kassler 2008, 246). Poorly defined specifications typically lead to agencies encountering higher project costs, decreased contract performance, and little to no emphasis on accountability. Planning and scoping is most successful on contracts where services are concrete, specified, measurable, and consistently monitored (Siegel 1999, 369).

### *Types of Solicitations*

After specifications have been completed, a solicitation for services or goods must be issued. Solicitations can be competitive or issued with the intent to award to a sole-source (a single individual or company that can supply a service or good) (Hefetz and Warner 2004, 175). The method of soliciting often depends on the nature of the service being provided. The most common form of solicitation is the Invitation for Bid (IFB). It is a formal solicitation where award is made to the lowest, most responsive and responsible bidder. IFBs are usually associated with construction. Some states, including the State of Texas, have a form of IFB awarded on the basis of “best value”, rather than simple cost consideration (Vendor Source Guide 2009, 16). A Request for Proposal (RFP) is a form of solicitation where vendors submit a response or “propose” a method to provide a service or good. RFPs also review responsiveness, responsibility, and price-however, price is not the sole consideration (Vendor Source Guide 2009, 17). RFPs are usually associated with non-professional type procurements. Request for Quotations are

utilized to purchase goods and services that are well defined. These awards are based on price only. The final method of solicitation is the Request for Qualifications (RFQ). This solicitation method is associated with professional services, such as engineering, architecture, and legal services. RFQs are awarded in a two step method of submittal and qualifications review. Pricing plays no part in award. Pricing is negotiated after contract award (Vendor Source Guide 2009, 18). After the form of issuance has been determined, the solicitation is initiated for issuance.

### *Solicitation Issuance*

The manner in which contract staff creates a solicitation has ramifications. Creating the solicitation should simply be stating the requirements for responders<sup>4</sup>, but how clearly the requirements are written and communicated can impact the number of prospective respondents if information is skewed even unintentionally (Cooper 1980, 463). The solicitation should be advertised in an effort to reach as many potential responders as possible. Advertising also limits the possibility of tampering with specifications and deadlines for potential respondents. Based on the bids or responses provided, contract staff must execute an extensive review to determine the best fit to provide the requested service.

### *Contractor Selection and Award*

Government contracting is rules driven, but procurement regulations and statutes allow for some flexibility. This is most evident in contractor selection and award (Cooper 1980, 463). Public administrators use their own judgment in selecting the contractor who provides the “best value” to the public agency. Public administrators review responsiveness, responsibility, and in some cases pre-award compliance to certain requirements of the contractors and consultants. Responsiveness is meeting all the requirements to be considered for contract award. Responsibility is a review to determine the bidders’ or

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<sup>4</sup> Responders are used as a general term. Firms who submit bids for typical low-bid projects are referred to as “bidders”. For Professional Service type projects, those who submit statements or qualifications are referred to as “proposers”.

responders' ability and likelihood of finishing the proposed project (Cooper 1980, 463). Additional factors may be considered, such as safety record, capacity, past experience, and reliability (Dovolina 2006, 16). Once a contractor is selected, the contract must be negotiated. Agencies need adequate and experienced staff to negotiate an adequate contract; a contract that is fair to both parties and illustrates the responsibilities of both parties involved (Lamothe, Lamothe, & Feiock 2008, 29).

### *Contract Negotiation*

In government, contracts are “contracts of adhesion” – our way or no way (Cooper 1980, 465). Most governmental agencies use standard contract language, but if needed, optional supplemental conditions can be included. (Cooper 1980, 465). Contractors should observe the terms and conditions of contracts. Contracts address two primary structural components: 1.) clarity and specificity and 2.) risk. Contracts should be well written and outline each party's roles, the goals of the project, performance requirements, including any incentives, and sanctions for breach of contract or non-compliance with the contract (Johnston, Romzek, & Wood 2004, 160). Clarity aids in decreasing project errors. In contracts, government seeks to shift a portion of the financial risk to the contractor instead of assuming all risk. Prior to bidding, firms will assess project risk, to determine if they have the capacity to perform the job and how best to complete the project. When specificity and clarity are not addressed, contractors may perform poorly or perform outside the parameters of the contract. A clearly crafted and detailed negotiation aids in expediting proficient contract execution.

### *Contract Execution*

Some public organizations may be staffed with legal representatives to approve the form of negotiated contracts, but not necessarily the content, which is a detriment to the public agency and the citizens. Government staff has a difficult time detailing performance expectations and in turn assessing performance (Lamothe, Lamothe, & Feiock 2008, 31). Watt (2005, 108) argues that because governments emphasize partnerships that are mutually beneficial, cooperative government and contractor

relationships are necessary (2005, 108). Cooper (1980, 463) suggests that contracts function in the form of “treaties”, where no separation of power is identified and alliances [between government and the service provider] are built. This concept is called “new feudalism” (Cooper 1980, 463). After executing the contract that clearly defines parties’ roles and responsibilities, monitoring and oversight of contracts must occur in order to gauge success in contracting.

### *Contract Monitoring*

The final phase of contracting involves monitoring and oversight. Monitoring and oversight occurs when the contractor and government relationship separates and when the needed service or product has been provided (Cooper 1980, 462). Monitoring is the most important part of the contracting process (Dovalina 2006, 17). Monitoring is simply evaluating contractor performance, based on the conditions stipulated in the contract (Brown and Potoski 2003, 155). Roughly, twenty percent of contracting costs are allocated toward monitoring (Dovalina 2006, 16). Monitoring and oversight are usually underemphasized in contracting, which is harmful in the long run, because of the focus to get services delivered swiftly and at a reduced cost. Most governments poorly execute contract monitoring. Monitoring often takes on a “paper-pushing function, rather than actual auditing and review in the field” (Auger 1999, 449). Public agencies often pay little attention to monitoring and the consequences of substandard contractor or consultant performance. Agencies that do not acknowledge the importance of the monitoring function, do not allocate adequate resources for oversight. Conversely, some agencies understand the importance and necessity of investing in the contract-management and monitoring function. The agencies that invest the resources are usually able to successfully escape the dangers of cost overruns, schedule delays, and poor performance in contracting (Brown and Potoski 2003, 155).

### **Characteristics of a Successful Government Procurement Program Model**

A successful procurement program has to take into account the government’s responsibility to provide service to the public and the public’s expectations in receiving service. Theoretically, it is a

simple process. One party, the public, makes a demand for service and one party, the government, provides the service. In practice, government service provision is a very complex process. Although contracting occurs at every level of government, there is no consistent model. The literature suggests two primary reasons for the broad approach given to contracting: 1) procurement and contracting rules, policies, and procedures are highly complex and often unique to individual agencies and 2) procurement and contracting rules are not static; there are always updates and changes occurring in contracting at every level of government (White 2007, 188). Regardless of the variations in programs, based on a review of the literature, there are some areas of consideration or characteristics that should be included in any government procurement program. Governments should take the following areas into consideration when attempting to contract or procure any good or service:

- Ethics
- Accountability
- Transparency
- Competition
- Complexity
- Equality
- Quality
- Monitoring and Oversight

Each characteristic of the model will be discussed and organized to create the practical ideal conceptual framework.

### *Ethical Considerations*

The process of contracting lends itself to unethical behaviors by all parties involved. Often, there are competing values of government and private industry (White 2007, 188). Ethical dilemmas may present themselves in the form of conflicts of interest, bribery, abuse of power, and fraud (Dovalina 2006, 18). Ethical violations occur whether it is the government providing the service or it is a third party. The

literature is fraught with examples of contracting fraud and scandal. According to Dovalina, the “Savings and Loan” is a prime example of the underbelly of government contracting (2006, 5). Berrios calls attention to the nature of personal relationships that may develop between government agencies and contractors. Those relationships are crucial when award and administration of a contract occurs (Berrios 2006, 122). Sometimes those tasked with selecting contractors and making contract awards leave government service to work for consultants or for lobbyists. This transition is possible because of the personal relationships that are often crafted between contractors and administrators (Berrios 2006, 122). Due to the rise in contracting, public administrators must realize that ethical dilemmas and violations will creep into the procurement process. Staff must be willing to face the dilemmas and resolve the situations in a manner that is satisfactory to the public, but that also upholds contract law. Conflicts of interest are the most frequent ethical violations in the form of contractors using personal relationships with administrators or policy makers in order to receive awards (Dovalina 2006, 19). These ethical lapses only aid in destroying public trust. This is especially harmful in the realm of contracting, because of the use of public funds. The literature suggests procurements be conducted in a manner that preserves the integrity of the process. Preserving integrity means contracting in a way that avoids favoritism, bribery, kick-backs, abuse of power, and any other unfair practices (White 2007, 189).

### *Accountability Considerations*

The core value of American democracy is being accountable and responsive to citizens. As a core value, it is also one of the most difficult tasks of government to balance the needs of public service provision and how best to use public funds to meet public service expectations (Morgan et al. 1996, 362). The expectation for public officials is to use public dollars to serve the public (Whitaker 2004, 115). Accountability can be considered in several different ways (Dovalina 2006, 21).<sup>5</sup> Defenders of rules and order think of accountability as a “check and balance” of public administrators power and maintaining

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<sup>5</sup> According to Dovalina , accountability can have several dimensions, including: hierarchy, legal, professional, political, moral, and ethical (2006, 21).

citizen rights (Kassel 2008, 241). When discussing accountability in government, a negative connotation often emerges. Contracting-out in government usually assumes escaping culpability or accountability. The negative connotation focuses on the emphasis to outsource government service, thereby shrinking accountability by placing service on a third party interested only in profit (Whitaker 2004, 115). Government will continue to contract-out to reduce costs and meet public demand; however, the debate continues on whether accountability can be preserved in public contracting (Dovalina 2006, 21). In public contracting, political, hierarchical, and professional aspects of accountability are not adequately captured; for this reason the legal and moral aspects of accountability are usually addressed in the contract stipulations and by creating monitoring and assessment tools (Dovalina 2006, 22; Johnston, Romzek, & Wood 2004, 161).

### *Transparency Considerations*

There is rarely a justification for contracting public dollars in secrecy (Bloomfield 2006, 403). Citizens have the legal right to know the projects government is committing their tax dollars to and the contractors that benefit (Bloomfield 2006, 403; Dovalina 2006, 22). Transparency in procurement and contracting creates the expectation of openness and fairness (White 2007, 189). The literature suggests all the rules, processes, and contracts should be open to public examination and scrutiny. Transparency should extend to how bids are evaluated and awarded (White 2007, 189). Theoretically, all contracting and procurement information is available, but in practice, information can be inaccurate and misleading (Bloomfield 2006, 403). Similar to accountability, the literature suggests transparency has many dimensions, including public finances, safety, open government (Piotrowski and Van Ryzin 2007, 320). Transparency in government is gaining emphasis, yet it is difficult to capture and assign a measurement to transparency (Piotrowski and Van Ryzin 2007, 308,320). A tool to measure the efficacy of transparency in contracting is usually unaddressed in the procurement process.

### *Competitive Considerations*

Competition in contracting aids in assuring that the goods and services being provided to the government are the best value for the capital expended (White 2007, 189). Competitive bidding in government contracting creates an incentive for contractors to provide the best service for the lowest priced, best quality bid or proposal (Bloomfield 2006, 401; Fernandez 2007, 1122). Literature suggests that competition is most evident in local governments than at the state or federal levels (Hefetz and Warner 2004, 175). According to the research, competition among vendors provides a general benefit to the community and the economy as a whole, since tax payer dollars are circulated back into the community (White 2007, 189). The preference toward competitive contracting is one of the most frequently referenced needs in contracting. Ideally, government should strive to award contracts based on a competitive basis. There will be times when competition is not an option; when a service or product is available from a single or sole source, there is no opportunity to compete and an agency must contract with the only available service provider or contractor. Competitive bidding has the potential to break up monopolistic tendencies in contracting and create opportunity for all potential contractors.

### *Complexity Considerations*

One belief is that contracting is a simple, black and white process; however, nothing could be further from the truth (Berrios 2006, 120; Brown and Potoski 2003, 155; Cooper 1980, 460). Contracting is a process that exists in phases; it is not a single action. It is an ongoing process (Hefetz and Warner 2004, 175). Successful contracting requires planning, managing and issuing solicitations, reviewing bids and proposals, selecting contractors, processing awards, and monitoring contract performance. Relationships add to the complexity of contracting. Relationships in contracting exist amongst contract staff, contract staff and contractors<sup>6</sup>, and contractors and subcontractors. The relationships between

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<sup>6</sup> These same relationships exist between contract staff and consultants, as well as consultants and subconsultants in the professional service arena.

government and agencies creates a type of “bi-lateral interdependency” (Lamothe, Lamothe, and Feiock 2008, 30). These relationships are described as relational contracting. Relational contracting emphasizes building partnerships, being non-adversarial in resolving agency-contractor issues, having continual communication, and ultimately establishing trust between all parties involved in the procurement process (Fernandez 2007, 1126; Watt 2005). The use of subcontractors adds another layer to the complexity of contracting (Fernandez 2007, 1129). Agency resources must be allocated to manage subcontractor utilization and contracting issues, especially if the governmental agency has no direct contract with subcontractors. The literature suggests the ultimate goal in building contracting relationships is to engender the trust needed for future collaborations (Watt 2005, 115).

### *Equity Considerations*

Citizens are often attuned to the need for equality in the contracting process in a way that policy makers and public officials may not focus on (Brown, Potoski, and Van Slyke 2006, 324). An administrator’s main focus is usually implementing policy, not focusing on whether the inequities that may arise from the policy. There is a need to ensure that all citizen interactions and transactions with government are fair and equitable (Dovalina 2006, 25). Equality should be included in public service provision, including interaction with contractors. Small, minority-owned and woman-owned businesses are most negatively impacted by contracting. Even though small businesses are awarded government contracts, disproportionately, larger contractors are allotted larger portions of contract, which equates to receiving a larger share of contract dollars (Berrios 2006, 124). The literature suggests that small, minority-owned and woman-owned businesses lack the capital, technical sophistication, and bonding capacity that larger businesses enjoy (Berrios 2006, 124). Alexander discusses the need for diversity of gender and race in contracting (2009, 25).

The literature illustrates that race can play a barrier in participating in procurement. There has been racial discrimination and exclusion in government procurement for ages

(La Noue 1993, 53). The stigma of affirmative action is attached to women, but more specifically to minorities. There is a belief that minorities create “pools of inefficiency” if hired because they are less-skilled and less-efficient workers (Holzer and Neumark 1999, 535, 567). In an effort to combat inequity, increase capacity and capital, and provide equal opportunities to government procurements, some agencies have developed and implemented minority-owned, women-owned, and disadvantaged business programs (Marion 2009, 503; Myers and Ha 2009, 51; Rice 1992, 482; Smith and Fernandez 2010; 88). These types of programs must be supported by evidence of compelling interest and be narrowly tailored to use race-based contracting (Ricucci 2007, 123, 125; Rice 1992, 483). Whether agencies engage in race-based or race-neutral contracting, government must be proactive in including and stressing equity as a part of procurement (Hefetz and Warner 2004, 174).

### *Quality Considerations*

Quality is one of the most difficult and unmeasured aspects of contracting. Unfortunately, quality in government is connected to the concept of going above and beyond one’s regular job description (Joaquin 2007, 3). Additional work does not equate to quality or the accuracy in which tasks are performed. The focus on performing additional work is short-sighted and does not address how quality should be measured in contracting. Government needs an adequate tool to measure the quality of services and goods being provided to the public as well as the quality of the agency’s procurement processes. The literature suggests that some form of quality assurance may aid in capturing these measurements. Quality assurance is defined as the “measure of confidence that....features, practices, and procedures exist that accurately mediates and enforces the...policy” (White 2007, 219). Quality assurance typically exists in the form of written policies, procedures, and practices that govern an agency’s broader policies (White 2007, 219). Literature is lacking in the area of quality related to public contracting. Government’s lack of emphasis on quality and lack of procedures that address quality in contracting illustrates a need to develop an adequate measurement of quality for inclusion in contracts.

### *Monitoring and Oversight Considerations*

Monitoring and oversight is the most important aspect of contracting because it is necessary in every phase of procurement. Contracts are not self-enforceable items and government is doing an inadequate job of enforcement (Fredrickson 2000, 5). Monitoring is defined as the formal or informal review of contractor practices, performance, and spending cost (Johnston, Romzek, and Wood 2004, 162). Monitoring tools may take the form of checklists, audits, inspections, or formal evaluations (Johnston, Romzek, and Wood 2004, 162; Siegel 1999, 372). In government, if monitoring is emphasized at all, it typically occurs after a contract has been awarded. The literature suggests that monitoring should not be relegated to the “back-end” of contracting; monitoring needs to begin as early as specification development (Hefetz and Warner 2004, 175).

Monitoring is needed in order to keep a contractor’s performance on track, improve upon a contractor’s past performance and behavior, and ensure the fulfillment of contractual obligations (Fernandez 2007, 1125). Public administrators understand the need for monitoring and oversight, but are often reticent to implement it. There are several reasons for their reticence. First, monitoring is extremely expensive. Some suggest monitoring may consume as much as twenty percent of contracting costs (Hefetz and Warner 2004, 175). Monitoring also requires adequate specialized staff. Performance monitoring and review is essential to evaluating whether a contractor is abiding by the responsibilities defined in the contract.

### **Conceptual Framework**

Evidence points to the fact that governmental contracting will continue. Government will continue to feel pressed to meet the increased public service demand while budgets stagnate or decline. Public service provision may take the form of in-house provision, contracting with for-profit firms, contracting with non-profits, or entering into interlocal agreements with other governing agencies. Regardless of the body providing the service, the standard of provision should remain the same.

The conceptual framework associated with this research is the practical ideal type. The practical ideal type serves as a standard or reference point in comparison for reality (Shields, 1998, 215). The practical ideal type framework for this research functions as a model to gauge the effectiveness of the City of Austin's procurement program (Shields and Tajalli 2005, 26). The framework is developed based on common characteristics identified through a review of the literature. The characteristics are illustrated in Table 2.1.

Ethical considerations are the first characteristic in the ideal type. Contracting professionals should be held to a higher standard of ethical behavior because of their routine interaction with sensitive documentation (Sorber and Straight 1995, 376). Ethics can be implemented into procurement by observing integrity laws and regulations, including conflicts of interest, and creating written policies and implementing processes that discourage bribery, fraud, waste, abuse of power (Sorber and Straight 1995, 377; White 2007, 189). Adherence to contracting law and regulations should be observed by all parties involved in the procurement process in an effort to preserve public trust.

An effective procurement program should also address accountability. The core function of government is to provide citizens with the services they request. Everyday politics creep into the contracting process and threaten the decisions of policy makers to contract based on public interest. For-profit, non-profit, or interlocal service provision aside, government has been tasked with stewarding public dollars and contracting for the community's necessary services. Public agencies will never escape the responsibility of accountability to citizens and the community (Morgan and England 1988, 79).

Transparency is also an ideal characteristic of a model procurement program. Citizens should always have open access to government business (Bloomfield 2006, 403). Public officials and staff alike should be prepared for citizen requests for information. The call for transparency in government is resonating from both general citizens and so called transparency experts (Piotrowski and Van Ryzin 2007, 309). The use of websites, open meetings, and open record requests will aid agencies in responding to the call for transparency (Piotrowski and Van Ryzin, 308).

Competition in government contracting should be standard practice, unless services are only available via sole-source. Competition is the tool that allows the government to receive service based on best-value to the organization. Efficiency and equality prevails when contractors compete against each other to supply service (Bloomfield 2006, 401). Combating monopolistic tendencies works in favor of government and aids in sustaining the reputation of the public procurement process.

The fifth element of an ideal model of a procurement program should address the complexity of the process. Contracting does not exist in a vacuum. It is a dynamic process with a myriad of moving parts and players. Complexity may be addressed by defining the roles of the contractor and agency in the contract documents and having written policies and processes for contracting staff. These steps help to ensure all parties' understanding of applicable standards and laws (Brown, Potoski, and Van Slyke 2006, 325).

Equity is also a core value of an ideal procurement program. The changing demographics are steering government toward diversity and inclusion (Ricucci 2007, 136). Equity can be in the form of government providing the same level and type of service and information to contractors. The issue of equity should be in the forefront of public administrators' minds because all citizens are entitled to equal treatment regarding service provision and interaction with government (Dovalina 2006, 25, 26). Agencies may also incorporate programs to address past and present discrimination in the contracting practices of government by developing and implementing small business programs or race and gender based minority-owned and Women-Owned business programs (Marion 2009, 503; Rice 1992, 482).

Another important government procurement program characteristic is quality. Quality is seldom addressed in the contracting process and in the literature, but warrants significant attention. In light of the current skepticism of government, the inability to monitor the quality of service provision and the quality of processes related to procurement is unacceptable. Government must redefine its concept of quality and institute some form of quality review measurement for contracting practices and policies (Joaquin 2007, 3; White 2007, 219).

Finally, an effective government procurement program should include contract monitoring and oversight. Monitoring is often lacking in public contracting processes because of the high costs associated with staffing and financial resources (Hefetz and Warner 2004, 175). Monitoring brings exemplary contractor performance or poor contractor performance to the forefront. Monitoring should take into account the specified roles and responsibilities designated in the contract for both the government agency and the contractor.

The ideal procurement program cannot exist if any of the characteristics are absent. There are a host of additional factors that could be included to develop a model procurement program; however, the items discussed constitute the foundational concepts, regardless of the level of government. The City of Austin has a very progressive contracting program and is an exemplary agency to gauge against the practical ideal framework. The next chapter will describe the setting for the City of Austin procurement program.

**Table 2.1:** Conceptual Framework of Government Procurement Programs

Ideal Type Categories	Sources
<p><b>Ethical Considerations</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures to secure the submittal of bids and proposals.</li> <li>▪ The program should have written policies and procedures to ensure contracts are awarded in accordance with federal and state regulations and/or municipal ordinances.</li> <li>▪ The program should have written policies and procedures banning gift giving to staff.</li> <li>▪ The program should have written policies and procedures emphasizing the importance of integrity in public procurement.</li> <li>▪ The program should have written policies and procedures restricting contractor deviation from organizational processes and procurement regulations.</li> <li>▪ The program should have written policies and procedures that discuss ethical dilemmas associated with public contracting.</li> </ul>	<p>Berrios 2006; Brown 2006; Cooper 1980; Dovalina 2006; Siegel 1999; Watt 2005, White 2007</p>
<p><b>Accountability Considerations</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures acknowledging the organization as the stewards of the community’s public dollars.</li> <li>▪ The program should have written policies and procedures stating the organization is tasked with serving and protecting public interest.</li> <li>▪ The program should have written policies and procedures stating the use of contractors and subcontractors to provide public service does not absolve the agency from accountability to the citizens.</li> <li>▪ The program should have written policies and procedures that contract awards and contract execution utilizing public dollars be based on citizen priorities.</li> <li>▪ The program should have written policies and procedures stating that contracts for services and goods to support and improve public health, safety, and quality of life.</li> </ul>	<p>Boyne 1998b; Bower 1993; Brown, Potoski, &amp; Van Slyke 2006; Dovalina 2006; Fernandez, Ryu, &amp; Brudney 2008; Hefetz &amp; Warner 2004; Johnston, Romzek, &amp; Wood 2004; Lempert 1997; Marvel 2007</p>

**Table 2.1:** *continued*

Ideal Type Categories	Sources
<p><b>Transparency Considerations</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures to communicate contract information to citizens.</li> <li>▪ The program should have written policies and procedures that provide an avenue for citizens to voice complaints regarding the procurement process. The program should have written policies and procedures to respond to citizen inquiries on contract amounts and utilization.</li> <li>▪ The program should have written policies and procedures detailing all information regarding total contracting costs.</li> </ul>	<p>Bloomfield 2006; Dovalina 2006; Kassel 2008; Whitaker 2004, White 2007</p>
<p><b>Competitive Considerations</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures detailing how to follow statutes related to government procurement.</li> <li>▪ The program should have written policies and procedures stating how contracts are awarded based on best value for the organization.</li> <li>▪ The program should have written policies and procedures on the use of competitive bidding in the form of IFBs, RFQs, RFPs, and alternate delivery methods.</li> </ul>	<p>Bloomfield 2006; Boyne 1998b; Bower 1993; Brudney, Fernandez, &amp; Ryu 2005; Fernandez 2007; Joaquin 2007, White 2007</p>
<p><b>Complexity Considerations</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures in the form of a procurement procedural manual.</li> <li>▪ The program should have written policies and procedures that define the roles and responsibilities for all parties involved in the contracting process.</li> <li>▪ The program should provide training to all staff involved in the contract process.</li> </ul>	<p>Bloomfield 2006; Bovaird 2006; Brudney, Fernandez, &amp; Ryu 2005; Brown &amp; Potoski 2003; Brown, Potoski, &amp; Van Slyke 2008; Cooper 1980; Dovalina 2006; Fernandez 2007; Fernandez, Ryu, &amp; Brudney 2008; Joaquin 2007; Johnston, Ryu, &amp; Wood 2004; Kassel 2008, White 2007</p>

**Table 2.1:** *continued*

Ideal Type Categories	Sources
<ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures detailing the requirements of utilizing subcontractors and subconsultants to provide public services.</li> <li>▪ The program should have a written policies and procedures to address risk-sharing between the agency and the contractor/consultant performing on projects.</li> </ul>	
<p><b>Equity Considerations</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures to provide all citizens with the same contracting information.</li> <li>▪ The program should have a written policies and procedures to allow both small and large contractors to perform as Prime Contractors/Prime Consultants on projects.</li> <li>▪ The program should have a program or written policies and procedures to include small businesses, and minority &amp; Women-Owned businesses in contracting.</li> <li>▪ The program should have written policies and procedures that do not allow discrimination in contracting.</li> </ul>	<p>Berrios 2006; Brown, Potoski, &amp; Van Slyke 2006; Boyne 1998b; Denes 1997; Dovalina 2006; Godell 1971; Hefetz and Warner 2004; Holzer and Neumark 1999; La Noue 1993; La Noue 1995; Marion 2009; Siegel 1999</p>
<p><b>Quality Considerations</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures to monitor quality control and quality assurance in the contracting process.</li> <li>▪ The program should have written policies and procedures to measure the quality of service delivered by contractors/consultants.</li> <li>▪ The program should have a written policies and procedures to track and monitor the quality of service or good provided by contractors/consultants.</li> </ul>	<p>Alexander 2009; Brown, Potoski, &amp; Van Slyke 2006; Brudney, Fernandez, &amp; Ryu 2005; Fredrickson 2000; Hefetz and Warner 2004; Joaquin 2007; Lowrey 1982</p>

**Table 2.1:** *continued*

Ideal Type Categories	Sources
<p><b>Monitoring &amp; Oversight</b></p> <ul style="list-style-type: none"> <li>▪ The program should have written policies and procedures to monitor contracting activities at every phase of procurement.</li> <li>▪ The program should include staff dedicated to the contract monitoring and oversight.</li> <li>▪ The program should include staff experienced in contract procurement and contract administration.</li> <li>▪ The program should have written policies and procedures mandating employee training on procurement regulations and applicable updates.</li> <li>▪ The program should have written policies and procedures to track contractor/consultant performance as part of contract compliance.</li> <li>▪ The program should have written policies and procedures to use legal recourse for contractor/consultant non-compliance or breach of contract.</li> </ul>	<p>Berrios 2006; Brown &amp; Potoski 2003; Dilger, Moffett, &amp; Struyk 1997; Dovalina 2006; Fernandez, Ryu, &amp; Brudney 2008; Fernandez 2007; Fredrickson 2000; Marvel 2007, White 2007</p>

## Chapter III: Setting – The City of Austin

### Chapter Purpose

This chapter describes the procurement processes and practices for the City of Austin. The chapter discusses the departments tasked with the role of administering the different functions in the City's procurement process.

### City of Austin Procurement



Figure 3.1 – City of Austin, City Hall Building

Austin, as the capital of Texas, is immersed in governmental functions. The State of Texas and the City of Austin are two of the largest employers alone in Austin. Both are heavily invested in providing procurement and contracting resources financially and through staff allocation. While both are regulated by state contracting law, the setting for this research will be the City of Austin.

Austin is a hub of activity and is fed by a thriving economy. Austin touts a very politically savvy and engaged community. Citizens are proactive about the environment as well as the economy, including procurement opportunities. In an effort to satisfy public demand and inquiry, the City of Austin has a proactive and complex procurement process that is primarily managed by the City's Purchasing Office

and the Contract and Land Management Department.<sup>7</sup> It takes the combined efforts of staff from the sponsoring departments, the procurement departments, and the project management department to successfully procure the services needed to erect facilities and to repair or construct infrastructure that maintains or adds to the quality of life of the Austin community.



Figure 3.2 – Dittmar Bridge<sup>8</sup>



Figure 3.3 – Cesar Chavez Two-Way Conversion Project

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<sup>7</sup> As of July 10, 2010, the City of Austin had 3, 160 active contracts, which accounted for approximately \$2.7 billion dollars. This information is available in the City Auditor’s 2010 Performance Audit of Citywide Contract Management.

<sup>8</sup> Photos for Figures 3.1, 3.2, 3.3, 3.4, and 3.5 provided from the City of Austin Public Works website.



Figure 3.4 – Austin Resource Center for the Homeless (ARCH)



Figure 3.5 – Pfluger Bridge

### *Purchasing Office*

Annually, the City of Austin contracts on average \$250 million in competitive awards (City of Austin 2010). Competitive awards are those that are issued using a solicitation process such as Invitation for Bid, Request for Proposals, Request for Qualifications, and Competitive Sealed Proposals. The City of Austin Purchasing Office is delegated with procurement authority for acquiring City goods and non-professional services.<sup>9</sup> The Purchasing Office handles all registration of vendors desiring to work with the City. Purchasing staff creates and is the central repository of financial contract award data. In

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<sup>9</sup> Non-professional services are those services not requiring professional licensing, such as consulting and temporary employment services. Goods are considered commodity purchases and can include a range of items such as uniforms, vehicles, or hot mix.

addition to those duties, Purchasing is tasked with creating solicitation advertisements through local print media for construction, professional services, non-professional services, and commodities<sup>10</sup>.

### *Contract and Land Management Department*

Contract and Land Management (CLMD), is tasked with facilitating procurement associated with capital project delivery for the City's construction and construction-related services projects, including professional services (City of Austin 2010).<sup>11</sup> For construction and professional service projects, the Contract and Land Management Department, reviews the responsiveness of bidders and the qualifications for all responsive proposers.<sup>12</sup> While the Purchasing Office and Contract and Land Management focus on different aspects of contracting, they do share some commonality of duty. It is the responsibility of both the Purchasing Office and Contract and Land Management to administer the solicitation process from issuance to contract execution. Both serve as "authorized contact" persons while active solicitations are in the City's "No-Contact" Period.<sup>13</sup> Contract and Land Management has a dedicated staff of 38 full-time employees who work in the contract procurement, program management, and administrative capacities for City capital improvement projects. The City of Austin is different from most governmental agencies in the nation, in that there is a dedicated program with dedicated staff that administer a Minority-Owned and Women-Owned Business Enterprise Procurement Program.

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<sup>10</sup> The City of Austin categorizes its procurements into 4 categories: Construction, Non-Professional Services, Professional Services, and Commodities. Every Monday, new solicitations are advertised in the Austin American Statesman. (City of Austin SMBR and Purchasing Office Websites)

<sup>11</sup> Capital project departments typically include City of Austin Public Works, Austin Water Utility, Austin Energy, Aviation, Parks and Recreation, Aviation, Transportation, Watershed Protection.

<sup>12</sup> Responsiveness checks for construction include reviewing insurance requirements, Non-Discrimination Disclosures, past project experience, safety records, etc. Responsiveness checks for professional services include

<sup>13</sup> The City of Austin has an Anti-Lobbying Ordinance. Established in the ordinance is a "no-contact" period. That period begins when a solicitation is let until a contract has been executed. Contact with any City staff, City Official, or City Board member other than the Authorized Contact Person will result in a bid or response being rejected. (City of Austin Contract and Land Management Website)

*SMBR – Minority-Owned and Women-Owned Business Enterprise Procurement Program*

The City’s Minority-Owned and Women-Owned Business Enterprise (MBE/WBE) Procurement Program is an affirmative action program.<sup>14</sup> The program is authorized by City Council per the MBE/WBE Procurement Program Ordinance.<sup>15</sup> The program is administered by the Small & Minority Business Resources Department (SMBR), which has a staff of 28 full-time employees.<sup>16</sup> The mission of the department is to administer this specific procurement program in addition to providing development opportunities and resources to small businesses in order to have affirmative access to the City of Austin’s contracting opportunities. For every solicitation over \$53,000 issued by the City of Austin, SMBR reviews the scopes of work and the availability of City certified MBE and WBE firms to determine if goals should be set on the solicitation.<sup>17</sup> Typically, for projects with a single scope of work and no certified firm availability, goals will not be set; the Sponsor Department will request approval of the project as a “No-Goals”. For construction, professional service, and at times Non-Professional projects,

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<sup>14</sup> MBE and WBE programs are a result of the 1989 Supreme Court case *City of Richmond v. J.A. Croson Co.* The case held that local governments could redress racial discrimination in contracting if it could demonstrate a compelling governmental interest to be remedied and that the remedy had to be narrowly tailored. Programs that are race-conscious have a two-prong test: compelling interest and narrow tailoring. (City of Austin MBE/WBE Procurement Program Ordinances 2-9A-D)

<sup>15</sup> The MBE/WBE Procurement Program Ordinance is divided into 4 distinct ordinances: 2-9A Construction; 2-9B Professional Services; 2-9C Non-Professional Services; and 2-9D Commodities. The MBE/WBE Procurement Program does not exist in perpetuity; Council authorizes the operation of the program for a term of 4-5 years, with a Sunset date. Sunset of the program is the official expiration of the program, unless reauthorized by City Council. (City of Austin MBE/WBE Procurement Program Ordinance; Race, Sex and Business Enterprise: Evidence from the City of Austin (Disparity Study))

<sup>16</sup> Staff is divided into Certification and Compliance Divisions. Certification staff certifies qualifying MBE, WBE, and DBE businesses based on SBA size standards, the MBE/WBE Ordinance Procurement Program Ordinances/Rules, and 49 CFR Part 26 regulations. (City of Austin SMBR Website)

<sup>17</sup> \$52,000 is the dollar threshold for the City of Austin City Manager’s Administrative Authority. Solicitations under this amount may be awarded “administratively” by departments and do not require City Council approval. Scopes of work are established by the projects Sponsoring Department and the Project Manager, whether departmentally managed or managed by the City’s Public Works Project Management Division. Availability is based on the number of certified MBE/WBE firms registered with the City. (City of Austin Purchasing Office Website and City of Austin SMBR SharePoint Site)

goals are determined based on a review of the scopes of work, MBE/WBE availability, and estimated project cost.<sup>18</sup>

A MBE/WBE Compliance Plan Packet is created and issued with each solicitation.<sup>19</sup> Potential bidders and responders are required to submit the compliance plan as a part of the bid and response. Firms that fail to submit this documentation are ruled non-responsive and are not reviewed for award. Firms that fail to meet the goals or sub-goals of the solicitation or fail to provide a demonstration of Good Faith Effort to meet the solicitation goals or sub-goals are deemed non-compliant and are rejected.<sup>20</sup> The City Council also appoints citizens to serve in an advisory capacity to SMBR, in addition to three Council members serving on a Council subcommittee for MBE/WBE issues.<sup>21</sup> Often contractors and at times City staff fail to understand the necessity and legal rationale for having such a program. Some argue such a program is more of a “quota” system than one that sets “aspirational” goals. Some argue that MBE/WBE procurement requirements are an obstacle to issuing and awarding projects. Still others argue that those MBE/WBE firms who perform on the projects are unqualified to do such. Regardless, City Council

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<sup>18</sup> The City of Austin engages in a Disparity Study every 4-5 years to determine if disparity in contracting continues to exist in its marketplace (the state of Texas). During this review, Annual MBE/WBE Participation goals and Ethnic Specific Participation sub-goals, are established for construction, professional, non-professional, and commodity solicitations. SMBR also has the ability to set project specific ethnic sub-goals on solicitations. (City of Austin MBE/WBE Procurement Program Ordinances 2-9A-D)

<sup>19</sup> The compliance plan is a document for Prime Contractors and Consultants to list the subcontractors and subconsultants that will be utilized on projects. For “No-Goals” projects, Primes are required to submit a MBE/WBE Utilization Form, if subcontracting opportunities are identified (this serves the same purpose as the compliance plan).

<sup>20</sup> During the review of bids and proposals, CLMD and SMBR work collaboratively to determine responsiveness and compliance. Firms that are deemed non-responsive and/or non-compliant have the option to appeal the decision. SMBR and CLMD staffs attend appeals hearings. Appeals are heard by and final decisions are made by an Independent Hearing Officer.

<sup>21</sup> Citizens, business-owners, both certified and non-certified, and representatives from local trade associations are appointed by Council to serve on the MBE/WBE and Small Business Advisory Committee. Three City Council members serve on the MBE/WBE and Small Business Advisory Council Subcommittee. Mayor Pro Tem, Mike Martinez, Council Member Sheryl Cole and Council Member Randi Shade are the current members. (City of Austin City Clerk Office Website – Boards and Commissions)

understands the mission of the department and program and continues to support the mission of the program and staff in its administration of the program.

## **Chapter IV: Methodology**

### **Chapter Purpose**

This chapter describes the research methodology used to assess how the City of Austin procurement program measures in comparison to this study's ideal type procurement characteristics. The eight characteristics identified in the ideal government procurement model, will be used to direct the collection of data to assess the City of Austin's procurement program. Each characteristic will be assessed using specific research methodology. The chapter also discusses the operationalization of the conceptual framework as well as examining the advantages and disadvantages of utilizing a case-study as this study's research model.

### **Research Method**

A case study is the selected methodology for this paper. Case studies are used in research to understand organizational, social, and political occurrences (Yin 2009, 4). Case studies may also be utilized when there is a pronounced need to understand complex situations (Yin 2009, 4). A single case study is also appropriate when a rare or unique situation exists (Ley 2002, 35). While all governments have some form of procurement program, the City of Austin is rare in that it devotes numerous dedicated full-time staff to procurement and in that it has a race-conscious Minority-Owned Business Enterprise and Women-Owned Business Enterprise Procurement Program, while most agencies operate race-neutral programs. Case study methodology does not use one distinct formula, but uses several research techniques in one study. Sources of data for case studies may include documents, interviews, archival records, or even direct observation (Yin 2009, 101)<sup>22</sup>. The use of many different sources of evidence is an enormous strength of case studies. The process of incorporating various forms of data into a case study is called triangulation (Yin 2009, 114).

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<sup>22</sup> Documentation, archival records, interviews, direct observation, participant-observation, and physical artifacts are the most common forms of case study data sources; however the list is vast.

Case studies also have inherent weaknesses. Case studies use a wide range of methods to collect data and can be problematic if the investigator is seeking to avoid a specific occurrence. If a particular outcome is desired and data is suppressed or skewed, case studies can occur at an abstract level and lack clear measurement (Yin 2009, 50). The nature of case studies can also allow for the research to shift unbeknownst to the researcher (Yin 2009, 52). The weaknesses identified will be addressed in the City of Austin case study by following case study methodology and utilizing the practical ideal framework. For this research, the City of Austin's procurement program is the "case". This case study uses document analysis and structured interviews data collecting techniques.

### **Operationalizing the Conceptual Framework**

**Table 4.1** summarizes the link between the conceptual framework, the methods for collecting data, data collected, and data sources. The items used for the operationalization of the framework will provide an assessment of the City of Austin's procurement program. One focus of the research is to determine what is being analyzed (unit of analysis) and the method in which data was collected. For this paper, the City of Austin's procurement program is being analyzed, and the sources of evidence are document analysis and structured interviews. **Table 4.1** illustrates the operationalization of the conceptual framework. Since the research is the practical ideal type, only descriptive statistics are utilized in this study.

**Table 4.1:** Operationalization of the Conceptual Framework

Ideal Type Categories	Research Method	Evidence	Sources
<b>Ethical Considerations</b>			
The program should have written policies and procedures on securing the submittal of bids and proposals.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and processes describing how contractor bids and consultant proposals are secured?</li>   <li>▪ How does the City of Austin secure contractor and consultant bids?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA Ethics in Professional Service Consultant Selection Training</li> <li>▪ CLMD Standard Operating Procedures</li>   <li>▪ CLMD Standard Operating Procedures</li> </ul>
The program should have written policies and procedures to ensure contracts are awarded in accordance with federal, state, and local regulations.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and processes describing how bids are awarded and how proposals are selected?</li> <li>▪ How does the City of Austin award contracts based on bid or proposal submission?</li> <li>▪ How does the City of Austin ensure contracts are awarded in compliance with federal, state, and local regulations?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> </ul>

**Table 4.1:** *continued*

Ideal Type Categories	Research Method	Evidence	Sources
<i>Ethical Considerations continued</i>			
The program should have written policies and procedures banning gift giving to staff.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policy and procedures banning gift giving to employees? If so, what types of gifts or favors are banned?</li> <li>▪ If the City of Austin has a written policy banning gift giving, is the policy applicable to all employees?</li>   <li>▪ If the City of Austin has a written policy and procedure banning gifts, what is the purpose of the policy?</li>   <li>▪ If the City of Austin has written policies and procedures banning gift giving, is the policy applicable to all employees? If it applies to all employees, why?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA Ethics Training Handouts</li> <li>▪ CLMD Ethics in Professional Service Consultant Selection Training Handbook</li>   <li>▪ COA Ethics Training Handouts</li> </ul>
The program should have written policies and procedures that detail how to maintain integrity in public contracting.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies detailing how to maintain integrity in public contracting?</li> <li>▪ If the City of Austin has written policies and procedures related to maintaining integrity in public contracting, how is integrity maintained?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA Ethics Training Handouts</li> <li>▪ CLMD Standard Operating Procedures</li> </ul>

**Table 4.1:** *continued*

<b>Ideal Type Categories</b>	<b>Research Method</b>	<b>Evidence</b>	<b>Sources</b>
<i>Ethical Considerations continued</i>			
<p>The program should have written policies and procedures restricting contractor and consultant deviation from organizational processes and procurement regulations.</p>	<p>Document Analysis</p>	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures restricting contractor and consultant deviation from organizational processes and procurement regulations?</li> <li>▪ If the City of Austin has written policies and processes restricting contractor and consultant deviation from organizational processes, how does the City of Austin restrict contractor behavior?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Ethics in Professional Service Consultant Selection Training</li> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Ethics in Professional Service Consultant Selection Training</li> </ul>
<p>The program should provide training for staff to illustrate examples of ethical dilemmas in public contracting.</p>	<p>Document Analysis</p>	<ul style="list-style-type: none"> <li>▪ Does the City of Austin provide ethics training for employees? If so, is the training mandatory?</li> <li>▪ If the City of Austin provides ethics training, does the training provide examples of ethical dilemmas? Are any of the ethical dilemma examples provided related to contracting?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA Ethics Training</li> <li>▪ COA Ethics in Professional Service Consultant Selection Training</li> <li>▪ COA Ethics Training</li> <li>▪ COA Ethics in Professional Service Consultant Selection Training</li> </ul>

**Table 4.1:** *continued*

<b>Ideal Type Categories</b>	<b>Research Method</b>	<b>Evidence</b>	<b>Sources</b>
<b>Accountability Considerations</b>			
The program should have written policies and procedures acknowledging the organization as the stewards of the community’s tax dollars.	Document Analysis  Structured Interviews	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures acknowledging the City as stewards of the community’s tax dollars?</li>   <li>▪ Does the City of Austin act as stewards of the community’s tax dollars? If so, how?</li> </ul>	<ul style="list-style-type: none"> <li>▪ City of Austin Charter</li>   <li>▪ Interviews with CLMD and Purchasing Executive</li> </ul>
The program should have written policies and procedures stating the organization is tasked with serving and protecting public interest.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin serve and protect public interest? If so, how?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA Charter</li>   <li>▪ CLMD Standard Operating Procedures</li> </ul>
The program should have written policies and procedures stating the use of contractors and subcontractors to provide public service does not absolve the City from accountability to the citizens.	Structured Interviews  Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin incorporate accountability to citizens into the contracting process? If so, how?</li>   <li>▪ Does the City of Austin have written policies and procedures stating the use of contractors and subcontractors does not absolve the City from accountability to the citizens?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interviews with CLMD and Purchasing Executive</li>   <li>▪ COA Charter</li> <li>▪ COA Standard Contract Documents</li> <li>▪ COA MBE/WBE Procurement Program Ordinance 2-9</li> <li>▪ COA Project Manager Manual</li> </ul>



**Table 4.1:** *continued*

Ideal Type Categories	Research Method	Evidence	Sources
<i>Transparency Considerations continued</i>			
The program should have written policies and procedures detailing avenues for citizens to voice complaints regarding the procurement process.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures describing the process for citizen complaints regarding the procurement process? If so, what is the process?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> </ul>
The program should have written policies and procedures regarding the process to answer citizen inquiries related to contractor utilization and contract amounts.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures regarding the process of answering citizen inquiries related to contractor utilization and contract amounts? If so, what is the process?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Purchasing Manual</li> <li>▪ COA Anti-Lobbying Ordinance</li> </ul>
The program should have written policies and procedures regarding the provision of information for total contracting costs.	Document Analysis  Structured Interviews	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures regarding the provision of information for total contracting costs? If so, how?</li> <li>▪ What factors are included in the total cost of COA contracting?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ Interviews with CLMD and Purchasing Executive</li> </ul>
The program should have written policies and procedures regarding the process to answer citizen inquiries related to contractor utilization and contract amounts.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures regarding the process of answering citizen inquiries related to contractor utilization and contract amounts? If so, what is the process?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Purchasing Manual</li> <li>▪ COA Anti-Lobbying Ordinance</li> </ul>





**Table 4.1:** *continued*

<b>Ideal Type Categories</b>	<b>Research Method</b>	<b>Evidence</b>	<b>Sources</b>
<b><i>Competitive Considerations continued</i></b>			
	Document Analysis	<ul style="list-style-type: none"> <li>▪ Are most City of Austin solicitations issued using IFBs, RFQs, or RFPs?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA eCapris system</li> </ul>
<b>Complexity Considerations</b>			
The program should have written policies and procedures in the form of a procurement procedural manual.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have a written procurement procedural manual?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Purchasing Manual</li> </ul>
The program should have written policies and procedures defining the roles and responsibilities for all parties involved in the contracting process.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written processes outlining all procurement staff and contractor and consultant responsibilities?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Purchasing Manual</li> <li>▪ COA Charter</li> <li>▪ COA MBE/WBE Procurement Program Ordinance 2-9</li> </ul>
The program should provide training to staff related to every phase of the contract process.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin provide training to staff related to every phase of the contracting process? If so, how is it provided? Is training mandatory?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA Project Manager Academy</li> <li>▪ COA Purchasing Training</li> <li>▪ COA SMBR Procurement Program Training</li> </ul>



**Table 4.1: continued**

Ideal Type Categories	Research Method	Evidence	Sources
<i>Equity Considerations continued</i>			
	Structured Interviews	<ul style="list-style-type: none"> <li>▪ How does the City of Austin ensure all citizens have the same access to contracting information?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interviews with CLMD, Purchasing, and SMBR Executive</li> </ul>
<p>The program should have written policies and procedures that allow both small and large contractors to perform as Prime Contractors/Prime Consultants on projects.</p>	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures that allow both small and large contractors to perform as prime and subcontractors on City projects?</li> </ul>	<ul style="list-style-type: none"> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Purchasing Manual</li> <li>▪ COA Project Manager Manual</li> <li>▪ SMBR Standard Operating Procedures</li> </ul>
<p>The program should have written policies and procedures or a specific program focused on the inclusion of small businesses, and minority &amp; Women-Owned businesses in contracting.</p>	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures or a specific program targeting small business and minority and Women-Owned business contracting?</li> <li>▪ Does the City of Austin address inclusion and diversity into its contracting process? If so, how?</li> </ul>	<ul style="list-style-type: none"> <li>▪ SMBR Standard Operating Procedures</li> <li>▪ COA MBE/WBE Procurement Program Ordinance 2-9</li> <li>▪ SMBR Standard Operating Procedures</li> <li>▪ COA MBE/WBE Procurement Program 2-9</li> <li>▪ COA Solicitation Documents</li> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA MBE/WBE Advisory &amp; Subcommittee meeting minutes</li> </ul>

**Table 4.1:** *continued*

<b>Ideal Type Categories</b>	<b>Research Method</b>	<b>Evidence</b>	<b>Sources</b>
<b><i>Equity Considerations continued</i></b>			
	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have a program specifically targeted toward small businesses, minority-owned, and Women-Owned businesses? If so, how are these businesses included into the City’s contracting process?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA MBE/WBE Procurement Program 2-9</li> <li>▪ SMBR Operating Procedures</li> <li>▪ Interview with SMBR Executive</li> </ul>
	Document Analysis/ Structured Interview	<ul style="list-style-type: none"> <li>▪ Does the City of Austin prohibit any size business from performing as a prime or sub on a project?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA MBE/WBE Procurement Program 2-9</li> <li>▪ SMBR Operating Procedures</li> <li>▪ Interview with SMBR Executive</li> </ul>
	Structured Interview	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have a process to transition subcontractors to the prime contractor function?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interview with SMBR Executive</li> </ul>
The program should have a process that does not allow discrimination in contracting.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have a non-discrimination policy? Is there a stipulation for non-discrimination in contracting? If so, what are the requirements?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA MBE/WBE Procurement Program 2-9</li> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA Standard Contract Documents</li> </ul>
<b>Quality Considerations</b>			
The program should have a process to measure the quality of service delivered by contractors and consultants.	Document Analysis/ Structured Interview	<ul style="list-style-type: none"> <li>▪ Does the City of Austin measure quality in services delivered by contractors and consultants? If so, how is it measured?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interview with CLMD Executive</li> <li>▪ COA Standard Contract Documents</li> </ul>

**Table 4.1:** *continued*

<b>Ideal Type Categories</b>	<b>Research Method</b>	<b>Evidence</b>	<b>Sources</b>
<b><i>Quality Considerations continued</i></b>			
The program should have a process to review the quality of the contracting process (i.e. monitor addenda, errors in solicitations, etc.)	Structured Interview	<ul style="list-style-type: none"> <li>▪ How does the City of Austin review the quality of its contracting process?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interview with CLMD and Purchasing Executive</li> </ul>
<b>Monitoring/Oversight Considerations</b>			
The program should have written policies and processes related to monitoring contracting activities at every phase of procurement.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and processes related to monitoring contracting activities at each phase of procurement?</li> <li>▪ Does the City of Austin utilize a standard contract document?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA Standard Contract Documents</li> <li>▪ CLMD Standard Operating Procedures</li> <li>▪ COA SMBR Standard Operating Procedures</li> <li>▪ COA Project Manager Manual</li> <li>▪ CLMD Standard Contract Documents</li> <li>▪ COA Purchasing Standard Contract Documents</li> </ul>
The program should allocate dedicated staff specifically for contract monitoring and oversight.	Document Analysis	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have staff specifically dedicated to contract monitoring and oversight? If so how many staff?</li> </ul>	<ul style="list-style-type: none"> <li>▪ COA SMBR Internal documents</li> <li>▪ CLMD Internal documents</li> <li>▪ COA Purchasing Internal documents</li> <li>▪ COA Internal Project Management documents</li> </ul>

**Table 4.1:** *continued*

Ideal Type Categories	Research Method	Evidence	Sources
<b><i>Monitoring/Oversight Considerations continued</i></b>			
The program should include staff experienced in contract procurement and contract administration.	Structured Interviews	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have experienced staff in contract procurement and contract administration? If so what skills does staff need to effectively perform the function?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interviews with CLMD, SMBR, and Purchasing Executive</li> </ul>
The program should have written policies and procedures mandating employee training on procurement regulations and applicable updates.	Structured Interviews	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have a written policy or process that mandates employee training related to procurement regulation/applications and contract law? If so how often is the training required? Who is required to attend training?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interviews with CLMD, SMBR, and Purchasing Executive</li> </ul>
The program should have written policies and processes related to tracking contractor and consultant performance as part of contract compliance.	Structured Interviews	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have a written policy and procedure related to tracking contractor and consultant performance as part of the contract compliance? If so how is performance tracked and what is tracked?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interviews with CLMD, SMBR, and Purchasing Executive</li> </ul>
The program should have written policies and procedures regarding the use of legal recourse for non-compliance or breach of contract.	Document Analysis/ Structured Interview	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have written policies and procedures on the use of legal recourse in contracting? If so, when is legal recourse utilized?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interview with CLMD Executive</li> <li>▪ COA Solicitation documents</li> <li>▪ COA Standard Contract Documents</li> </ul>
	Structured Interviews	<ul style="list-style-type: none"> <li>▪ Does the City of Austin have legal staff to review contracts? If so, what does legal staff review in a contract?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interviews with CLMD and Purchasing Executive</li> </ul>

**Table 4.1:** *continued*

Ideal Type Categories	Research Method	Evidence	Sources
<i>Monitoring/Oversight Considerations continued</i>			
	Structured Interviews	<ul style="list-style-type: none"> <li>▪ What legal recourse does the City of Austin have related to contracting?</li>   <li>▪ Does the City ever utilize its legal recourses?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Interviews with CLMD and Purchasing Executive</li>   <li>▪ Interviews with CLMD and Purchasing Executive</li> </ul>

**Document Analysis**

Document analysis is one of the two research methods selected for this case study. According to Yin, “the most important use of documents is to corroborate and augment evidence from other sources” (Yin 2009, 103). Document analysis brings certain strengths to research. First, it is non-volatile; information can be reviewed repeatedly (Yin 2009, 102). Documents are also broad and cover extended periods of time (Yin 2009, 102). Document analysis does have some weaknesses including irretrievability, the reporting bias of the originating author, and accessibility issues, if documents are purposely withheld (Yin 2009, 102). Document analysis will be utilized to assess all of the identified categories in the conceptual framework. Document analysis is helpful in this instance because policies, procedures, ordinances, council action items, public solicitations, and other decisions are available in the form of documents. These documents allow the review of historical practices as well as any evolution the program has undergone.

### *Sample: Document Analysis*

The document analysis of the City of Austin was affected by biased selectivity. Some documents were public information and readily available. There were, however, some internal process documents that could have been reviewed that were inaccessible. Continued process and procedure changes may have affected the ability to collect data. An example of the documents analyzed for this case study include the Texas Government Code, the City of Austin Charter, the City of Austin MBE/WBE Procurement Program Ordinance 2-9(A-D), the City of Austin 2008 Contracting Disparity Study, training documents, standard contract documents, and internal processes and procedures. A list of the documents is provided in Appendix C of the study. A three point scale of “Meets Criteria”, “Somewhat Meets the Criteria”, and “Does Not Meet the Criteria” was developed to measure the findings associated with each ideal type category.

### **Structured Interviews**

Structured interviews are the second method of data collection used as a research methodology to assess the City of Austin’s procurement program. According to Yin, the interview is one of the most important sources of case study information (Yin 2009, 106). By utilizing structured interviews, information can be targeted to a specific topic. Interviews allow additional insight because they provide a means for causal inferences as well as explanations (Yin 2009, 102). Interviews can be biased if interviewees have poor recall or if questions are poorly written. In order to avoid bias, the interview questions are developed based on the practical ideal type framework.

In this study, three interviews occurred, one each with the Contract and Land Management Acting Director, the Deputy Purchasing Officer, and the Small & Minority Business Resources Director. These individuals were selected to interview because of their responsibility in administering the City’s procurement program and the discretion they are allowed to exercise to successfully accomplish these tasks. One shortcoming to the selection of only executives may be the exclusion of the operational

employees' perceptions of the policies and processes. Many of the operational or "front-line" employees in the procurement arena are very tenured and are tasked with acting as procurement administrators in an executive's absence. These employees also participate in policy development and implementation. The interview questions were open-ended, which allowed the interviewees to expand upon and augment the information provided from the document analysis. Any known changes in the program and current processes were taken into account during the interviews.

#### *Sample: Structured Interviews*

Of the three interviews conducted the questions for the Contract and Land Management Acting Director and Deputy Purchasing Officer focused on most of the ideal type categories identified in the conceptual framework. The interview questions directed toward the SMBR Director focused on inclusion because the department is tasked with increasing opportunity for those firms who have historically experienced discrimination in government contracting, including with the City of Austin.

Interviews were conducted in Austin, TX on October 20, 2010, October 26, 2010, and October 27, 2010 in an office setting. The interviews lasted between thirty minutes to one hour. The interview questions are listed in Appendix A of this study.

#### **Human Subjects Protection**

This study uses human subjects in its structured interviews. The concerns related to interviewing are most often voluntary participation in the interview and any harmful or negative impacts associated with participation. The interview questions posed no identifiable risks or conflicts of interest to the interviewees, since the information provided is of the nature of data typically provided in workshops, board and commission meetings, City Council meetings, or public information requests. All of the interviewees participated voluntarily with the subjects being informed of the right to decline or discontinue participation at any time. This research project was approved for exemption by the Texas

State Institutional Review Board on September 23, 2010 (EXP2010H2814). A copy of the exemption certificate is found in Appendix B of the research.

### **Chapter Summary**

Chapter Four provided a detailed outline of the research design for this study. The study utilized document analysis and structured interviews as the method of data collection. The data collected was used to measure on a three-tiered scale whether or not the City of Austin procurement program addressed each ideal type characteristic. Chapter Five presents the results of the data used to assess the City of Austin procurement program.

## **Chapter V: Results**

### **Chapter Purpose**

The purpose of this chapter is to assess the City of Austin procurement program and contracting processes in relation to this study's ideal type characteristics for procurement. Each data collection method used and the subsequent results are discussed for each component. The results are then analyzed according to degree to which the criteria set in the practical ideal type are met. The three degrees are: Meets the Criteria (1), Somewhat Meets the Criteria (2), and Does Not Meet the Criteria (3). A summary table for each criterion is illustrated on the results for each practical ideal type characteristic of the conceptual framework for this case study.

### **Ethical Considerations**

Chapter Two discussed the first ideal type category, ethics, in terms of high standards in behavior related to integrity in the observance of contract and procurement law and standards, as well as avoiding any perceived or actual conflicts of interest. The core concepts of government ethics focuses on transparency, fairness, keeping personal interests or associations away from official decision making, utilizing government property for government use, and ensuring official decisions are not influenced by financial gain. The City has several documents that illustrate ethics as an important factor in procurement, including Ethics in Consultant Selection, the Integrity Office's Ethics in the City of Austin presentation, City of Austin Ethics Policy, City of Austin "No Gift" Giving policy, the City Anti-Lobbying Ordinance, and "CityEthics: Grow Good Government" training.

## *Document Analysis – Ethical Considerations*

The documents used to analyze ethical considerations in the City of Austin procurement program illustrate a strong emphasis on ethics in all of its activities; ethics in City contracting is no different. A procurement-related job presents a unique problem related to ethics. In a training handout provided by the City's Integrity Officer, a person who has a financial interest in a contract resulting from a solicitation, may not be involved in developing, evaluating, or making any decisions on how the contract is awarded. Another example of the City's support for ethics is the City Manager, Marc Ott's, mandate for all employees to take a two part ethics training series; one section focuses on the ethical values of integrity and trust, while the other focuses on the City of Austin's policies. The City also has an Integrity Officer, whose responsibility it is to emphasize ethical behavior in performing one's job and interaction with the public, to answer ethics questions, and to provide ethics training to staff.

A review of the internal operating procedures and training materials indicate the City supports and makes great strides in incorporating ethics in procurement. An analysis of processes reveals the City has an expectation of ethics for every employee involved in procurement. Evidence of this support is the Purchasing Office's "Ethics at the City of Austin" training. The training addresses employee expectations, what's considered an ethical violation, how to report an ethical violation, and penalties. The City of Austin ethics policy states employees should not realize personal gain through contracting nor should an employee use one's employment to influence contract awarding. The City has an Anti-Lobbying ordinance that restricts respondents' communication regarding an active City solicitation to only an authorized contact person. This policy is an attempt to enhance ethics by removing officials from influencing contract awards, to eliminate lobbying for contracts, and is designed to provide all the same information to all citizens and respondents.

Professional service consultant selection is another area in which the City emphasizes ethics. City of Austin staff who participates as an evaluation team member must take a class entitled "Ethics in

Consultant Selection Training”. This is an effort to educate staff on what is and is not acceptable when qualifications-based contracts are evaluated and awarded. A focus on ethics is stressed by enforcing the policy of rejecting bids and proposals as non-responsive when the organization’s written processes are violated. City employees may be and in the past have been disciplined for ethical lapses and criminal offenses, such as falsifying time and attendance, theft, conflict of interest, and the misuse of City resources. Through these efforts, the City of Austin seeks to promote ethics not only in contracting and procurement, but in all of its daily activities. Taking a proactive approach to enforcing ethics assists in preserving public trust. Table 5.1 summarizes the results of ethical considerations related to the City’s procurement program.

**Table 5.1: Ethical Considerations - Results**

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<b>Ethical Considerations</b>			
The program should have written policies and procedures on securing the submittal of bids and proposals.	Procurement departments have written policies and procedures.  Sealed submission of bids.  Bids open and read only at time established in solicitation. Document Analysis	Document Analysis - Internal CLMD and Purchasing processes	Meets criteria

**Table 5.1:** *continued*

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<p>The program should have written policies and procedures to ensure contracts are awarded in accordance with federal, state, and local regulations.</p>	<p>Written procurement policies exist in CLMD and Purchasing.</p> <p>Solicitation documents address applicable federal, state, and local requirements for contracting.</p>	<p>Document Analysis – Texas Government Code, Internal CLMD and Purchasing processes</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures banning gift giving to staff.</p>	<p>The City has a written “No-Gift” Giving policy.</p>	<p>Document Analysis – City “No Gift” Giving Policy</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures that detail how to maintain integrity in public contracting.</p>	<p>The City has procurement training related to integrity.</p> <p>The City has an Integrity Office tasked with providing written policies on ethics and integrity, which includes contracting.</p>	<p>Document Analysis – Integrity Office “Ethics in the City of Austin” presentation, Ethics in Consultant Evaluation Selection training, City Ethics: Grow Good Government training</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures restricting contractor and consultant deviation from organizational processes and procurement regulations.</p>	<p>City solicitation documents discuss firms as being “non-responsive” when they deviate from processes.</p> <p>Anti-Lobbying Ordinance allows firm’s bid/proposal to be rejected for discussing active solicitation during no-contact period.</p> <p>MBE/WBE Ordinance reference “non-compliant” or in violation for deviating from established ordinance and rules.</p>	<p>Document Analysis – MBE/WBE Procurement Program Ordinance &amp; Rules, City Anti-Lobbying Ordinance, CLMD and Purchasing processes</p>	<p>Meets Criteria</p>

**Table 5.1:** *continued*

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<p>The program should provide training for staff to illustrate examples of ethical dilemmas in public contracting.</p>	<p>City of Austin has mandatory ethics training for all employees.</p> <p>City of Austin has mandatory “Ethics in Consultant Selection” training for staff participating on consultant evaluation panels.</p>	<p>Document Analysis - Office “Ethics in the City of Austin” presentation, Ethics in Consultant Evaluation Selection training, CityEthics: Grow Good Government training</p>	<p>Meets Criteria</p>

**Accountability Considerations**

Accountability is at the core of governments’ responsibility to citizens. Chapter Two describes the second ideal type category, accountability, as being responsive to citizens’ needs, but also how best to utilize resources to meet citizen expectation. Evidence from document analysis and structured interviews indicate the City of Austin mostly meets the criteria by addressing accountability in procurement. Some of the documents utilized in the analysis include the City Charter, handouts from procurement workshops and boards and commissions meetings, and City Council video and transcripts.

*Document Analysis – Accountability Considerations*

As the local governing body, the City of Austin, must serve as a steward of citizen tax dollars. Using that rationale, one would assume that public officials create policy reflective of the public’s input and interests to be accountable to the community. The City Charter states that a contract or an amendment of a contract involving expenditures over a department’s purchasing limit, which is currently

\$53,000, must expressly be approved by the City Council. This is a method of ensuring that contracting does not run amuck and to provide a sense of accountability.

Another City component of accountability is the processes and avenues afforded citizens to complain or challenge City processes, including the procurement process. One option citizens have is voicing their concerns at Council or boards and commissions meetings. While the process may be time consuming or inconvenient at times, it serves as a means of accountability feedback. Conversely, all aspects of City procurement are not made public. The project planning meetings and contracts themselves are not usually made public as a practice, unless requested via the Open Records Act.

#### *Interviews – Accountability Considerations*

During the structured interviews with the Deputy Purchasing Officer and CLMD Acting Director, both described this process as a partnership, with slight variations. Both contend that City officials must understand what citizens need and anticipate how and in what capacity citizens want their tax dollars utilized. Citizens usually support procurements for projects that reconstruct streets, waterlines, or enhance parks; however, those projects that affect the perceived aesthetics of the community are not supported and receive considerable discussion from citizens at City Council meetings. When asked about how accountability is incorporated into the City's procurement process, the Deputy Purchasing Officer responded that as a municipality, officials must balance the needs of the community and the goals of the organization, which are sometimes incompatible and impossible. The reality is that accountability in procurement depends on the scenario in which it is defined. According to the CLMD Acting Director, the accountability is addressed by a contractor or consultant successfully supplying a good or performing a service as detailed in the terms and conditions of the City's standard contract documents. Overall, however, accountability to citizens for what the City does, including procurement, is based on policy established by the elected officials, with staff playing their role in the implementation process.

The research reveals that the City is aware that citizens are expecting and demanding more accountability and is making great strides to be accountable to citizens' issues and demands. Table 5.2 summarizes the results of accountability considerations related to the City's procurement program.

**Table 5.2: Accountability Considerations – Results**

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<b>Accountability Considerations</b>			
<p>The program should have written policies and procedures acknowledging the organization as the stewards of the community's tax dollars.</p>	<p>City Charter outlines the responsibility of the City in relation to contracting and fiduciary responsibility.</p> <p>Executives acknowledge the City is a steward of taxpayer dollars.</p> <p>Written processes declare contracting and procurement should be to best value of the City and by extension, the community.</p>	<p>Document Analysis – City Charter, CLMD and Purchasing processes</p> <p>Structured Interviews</p>	<p>Meets Criteria</p> <p>Somewhat meets Criteria</p>
<p>The program should have written policies and procedures stating the organization is tasked with serving and protecting public interest.</p>	<p>Procurement processes are available to the public.</p> <p>Procurement processes are discussed with the public in boards and commission meetings, Council meetings, workshops, and networking sessions.</p> <p>City has written processes and procedures for citizens to utilize to address procurement issues.</p>	<p>Document Analysis – City of Austin website, Board &amp; Commission handouts, handouts from CLMD and SMBR workshops and outreach sessions, City Council meeting video/transcripts</p>	<p>Meets Criteria</p>

**Table 5.2:** *continued*

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<p>The program should have written policies and procedures stating the use of contractors and subcontractors to provide public service does not absolve the City from accountability to the citizens.</p>	<p>City contract documents state Prime contractors and Prime consultants responsible for sub participation.</p> <p>Management verified that public holds the City responsible for poor contractor/supplier performance.</p>	<p>Document Analysis – MBE/WBE Procurement Program Ordinance, City of Austin Compliance Plan Instructions, Standard Contract Documents</p> <p>Structured Interviews</p>	<p>Meets Criteria</p> <p>Meets Criteria</p>
<p>The program should award and execute contracts that utilize public dollars based on citizen priorities.</p>	<p>Management verified public has some input on projects.</p>	<p>Structured Interviews</p>	<p>Somewhat Meets Criteria</p>
<p>The program should contract for services and goods to support and improve public health, safety, and quality of life.</p>	<p>Management verified that projects do support the health, safety, and quality of life of citizens.</p> <p>Procurement projects include such things as waterlines, new libraries, facility rehab, new parks, street reconstruction, social services, etc.</p>	<p>Structured Interviews</p> <p>Document Analysis – City solicitation documents, project scopes of work, Council RCAs</p>	<p>Meets Criteria</p> <p>Meets Criteria</p>

**Transparency Considerations**

According to the literature, the third ideal type category, transparency, is an expectation of openness and fairness (White 2007); in this case, to understand what happens in the City of Austin procurement and contracting process. Austin is a very engaged community and has an intense expectation for open and transparent government. Through an analysis of documents and structured interviews, evidence of this expectation has translated into the City of Austin working diligently to report out on contract awards, contract payments, and contractor and subcontractor participation. Several

documents as well as interviews were used to identify how transparency is incorporated into the City of Austin procurement program.

### *Document Analysis – Transparency Considerations*

The City illustrates its support of transparent government in many ways. One example is the City of Austin's Online Contract Catalog. The catalog reports City expenditures by contractor name, type of contract, contract amount, and total expenditure to date.<sup>23</sup> This report allows citizens and vendors alike to track the firms receiving contracts and track what the City is paying for goods and services. Similar to the concept of accountability, the City does have a process and written policies where citizens can voice any transparency concerns. While contracting expenditures are tracked, the "total cost" of procurement is not reported. "Total cost" would be the hidden costs of activities such as staff time for solicitation planning meetings, pre-bid and pre-response meetings, and any procurement outreach activities.

As previously stated, the research reveals that the City works closely with citizens to provide transparency in procurement; however, in some instances it is not possible. One instance of an impediment to transparency is the City's Anti-Lobbying policy. The Anti-Lobbying ordinance is used to enhance ethics and fairness in the procurement process; however, it acts as an impediment in transparency. The ordinance contains a "No-Contact" provision, where communication on an active solicitation is prohibited between respondent and City staff, except the authorized contact person. Interested contractors and citizens often call to inquire about the status of a contract. They are sometimes frustrated when they are referred to the authorized contact person and informed that only the authorized contact person can provide solicitation related information until a contract is successfully executed.

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<sup>23</sup> The City Online Catalog is a real-time account of payments. Data is downloaded from the City's financial system and is synced to the online catalog. The website can be accessed by viewing <http://www.ci.austin.tx.us/financeonline/finance/index.cfm>.

### *Interviews- Transparency Considerations*

Structured interviews were used to acquire an understanding of the concept of revealing the “total cost” to contract as a means of increasing transparency to the public. As stated earlier, “total cost”, includes the preparatory work that supports the activities related to a project. One interviewee responded that these expenses are largely overlooked by the public because it is not the public’s main priority. The public places emphasis on fairness and equity in the procurement process. Getting an executed contract is the goal for the public; the background work it takes to get there is secondary. The structured interviews also revealed that while the City strives to provide information to the public, staff must understand how to respond to solicitation questions, when it is acceptable to respond to solicitation questions, and when responding to a solicitation inquiry is prohibited.

Austin’s highly political and highly engaged community continues to propel the City to greater levels of transparency. Table 5.3 summarizes the results of the City’s high level of support for transparency in procurement and contracting and that the program meets most of the criteria for transparency.

**Table 5.3: Transparency Considerations – Results**

Ideal Type Categories	Evidence	Research Method/Source	Evidence Supports
<b>Transparency Considerations</b>			
<p>The program should have written policies and procedures to communicate contract information to citizens.</p>	<p>City provides solicitation information on website and advertises in newspapers.</p> <p>City has online contract catalog for citizen review.</p> <p>City publishes pending contract awards on Council agenda.</p> <p>City holds vendor workshops and networking sessions.</p>	<p>Document Analysis – Anti-Lobbying Ordinance, Solicitation documents, CLMD, Purchasing, and SMBR internal process documents</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures detailing avenues for citizens to voice complaints regarding the procurement process.</p>	<p>City has processes/policies for citizens to speak at Council meetings, to speak at board and commission meetings.</p> <p>City has process/policies for affected vendors to participate in the procurement appeal process.</p>	<p>Document Analysis – MBE/WBE Procurement Program Ordinance &amp; Rules, CLMD Protest Procedures</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures regarding the process to answer citizen inquiries related to contractor utilization and contract amounts.</p>	<p>City has written policy and process that tracks sub utilization (Sub-K Form) submitted by prime.</p> <p>City processes established Online Contract catalog for citizens to review and make inquiry on contractor utilization.</p>	<p>Document Analysis – Sub-K Instructions, MBE/WBE Procurement Program Ordinance &amp; Rules, Standard Contract Documents, Online Contract Catalog</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures regarding the provision of information for total contracting costs.</p>	<p>No evidence supports that the City provides information on the total cost of contracting (ie. Soft costs including planning, staff meetings, etc).</p>	<p>Document Analysis</p> <p>Structured Interviews</p>	<p>Does Not Meet Criteria</p> <p>Does Not Meet Criteria</p>

## **Competitive Considerations**

The literature maintains that the fourth ideal type category, competitiveness, is acquiring or soliciting for goods or services at the best value for the capital expended (White 2007). Competition in procurement is helpful for governments, because they are not held captive to the services of only one provider. Typically, competition in procurement, leads to lower costs or prices for the services provided. Document analysis and focused interviews reveal that the City of Austin procurement program meets most of the criteria for competitiveness in procurement.

### *Document Analysis – Competitive Considerations*

A review of several documents provided evidence that the City of Austin makes an attempt to remain compliant with government procurement laws, regulations, and ordinances. City procurement must occur in compliance with the federal code of regulations, Texas Government Code, and several city ordinances. These laws and city ordinances set the legal parameters of procurement, including competitiveness. Most City of Austin procurements are competitively bid, regardless of the solicitation type associated with the project. Professional service procurement is evaluated and awarded on a qualifications-based selection, while construction projects are typically procured using the low-bid procurement method. According to the City Charter, before the city makes any purchase or contract for supplies, materials, equipment or contractual services, opportunity shall be given for competition unless exempted by state statute. In 2007, the City began to increase the use of alternative types of procurement methods other than the standard design-bid-build formulary. Low-bid contracting is a price focused method of contracting and does not allow for any other value considerations. As a result, the City has

expanded its procurement program to include alternative delivery project methods, which are associated with “best value”.<sup>24</sup>

### *Interviews – Competitiveness Considerations*

During one interview, it was stated that most City of Austin procurements are competitively bid, regardless of the solicitation type associated with the project. There are however, contracts that are not competitively bid. Non-competitive procurement occurs when a service or product is a single source or a sole source.<sup>25</sup> Whichever procurement method is utilized, the competitiveness of the method and value provided to the City is important. As stated earlier, best value is an important concept to the City of Austin. One interviewee described that best value contracting serves as a means of increasing competitiveness, allowing for greater participation of contractors, and as an avenue for acquiring the best service for citizens without loss of product or service quality. These alternative type project delivery methods are sophisticated in nature, are often expensive in comparison to the low-bid method, and are very labor intensive.

Competitiveness in procurement continues to be the norm at the City of Austin. Competitiveness in contracting provides for better pricing, increased participation, and by extension provides greater value to the community. Table 5.4 summarizes the results of the competitive considerations for the City’s procurement program.

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<sup>24</sup> Best-value is a legally defined term, according to Texas Government Code Chapter 271.113 (B). Best value may take into consideration things such as quality, contractor experience, ability to perform, etc. Cost may be taken into consideration, but it is not the central defining quality.

<sup>25</sup> A sole source exists if a good or service is the only good or service that meets the criteria and is only available from the source being recommended. In a sole source situation, there is no competition because the purchase involves goods or services that may be patented, copyrighted, uses secret processes, sole expertise, etc. A single source is the one source among other sources in a competitive marketplace identified as having the predominant qualifications, based on specific reasons, for selection of contract award. (“Ethics at the City of Austin” -City of Austin Purchasing Ethics presentation)

**Table 5.4:** Competitive Considerations – Results

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<b>Competitive Considerations</b>			
<p>The program should have written policies and procedures on complying with related government procurement statutes.</p>	<p>City has written procedures on compliance in solicitation documents and contract documents.</p> <p>City has established procurement processes based on state, federal, and local procurement rules and regulation.</p> <p>Management verified City has policies and processes on procurement regulations.</p>	<p>Document Analysis – Texas Government Code 252 and 271, MBE/WBE Procurement Program Ordinance, Federal Code of Regulations</p> <p>Structured Interviews</p>	<p>Meets Criteria</p> <p>Meets Criteria</p>
<p>The program should have written policies and procedures on how it awards projects based on the best value for the organization.</p>	<p>City solicitation and evaluation criteria describe best value contracting.</p> <p>Internal City processes and procedures speak to best value.</p> <p>CLMD and SMBR workshop presentations describe the evaluation and selection criteria associated with best value contracting.</p> <p>Management orally confirmed that best value contracting is becoming more utilized by the City.</p>	<p>Document Analysis- RFQ evaluation criteria, RFP evaluation criteria, Alternative Delivery Project Method training handouts, CLMD and SMBR workshop handouts on Alternative Delivery Project Methods</p> <p>Structured Interviews</p>	<p>Meets Criteria</p> <p>Meets Criteria</p>

**Table 5.4:** *continued*

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<p>The program should have written policies and procedures regarding the use of competitive bidding in the form of IFBs, RFQs, and RFQs, including alternative delivery methods.</p>	<p>City Purchasing Office and CLMD have written processes and procedures on when to utilize the appropriate bidding methods.</p>	<p>Document Analysis – CLMD internal processes, solicitation documents, CLMD Purchasing and SMBR processes.</p>	<p>Meets Criteria</p>
	<p>CLMD discusses competitive bidding processes at Council meetings, board and commission meetings, and, vendor workshops, as needed.</p>	<p>Structured Interviews</p>	<p>Meets Criteria</p>
	<p>CLMD has processes and procedures detailing what alternative delivery methods entail advantages and disadvantages of utilization, and when to use these methods.</p>		

**Complexity Considerations**

Procurement is not a process that occurs in a vacuum. It is a multi-dimensional, detailed, and collaborative process. At the City of Austin, a typical procurement has at least four departments involved in the process; the sponsor department initiates the process, the Purchasing Office or Contract and Land Management issues the solicitation and evaluates the responsiveness of the responses, the Small and Minority Business Resource Department reviews compliance for subcontracting participation, and the managing department will also provide a review for responsibility or participate in qualifications-based evaluations. The literature describes the fifth ideal type category, complexity, as the sophistication of and multi-faceted nature of procurement and contracting processes. Document analysis was utilized to evaluate complexity in the City’s procurement program.

### *Document Analysis – Complexity Considerations*

The complex nature of the City’s procurement program and contracting processes is revealed by the fact that three departments play a major role in administering different aspects of the procurement function. Administrative policy dictates that, the Purchasing Office is responsible for the procurement of commodities and non-professional services, while the Contract and Land Management Department controls procurement for construction and construction-related professional services. Per the Minority-Owned and Women-Owned Business Enterprise Procurement Program Ordinance (based on Council approval), the Small and Minority Business Resources Department, also a procurement department, administers an affirmative action based program that deals with providing equal access to contract opportunities to small, minority-owned and Women-Owned businesses. Each department must effectively administer their procurement duties to successfully issue a solicitation and execute a contract. This multi-departmental involvement occurs across procurement phases. The complexity of procurement and complexity at the City is recognized in the fact that roles and responsibilities not only exist for internal procurement staff, but rules also exist for contractors, consultants, and their subs.

The City of Austin realizes that procurement is a complex process. The organization establishes written processes and policies to direct staff and contracts and consultants on their responsibilities in contracting. Table 5.5 summarizes the results of the City’s acknowledgement and support that complexity exists in procurement and that the program meets most of the established criteria.

**Table 5.5: Complexity Considerations – Results**

Ideal Type Categories	Evidence	Research Method/Source	Evidence Supports
<b>Complexity Considerations</b>			
The program should have a written policies and procedures in the form of a procurement procedural manual.	City procurement departments have either procedural manuals or written procedures and stepping processes.	Document Analysis – Purchasing Procedures Manual, CLMD procedures, SMBR Procedures, Project Manager Manual	Somewhat Meets Criteria
The program should have written policies and procedures defining the roles and responsibilities for all parties involved in the contracting process.	<p>City procurement departments’ responsibilities detailed in procedures manual.</p> <p>City procurement departments’ responsibilities detailed in the MBE/WBE Procurement Program Ordinance.</p> <p>General City procurement responsibilities outlined in City Charter.</p> <p>City procurement departments’ responsibilities outlined in vendor handouts, brochures, pamphlets, and presentations.</p>	Document Analysis - Purchasing Procedures Manual, CLMD procedures, SMBR Procedures, Project Manager Manual, MBE/WBE Procurement Program Ordinance & Rules, City Charter, CLMD, Purchasing, and SMBR handouts, pamphlets, and presentations.	Meet Criteria
The program should provide training to staff related to every phase of the contract process.	<p>City provides internal staff training related to contracting for Project Manager.</p> <p>City provides staff training related to MBE/WBE Procurement Program requirements.</p> <p>City provides staff training on purchasing procedures.</p>	Document Analysis – Project Manager Academy training documents, MBE/WBE Procurement Program training documents, online Purchasing training/handouts	Meets Criteria

**Table 5.5:** *continued*

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Source</b>	<b>Evidence Supports</b>
<p>The program should have written policies and procedures detailing the requirements of utilizing subcontractors and subconsultants to provide public services.</p>	<p>City’s standard contract documents discuss utilizing subcontractors and subconsultants.</p> <p>City MBE/WBE Procurement Program Ordinance and Rules discuss using subcontractors and subconsultants.</p> <p>Public Works Project Manager manual has written policy on subcontractor and subconsultant utilization.</p> <p>CLMD, Purchasing, and SMBR processes and procedures discuss subcontractor and subconsultant utilization.</p>	<p>Document Analysis – Standard Contract Documents, MBE/WBE Procurement Program Ordinance &amp; Rules, Project Manager Manual, CLMD, Purchasing, and SMBR policies and internal procedures.</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures that address risk-sharing between the agency and the contractor &amp; consultant performing on projects.</p>	<p>City standard contract documents General Conditions discuss risk associated with the City and contractors for a project.</p>	<p>Document Analysis – Standard Contract Documents</p>	<p>Meets Criteria</p>

**Equity Considerations**

Fairness and the need for inclusion in procurement is an important, yet often misunderstood and overlooked concept. The pressure to get a project completed can supersede any thoughts of inclusion. Public and private agencies have a documented history of excluding minority-owned and women-owned

businesses from procurement.<sup>26</sup> In order to address the issue of past discrimination and a pattern of continuing under and non-utilization, some agencies have implemented specific programs focused on increasing access to government procurement opportunities. The City of Austin has taken a proactive stance in addressing inclusion and equity issues. The literature describes the sixth ideal type category, equity, as the process of ensuring that all citizen interaction with government is fair and equitable. Through the analysis of documents and a structured interview, equity in the City's procurement program was evaluated.

#### *Document Analysis – Equity Considerations*

The City provides all citizens and vendors with the same information through the use of its website, newspaper advertisements, project pre-bid/pre-response meetings, workshops, boards and commissions meetings, and networking sessions. In an effort to maintain equity, there are written policies and procedures related to how information is released so that no firm gains unfair advantage over others. The most poignant evidence to demonstrate the City's support of equity in contracting is the existence of the Minority-Owned and Women-Owned Business Enterprise Procurement Program. Austin is one of only a few government agencies in the nation with a race-conscious subcontracting program. Other municipalities have not authorized a disparity study demonstrating discriminatory practices in contracting and therefore are unable to have a program with racial and gender components. This program is targeted toward small, minority-owned and Women-Owned businesses. In order for the program to exist, City Council must authorize its existence through the review of the program's corresponding ordinance. Although the City understands the importance of inclusion, this is not a program that can exist in perpetuity. The program is issued a sunset date, in which the two pronged test of compelling interest

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<sup>26</sup> The City of Austin's original 1987 study of contracting practices with minority and woman-owned businesses revealed discrimination in contracting practices. Since that time, all City of Austin Disparity Studies have revealed that disparity and discrimination continue in contracting. The last study was completed in 2008.

and narrow tailoring must be demonstrated. MBE/WBE Procurement Program requirements are included in most contracting opportunities at the City.

*Interview – Equity Considerations*

One interview revealed that the Small and Minority Business Resources Department works diligently to address the issue of diversity and inclusion by operating in tandem with other City departments to ensure participation and compliance with the program. This is accomplished by providing information at monthly workshops, outreach, and monitoring to address subcontractor utilization. The interview established that the department is focused on assisting a population that is and has been under and non-utilized, to increase these firms' presence in the procurement arena. The Minority-Owned and Women-Owned Business Enterprise Procurement Program is largely supported across the organization; however, not all staff or citizens understand the value of the program. Detractors of the program feel it is a hindrance to completing projects and an obstacle in procuring goods and services.

The City's focused and intentional emphasis on inclusion has created a more participatory form of procurement program than most programs anywhere in the state or nation. The idea of providing everyone the same information to maintain equity is acceptable; however, when race comes into play, a dismissive attitude is frequently uncovered. Minority and woman inclusion in procurement and contracting is an area that requires continuous development and improvement because it is not only about changing processes, the policy makers need to be educated on the need for the program. Table 5.6 summarizes the results of equity considerations in the City's procurement program.

**Table 5.6: Equity Considerations – Results**

Ideal Type Categories	Evidence	Research Method/Sources	Evidence Supports
<b>Equity Considerations</b>			
<p>The program should have written policies and procedures on providing all citizens with the same contracting information.</p>	<p>City has written processes on posting solicitation and contract award data on the City website.</p> <p>City has written process on contract award details posted on the website for Council agenda.</p> <p>City has written processes and procedures on contract information provided at Pre-bids/Pre-Response meetings.</p> <p>City has written processes on issuing addenda to solicitations to inform potential respondents.</p>	<p>Document Analysis – CLMD and SMBR processes, CLMD, Purchasing, and SMBR websites</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures that allow both small and large contractors to perform as Prime Contractors/Prime Consultants on projects.</p>	<p>City only references business size and participation in relation to certification with the MBE/WBE Procurement Program as a small, minority-owned or Women-Owned business enterprise.</p>	<p>Document Analysis – MBE/WBE Procurement Program Ordinance &amp; Rules</p>	<p>Does Not Meet Criteria</p>
<p>The program should have written policies and procedures or a specific program focused on the inclusion of small businesses, and minority &amp; Women-Owned businesses in contracting.</p>	<p>City has a written ordinance, 2-9 (A-D) of the City Charter, specifically establishing the MBE/WBE Procurement Program.</p> <p>City has written policies and processes that establish MBE/WBE participation requirements with most City procurements, unless exempted by the program.</p>	<p>Document Analysis – MBE/WBE Procurement Program Ordinance &amp; Rules</p>	<p>Meets Criteria</p>

**Table 5.6:** *continued*

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Sources</b>	<b>Evidence Supports</b>
The program should have a process that does not allow discrimination in contracting.	City has written policy and procedures related to non-discrimination in contracting as a part of the City Charter, solicitation documents, standard contract documents, and as part of the MBE/WBE Procurement Program Ordinance and Rules.	Document Analysis – Non-Discrimination Form, Standard Contract Documents, MBE/WBE Procurement Program Ordinance & Rules	Meets Criteria

**Quality Considerations**

Chapter Two refers to the seventh ideal type category, quality, as a measurement of the durability or superiority of services and goods provided. Quality in procurement may be measured in terms of the service or good provided as well as the effectiveness and accuracy in which an agency administers its procurement process. Document analysis and structured interviews were used to evaluate quality in the City of Austin procurement program.

*Document Analysis – Quality Considerations*

Most City procurement and contract documents do not directly address quality. The primary tool utilized by the Contract and Land Management Department to measure quality is the Consultant Evaluation Form; however, that is only for professional service projects. Staff is currently working to develop a Contractor Evaluation Form, but the same issues may exist unless quality is clearly defined. In CLMD, there are no “official” performance measures to measure quality. Staff does attempt to monitor internal quality, as noted in their SSPR’s; by tracking the number of addenda issued due to staff initiated errors in solicitations. One of the official performance measures for quality is tracking the number of valid request to protest. Protests of solicitations are only valid when there is a valid and verifiable issue

related to the procurement process. Another concept of quality measurement was provided by the Deputy Purchasing Officer.

#### *Interviews - Quality Considerations*

Interviews revealed, there are two ways the City of Austin measures quality in the City procurement process. Staff explained that at the departmental level, staff uses a checklist to sure contract files are completed and ready to be filed. All contracts should be reviewed for signature and reviewed to ensure inclusion of the required documentation. At a city-wide level, the City Auditor reviews contracts for appropriate signatory authority and other documents. Departments review quality to ensure a good project. The City Auditor's review of quality is to ensure processes are followed.

The City has not fully committed to monitoring or tracking quality in both contracting and in measuring quality in the services and goods provided to the City. Table 5.7 summarizes the results in evaluating quality in the City's procurement program. The results illustrate that the City does not meet the criteria for quality.

**Table 5.7: Quality Considerations – Results**

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Sources</b>	<b>Evidence Supports</b>
<b>Quality Considerations</b>			
The program should have a process to measure the quality of service delivered by contractors and consultants.	<p>Only written process documented was the Consultant Performance evaluation for project design, which doesn't truly measure quality. .</p> <p>Management verbally verified that quality measuring in contracting is inconsistent.</p> <p>Quality measured at two levels – departmental and by City Auditor with different end goals.</p>	<p>Document Analysis – CLMD Consultant Performance Evaluation, Standard Contract Documents</p> <p>Structured Interviews</p>	<p>Does Not Meet Criteria</p> <p>Does Not Meet Criteria</p>
The program should have a process to review the quality of the contracting process (i.e. monitor addenda, errors in solicitations, etc.)	<p>Management verbally verified that quality measuring in contracting is inconsistent.</p> <p>Quality measured at two levels – departmental and by City Auditor with different end goals.</p>	Structured Interviews	Somewhat Meets Criteria

**Monitoring/Oversight Considerations**

The literature suggests that the primary goal of monitoring is to ensure the contractual obligations agreed to by the contracting agency and the contractor is fulfilled. Chapter Two stated that the final ideal type category, monitoring and oversight, as the review of contractors practices, performance, spending and utilization. Evidence from document analysis and the structured interviews were used to evaluate how the City incorporates monitoring into its procurement program.

### *Document Analysis – Monitoring/Oversight Considerations*

A review of the Purchasing Office’s and City Auditor’s Contract Monitoring Guides reveal the City’s perspective on contract monitoring. The goal of contract monitoring is to ensure the City receives the good or services purchased. Contract monitoring also seeks to reduce risk. The City of Austin is aware of the need for monitoring its contracts; however, monitoring is inconsistent across the organization. Contract and Land Management, the Purchasing Office and Small and Minority Business Resources all have dedicated staff to the function of monitoring and oversight. A review of the documents stresses monitoring in procurement; however, the monitoring performed is not at the necessary level, and occurs in an inconsistent manner. The City Auditor’s Office recently conducted an audit of City-wide contract management practices, and found instances where exceptions to the procurement processes weren’t recorded in either a manual or in any procedural document, but are treated as a standard policy and procedure. Monitoring is a continuous process, not a onetime activity. Another finding revealed departments executing contracts above the City’s administrative authority without Council approval and then returning to Council for ratification. At the City, procurement departments “own” the contracts; however, project managers are tasked with the responsibility of managing projects using the contract as the tool to do so. They in effect are tasked with monitoring the contract as well.

### *Interviews – Monitoring and Oversight*

According to the interviews, contract monitoring is a function performed at the department level. The interviews also confirmed that contract monitoring occurs at the organizational level by the City Auditor and staff. The review takes into account prevailing procurement laws, rules, ordinances and randomly audits contracts to see if the contract meets the standards established by the laws and rules. During the interviews, the interviewees agreed that staff tasked with performing these duties should have a certain skill set. One interviewee felt a person should have certain “soft skills,” including integrity, analytical skills, and the ability to learn and comprehend. Another interviewee emphasized the need for

employees to be detail oriented, tenacious in the ability to complete tasks, the ability to deal with conflict, and be an effective communicator. All interviewees supported the fact that the technical aspects of contracting, including contract monitoring and oversight are “hard skills” that can be taught.

At its best, monitoring contracts is inconsistent at the departmental level at the City. At its worst, monitoring is not occurring at all. The City Auditor may serve as a check and balance to ensure that monitoring is happening. Lack of monitoring allows the contractors to possibly slip in their performance, since no one is watching, per se. Table 5.8 summarizes the results of monitoring and oversight criteria in procurement at the City of Austin.

**Table 5.8: Monitoring/Oversight Considerations-Results**

<b>Ideal Type Categories</b>	<b>Evidence</b>	<b>Research Method/Sources</b>	<b>Evidence Supports</b>
<b>Monitoring/Oversight Considerations</b>			
The program should have written policies and processes related to monitoring contracting activities at every phase of procurement.	City has written process focused primarily on post contract award and execution contract monitoring.	Document Analysis – Purchasing Office Contract Management Guide, City Auditor Contract Management Guide, CLMD processes, SMBR processes	Does Not Meet Criteria
The program should allocate dedicated staff specifically to contract monitoring and oversight.	City has staff in CLMD, Purchasing, Public Works, and SMBR related to contract monitoring and oversight.	Document Analysis – Organizational structure, CLMD, SMBR, and Purchasing processes	Does Not Meet Criteria
The program should include staff experienced in contract procurement and contract administration.	Management verified some is tenured and has experience in contracting.  Management verified that some “soft skills” are valuable; technical aspect of job can be taught; however, experience is helpful.	Structured Interviews	Meets Criteria
The program should have written policies and procedures mandating employee training on procurement regulations and applicable updates.	City has a written policy on requiring all employees to have at a minimum 16 hrs of training.  Management verbally responded it is difficult to pinpoint the specific contract training every procurement employee needs.  Procurement training is offered in-house.	Structured Interviews	Somewhat Meets Criteria

**Table 5.8:** *continued*

Ideal Type Categories	Evidence	Research Method/Sources	Evidence Supports
<p>The program should have written policies and processes related to tracking contractor and consultant performance as part of contract compliance.</p>	<p>City has written policy and process regarding tracking contractor participation related to sub-utilization.</p> <p>City has written policy and process regarding tracking consultant performance using evaluations.</p> <p>City is working to establish policy and process to track contractor performance using evaluations.</p>	<p>Structured Interviews</p>	<p>Meets Criteria</p>
<p>The program should have written policies and procedures regarding the use of legal recourse for non-compliance or breach of contract.</p>	<p>City has written policy and procedure related to the ability to utilize legal recourse in contracting.</p> <p>City has legal options such as contract termination, probation, suspension, and debarment.</p>	<p>Document Analysis – Standard Contract Documents</p> <p>Structured Interviews</p>	<p>Meets Criteria</p> <p>Meets Criteria</p>

The City of Austin procurement program was assessed based on the practical ideal type framework of a model government procurement program that was developed from the literature review. Document analysis and focused interviews were the methods of making the assessment. Utilizing these methods, the case study revealed that the City of Austin’s procurement program addressed the majority of characteristics in the conceptual framework. There are areas, however, that require improvement, as the City strives to become the “Best Managed City” in the nation in all aspects, including procurement. The next chapter will provide recommendations for improving the City of Austin’s procurement program based on the assessment of the evidence.

## **Chapter Summary**

This chapter provides results of the case study conducted on the City of Austin procurement program. The research methodology of this case study includes document analysis and structured interviews. The final chapter concludes the research and offers suggestions for improvement of the City of Austin procurement program.

## **Chapter VI: Recommendations and Conclusion**

### **Chapter Purpose**

The purpose of this research is threefold and is designed to: 1) describe the ideal characteristics of an effective government procurement program based on a review of the literature 2) gauge the City of Austin's contracting and procurement program in relation to practical ideal conceptual framework characteristics and 3) develop strategies for improving the efficacy of the City of Austin's contracting and procurement processes and procedures. Chapter Two described the ideal type characteristics and developed a conceptual framework for an assessment based on the literature. Chapter Three discussed the setting for the case study, the City of Austin, in order to describe its procurement environment. Chapter Four described the research methodology utilized to gather the data for the study. The ideal type characteristics were also organized into an operationalization table. Chapter Five presented the results of the assessment based on the use of document analysis and focused interviews. This chapter will address the final purpose of the research, providing recommendations for improving the City of Austin's procurement program based on the evidence collected.

### **Recommendations**

Through the document analysis and structured interviews, several areas were identified that require improvement. The identified recommendations for improvement are made for the ideal type categories were evidence "Somewhat Meets the Criteria" or "Does Not Meet the Criteria" established in the conceptual framework. After reviewing the many City documents and engaging in structured interviews related to procurement and contracting, evidence points to the fact that the City is striving to meet the expectations of the City Manager's "best managed" mandate, and may be recognized as the national model for procurement and contracting with some policy and process updates.

Based on an analysis of the evidence for the ideal type categories, the City of Austin procurement program was most lacking in two areas: 1) quality; and 2) monitoring and oversight. Quality is always an illusive measure to capture; however, there has to be some accounting of quality for what the City procures and in the quality in which it executes the procurement. For this reason, the Purchasing Office, the Contract and Land Management Department, and the Small and Minority Business Resources Department, should establish a comprehensive process and performance measure to gauge the quality of their individual procurement products. While they all may produce different documents related to solicitations and contracts, capturing the level accuracy or lack thereof in the work product is a common need. Once a common practice is established, it should be communicated to all staff within these departments, as well as the expectation of the level of accuracy. This information should also be included in each department's standard operating procedures, procedural manuals, or any departmental information repository.

In order to capture a measure of quality for the contractors, first a policy and process must be developed and implemented. Most construction awards are based on low-bid, which allows little if any room to evaluate other areas besides price. To date, only consultant performance is tracked because it is directly linked to the evaluation matrix and has an impact on future evaluations. To capture the quality of service provided by the contractors and consultants, it is necessary to create and implement an evaluation tool that includes objective performance criteria that links actual work performed to the executed contract. The evaluation should also take into account the number of change orders or amendments that are processed as a result of errors by the consultant or contractor as well as any changes, whether authorized or unauthorized, to the original compliance plan detailing the project's subcontractor or subconsultant utilization.

Monitoring and oversight was another area where the City of Austin needed improvement. As stated earlier the City of Austin does engage in contract monitoring at the departmental and organization-wide level; however, there are glaring inconsistencies in how monitoring is performed. The City of

Austin should re-evaluate its current monitoring practices and work with departments to identify where the deviations in process occur. Contract and Land Management, the Purchasing Office, and Small and Minority Business Resources, with the advice of the City's Law Department, should coordinate to create a comprehensive policy and procedure manual that outlines the functions of the procurement departments, project sponsors, and project managers. One consistent process should exist, which would aid in identifying procurement anomalies. At the core of the monitoring and oversight problem is the fact that the City is unaware if monitoring is occurring when it should be or whether it is being performed in any capacity. Once a contract is executed there is not a check and balance that exists to ensure the contract is ever monitored. The potential exists for many projects, especially contracts that are awarded administratively (at the departmental level) and are never brought to the attention of Council, to "remain on the shelf" until project completion. A system must be put into place that establishes a process and notification to the departments and to the procurement departments indicating when a contract review or "spot check" should occur. Of course, the success of contract monitoring and oversight depends on the skills of the employees. The City must invest in staff by either providing in-house contract management training or acquiring the training from an external vendor.

**Table 6.1: Recommendations**

Areas of Improvement	Recommendations
Quality Considerations for Staff	Initiate and establish a comprehensive process and performance measure in the procurement departments to gauge the quality of their individual procurement products.
	Communicate to staff the established process, how performance is being measured, and the expectation of accuracy in the procurement products produced.
	Include new process in any departmental process documents or a procedural manual.
Quality Considerations for Contractors & Consultants	Establish a policy and process to evaluate contractor performance.
	Create and implement an evaluation tool for both contractors and consultants that include objective performance criteria that links actual work performed to the executed contract.
	Performance evaluation should take into account change orders and amendments caused by the contractor and consultant as well as changes to the original compliance plan of subcontractor and subconsultant utilization.
Monitoring and Oversight	Re-evaluate current monitoring practices and work with departments to identify where the deviations in process occur.
	Contract and Land Management, the Purchasing Office, Small and Minority Business Resources, and Law should coordinate to create a comprehensive policy and process manual to establish the roles and responsibilities for the affected departments related to contract management.
	Develop and implement a system to notify departments, including the procurement departments, when a contract review or “spot check” should occur.
	Provide contract management training for employees using in-house resources or from and external vendor.

Based upon document analysis and structured interviews, it is clearly illustrated that the City of Austin’s procurement program is a successful, highly complex machine. Procurement is a part of every City department, and as such is an invaluable support function in the organization. While not a perfect

process, the City is striving to enhance the proficiency and transparency of the procurement function and process on a continual basis. A review of the areas of recommended improvements may assist management in moving one step closer to achieving the City Manager's goal of "best managed" city in the nation.

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## Appendix A

### Interview Questions

1. Does the City of Austin act as stewards of the community's tax dollars? If so, how?
2. Does the City of Austin incorporate accountability to citizens into the contracting process? If so, how?
3. Does the City of Austin award and execute contracts based on the priorities that citizens voice? If so, how?
4. Does the City of Austin contract for services and goods to support and improve public health, safety, and quality of life? If so, how?
5. Are all projects executed by the City based on citizen demand? If not, why?
6. Does the City of Austin have written policies and procedures regarding the provision of information for total contracting costs? If so, how?
7. What factors are or would be included in the total cost of COA contracting?
8. How does the City of Austin ensure it is following contract law when issuing solicitations, awarding contracts, and executing contracts?
9. How is best value determined by the City of Austin when awarding contracts?
10. What is the rationale for not competitively awarding a contract?
11. How does the City of Austin address the issue of using subcontractors and subconsultants in contracting?
12. Does the City of Austin have written policies and procedures that address risk-sharing between the agency and the contractor or consultant? If so, how is risk-sharing addressed?

13. How does the City of Austin ensure all citizens have the same access to contracting information?
14. Does the City of Austin measure quality in services delivered by contractors and consultants? If so, how is it measured?
15. How does the City of Austin review the quality of its contracting process?
16. Does the City of Austin have experienced staff in contract procurement and contract administration? If so what skills does staff need to effectively perform the function?
17. Does the City of Austin have a written policy or process that mandates employee training related to procurement regulation/applications and contract law? If so how often is the training required? Who is required to attend training?
18. Does the City of Austin have a written policy and procedure related to tracking contractor and consultant performance as part of the contract compliance? If so how is performance tracked and what is tracked?
19. Does the City of Austin have legal staff to review contracts? If so, what does legal staff review in a contract?
20. What legal recourse does the City of Austin have related to contracting?
21. If the City has legal recourse, are they ever utilized?

Appendix B

**TEXAS  STATE**  
**UNIVERSITY**  
SAN MARCOS  
*The Rising STAR of Texas*

**Institutional Review Board**

**Request For Exemption**

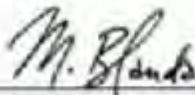
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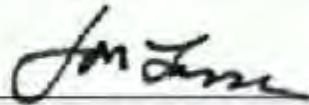
Applicant: Felecia Shaw

Request Number : EXP2010H2814

Date of Approval: 09/23/10

  
Assistant Vice President for Research  
and Federal Relations

  
Chair, Institutional Review Board

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## Appendix C

### List of Documents Utilized for Document Analysis

Texas Government Code 252	
Federal Code of Regulations	49 CFR Part 26 - Construction
	49 CFR Part 23 - Concessions
City of Austin Website	City Charter
	Anti-Lobbying Ordinance
	City Council Meeting video and transcripts
	MBE/WBE and Small Business Advisory Committee meeting minutes
	MBE/WBE and Small Business Council Subcommittee meeting video and minutes
City of Austin – City Auditor	Contract Monitoring Guide
	Report of City-wide Contract Monitoring (2010)
City of Austin – Contract & Land Management	RFQ Issuance Process
	RFQ Evaluation Process
	RFQ Evaluation Matrix Criteria
	RFQ Evaluation Matrix
	Prof. Svc Agreement & Supplemental Amendment Negotiation
	RFQ Solicitation Issuance Process
	Ethics in Consultant Evaluation Selection Training
	CLMD Protest Process/Procedure
	Cooperative Purchasing Policy & Procedures

Appendix C: *continued*

	Solicitation Documents
	Standard Contract Documents
City of Austin – Purchasing Office	Purchasing Procedures Manual
	Ethics in the City of Austin Presentation
	Contract Monitoring Guide
	AIMS – Central Buyer Procedures
	Standard Contract Documents
City of Austin – Small & Minority Business Resources Department	MBE/WBE Procurement Program Ordinance 2-9 (A-D)
	MBE/WBE Procurement Program Rules
	Third Party Agreement Resolution
	MBE/WBE Procurement Ordinance Training Presentation
	Second Generation Study – The State of Minority-and Women-Owned Business Enterprises in the City of Austin, Construction Economy (2006)
	Race, Sex, and Business Enterprise: Evidence from the City of Austin Final Report (2008)
	DBE Goal and Methodology Report (2008)
City of Austin – Public Works Department	Project Manager Academy Training Handouts
	Project Manager Procedures Manual