



ECTOR COUNTY, TEXAS

PROCUREMENT

POLICIES AND PROCEDURES

Adopted by Ector County Commissioners' Court - April 26, 2010

For Implementation - April 26, 2010

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I. INTRODUCTION

This manual contains the policy and procedures for the PROCUREMENT of goods and/or services for Ector County. Procurement is defined as purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; including all functions that pertain to the acquisition, description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. Procurement is the combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage and disposal operations. These policies and procedures are approved and authorized by the Ector County Commissioners' Court, and changes in the contents of this manual shall be made only by the approval of the Ector County Commissioners' Court.

The Ector County Commissioners' Court has adopted a centralized procurement function that provides many benefits:

- It allows for the consolidation of several smaller procurements by individual departments into larger procurements for the entire County, resulting in lower unit prices and savings
- Vendors and the business community have a single, central link to the County procurement process to facilitate consistent communication and understanding
- Purchasing personnel accumulate a solid foundation of procurement knowledge and experience about purchasing, marketing trends, pricing, contractual arrangements and vendors. This expertise assists users to define their needs better to save the County money and promotes a more efficient procurement process
- Centralized expertise puts the procurement processes on a professional footing and inspires public confidence in the actions of the County

The centralized procurement concept provides the County with an orderly and business-like procedure for procuring goods and/or services for the various departments of the County. Bear in mind that not only is it necessary to procure the proper goods and/or services required by the various activities of the County; review fund accounts; oversee that the goods and/or services are delivered in an orderly, acceptable and timely manner at the awarded prices; but also that the vendor will be promptly paid upon completion of their order or contract.

County procurement procedures are governed by Texas statutes. These statutes, including interpretations of them made by Texas courts, are the ultimate authority on the validity of procurement procedures. Because the policies and procedures described in this manual are based on state law, this manual, in many instances, contains language taken directly from statutes, and paraphrases of and broad generalizations about Texas statutory law which have been included where appropriate to assist in applying the law in routine situations. *This manual cannot address every situation*; and when an unusual situation occurs or a difficult legal or factual problem arises, the exact statutory language must be reviewed and analyzed. In every situation, the final authority for County procurement procedures is the law itself.

This manual is intended for the use of Ector County officials and employees and is designed to assist them in complying with the laws governing county procurement policies and procedures. This manual does not create any rights of individuals or entities enforceable against Ector County.

The goal of this written procurement policy is to promote the County's best interest through intelligent action and fair dealings, which will result in obtaining the maximum value for each dollar expended and at the same time conform to the laws of the State of Texas under which the County government must operate.

II. PROCUREMENT POLICY

A. AUTHORITY:

1. Authority to make a County procurement resides in either the County Purchasing Agent or the Commissioners' Court. The Purchasing Agent is responsible for overseeing, reviewing and authorizing procurements of supplies, goods and/or services, equipment, and for making contracts for repairs to County owned property. LOCAL GOVERNMENT CODE (LGC), CHAPTER 262.
2. The Ector County Purchasing Agent was established utilizing LGC, CHAPTER 262., Sec. 262.011., (a); in which a board, composed of the judges of the district courts in the county and the county judge, by majority vote, appoint a suitable person to act as the county purchasing agent. The term of office of the county purchasing agent is two years.
3. Procurement entails the commitment and expenditures of public funds. Therefore, it is extremely important that the responsibility for key procurement activities be clearly fixed. The Purchasing Agent of Ector County is the central purchasing authority responsible for assuring that the principles and requirements of public procurement are met.

B. PURCHASING ETHICS:

1. It is the policy of Ector County to promote and balance the objective of protecting government integrity and public trust. Such policy is implemented by prescribing essential standards of ethical conduct.
2. Ector County employees must discharge their duties impartially so as to assure fair and competitive access to governmental procurement by responsible contractors. County employees will avoid the appearance of unethical or compromising practices in relationships, actions, and communications.
3. It is the intent of the Purchasing Department to promote the County's reputation for courtesy, fairness, impartiality and transparency. The responsibility for achieving this goal rests with each individual who participates in the procurement process. This includes the requesting departments and agencies, the vendors, as well as the purchasing personnel. The Purchasing Department adheres to the ethics set forth by the National Association of Purchasing Management, the National Institute of Governmental Purchasing, the Uniform Commercial Code, and The Texas Public Purchasing Association.

4. General Ethical Standards:

- a. It shall be a breach of ethics to attempt to realize personal gain through public employment with Ector County by any conduct inconsistent with the proper discharge of the employee's duties.
- b. It shall be a breach of ethics to attempt to influence any public employee of Ector County to breach the standards of ethical conduct set forth in this code.
- c. It shall be a breach of ethics for any employee of Ector County to participate directly or indirectly in a procurement when the employee knows that:
 - 1.) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
 - 2.) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
 - 3.) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
 - 4.) If such conflicts of interest exist, the employee shall notify the Purchasing Agent in writing and remove him/herself from the County procurement process.

- d. It shall be a breach of ethics to offer, give or agree to give any employee or former employee of Ector County, or for any employee or former employee of Ector County to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content or any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this governmental body.
- e. It shall be a breach for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Ector County, or any person associated therewith, as an inducement for the award of a subcontract to order.
- f. The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation thereof.
- g. It shall be a breach of ethics for any employee or former employee of Ector County knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person. All solicited procurement information is to be kept secret and confidential by all County employees until after an award and/or a contract is approved.

C. CENTRALIZED PROCUREMENT:

- 1. Centralized procurement is the method of organization and procedure, whereby all procurements are managed by a single agency—in Ector County’s case the County Purchasing Department.
- 2. This centralization allows for the consolidation of all of the County departments’ procurements.
- 3. Three important requirements of centralized procurements are:
 - a. Full authority of procurement are in the hands of a qualified central authority.
 - b. Designation of responsibility to qualified assistants for procurements to insure that the County receives full value for each dollar expended.
 - c. Common standards of specifications, services and/or operations to permit an efficient procurement program.

D. PROCUREMENT POLICIES:

1. Statement of General Policy:

- a. It is the policy of Ector County that all procurements shall be conducted strictly on the basis of economic and business merit to best promote the interest of the citizens of Ector County.
- b. A procurement program encompasses much more than merely acquiring pricing and placing orders for goods and services. Management functions such as planning and scheduling, seeking and researching vendors, assuring the preparation of proper specifications, auditing pricing, proper training of staff and assistants, quality assurance and inventorying of procured goods and/or services, are all part of an efficient program.
- c. Furthermore, a public procurement program operates in full view of the public. A responsible program is fundamental to the County’s government and, in contrast to industrial or private procurement; the price of goods procured is not the overriding indicator of performance. More important in public procurement is how the price is obtained. There shall be no place in County procurement for partiality, secretiveness or deception.

- d. Ector County will maintain a procurement program conforming to the best practices of management. To be successful, such a program must embody the proper attitudes and cooperation of all County employees. Only through such cooperative effort can a procurement program be established and preserved to the best interest of all parties.
- e. The procurement process is not instantaneous. Time is required to process the volume of requests received through the steps decreed by State law and County policy. In order to accomplish timely procurement of goods and/or services required by all County departments, the Purchasing Department and all requesting departments must cooperate fully. Prior planning and the timely submission of requests are needed to expedite the procurement process.

2. **Specific policies:**

- a. Authority to make a County procurement resides in either the County Purchasing Agent or the Commissioners' Court. The Purchasing Agent is responsible for overseeing, reviewing and authorizing procurements of supplies, goods and/or services, equipment, and for making contracts for repairs to County owned property. LGC, CHAPTER 262. Procurements which are not made through or with the explicit knowledge and permission of the Purchasing Agent shall be a personal obligation of that employee and cannot be ratified by the Purchasing Agent or the Commissioners' Court, and the Auditor cannot pay for the purchase (LGC, CHAPTER 262, SECTION 262.011,(f)).
- b. All procurements will be for a quality suitable for the purpose at the least possible expense to Ector County. The Purchasing Department promotes economy by consolidating requirements and by setting standards for inventories.
- c. The requests for all purchases will originate at the requesting department level.
- d. All procurements over \$500 will require "Competitive Bids/Proposals". This requirement may be exempted by LGC, Section 262.024, if the Commissioners' Court, by order, grants the exemption. See attached LGC page 29-30 for details.
- e. All Purchase Orders will be issued by the Purchasing Department after an award is made. Before the Purchase Order can be issued, sufficient funding and all associated documents (quotes, contracts, Master Service Agreement/Insurance, etc.) must be submitted, reviewed, approved, properly signed by the appropriate County personnel, and on file with the Purchasing Department.
- f. No purchase for the County will be made without a Purchase Order to support the award of the purchase unless specific exceptions are provided for in this policy.
 - 1.) Purchases under \$500 made directly by a department. See page 11 for more details on this type of purchase.
 - 2.) Ector County Commissioners' Court has granted an additional list of exemptions, due to the fact that the cost of the goods and/or services can only be determined "after the fact." See attached pages 48 - 49 for details.
- g. Procurements will be open and unrestricted, and the Purchasing Department will continually strive to increase competition and obtain new sources.
- h. Procurements will be based on established standards and specifications whenever possible.
- i. Prior procurements are a matter of public record and are available to all "open records" requests.
- j. Procurements utilizing the firm bid methods (Request For Bid (RFB) or Invitation For Bid (IFB)) shall be revealed at time of bid opening or after the award.
- k. Procurements utilizing the proposal method (Request For Proposal (RFP) or Invitation For Proposal (IFP)) shall be considered and held confidential until after an award and/or contract has been made.

- l. Any commitment to acquire goods and/or services in the name of Ector County for personal use or ownership is prohibited. Any individual making such a commitment may be liable to prosecution. County employees shall not use County letterhead in making personal purchases or ordering goods and/or services for their own use.
 - m. The County is exempt from payment of taxes under Chapter 20, Title 122A, Article 20.04, Revised Civil Statutes of Texas, for the purchase of tangible property. Any use of the County tax exemption certificate/number for personal purchases is prohibited. Anyone using the County's tax exemption certificate/number for personal purchase may be liable to prosecution.
3. **Types of Purchases:**
- a. **Less than \$500:** Purchases for goods and/or services in the amount of \$499.99 or less may be made by departments designed as "Direct" purchases. See page 11 for the definition and procedures on this type of purchase.
 - b. **\$500 — \$4,999.99:** Purchases will originate with a requisition from the requesting department. The Purchasing Department, or authorized assistants, will obtain verbal or written quotes from the vendors.
 - c. **\$5,000 - \$49,999.99:** Purchases will originate with a requisition from the requesting department. The Purchasing Department, or an authorized assistant, will obtain written quotes from the vendors.
 - d. **\$50,000 and above:** Specific procedures as required by law and reflected in Vernon's Civil Statutes of the State of Texas Annotated, Local Government Code, Chapter 262, are followed by the County in the procurement of goods and/or services where the cost exceeds the statutory limit set by the legislature. As of June 19, 2009 that limit was set at \$50,000.
 - e. **Emergency Purchases and Emergency Repairs:** Emergency purchases and repairs should only be for an unexpected and urgent need to keep buildings and machinery in operating condition when their idleness would result in expense to the county; or for the public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county; and/or for the unforeseen damage to public property.
 - f. **Sole Source:** A sole source purchase occurs when only one vendor possesses the unique capability to meet the particular requirements.
 - g. **Blanket Purchase Orders:** A Blanket Purchase Order will allow multiple purchases of like type goods and/or services, that have an awarded quote, on "as needed basis" through out the fiscal budgeted year.
 - h. **Purchasing Card Program:** This Card can be used for purchases as provided for in the Purchasing Card Program.
 - i. **Professional Services:** Professional Services should be obtained utilizing the Professional Services Procurement Act, LGC 2254.
 - j. **Exemptions from Competitive Bid/Proposal:** Specific exemptions from "Competitive Bidding" procedures can be used, if the Commissioners' Court grants the exemption. These specific exemptions are listed in Vernon's Civil Statutes of the State of Texas Annotated, Local Government Code, Chapter 262, Section 024 - Discretionary Exemptions.
 - k. Purchasing Policy Exemptions from Purchase Orders granted by the Commissioners' Court are listed on pages 48 - 49.

III. RESPONSIBILITIES OF COUNTY OFFICIALS

The Purchasing Department is a service agency for all departments and agencies of the County. The procurement function is a “family affair” and the mutual benefits derived depend wholly upon cooperation with each other. This section of the manual is to be used as a guide to help the departments and agencies do their part, and to point out their responsibilities in the procurement program.

A. RESPONSIBILITIES OF DEPARTMENTAL OFFICIALS:

The Departmental Official’s responsibilities are to:

1. Read, review and utilize the procurement policies and procedures.
 - a. The Department Head/Elected Official may designate an employee to be trained and/or participate in a Purchasing Department training session to assist in the procurement program.
 - b. The Purchasing Department will also provide training to anyone involved with the procurement program.
2. Review their budget for available funds and ensure the request is in the proper line item expense account.
3. Make the necessary arrangements with the Auditor and Commissioners’ Court if budgeted funds are not sufficient for a requested purchase.
4. Supply a list of anticipated requirements in advance, including a complete, clear, and concise description of the goods and/or services requested, especially those of an engineering or technical background.
5. Always allow sufficient time to obtain and award quotes, place the order, and for the vendor to process and make delivery on the requested goods and/or services.
 - a. Plan purchases so as to avoid “rush orders” and/or emergency purchases.
 - b. Assist in the administration of annual contracts that directly affect their operations.
 - c. Forward all budgeted requests to the Purchasing Department for the procurement process to take place.
 - 1.) All formal bid/proposal requests are to be submitted to the Purchasing Department far enough in advance to allow enough time to review and approve the specifications, advertise, accept, evaluate and present to the Commissioners’ Court for award on a timely basis. Before the presentation to the Commissioners’ Court, evaluation of bid/proposal specifications shall be made with the knowledge and assistance of the requesting department.
 - 2.) Any pertinent documents submitted during budget hearings to acquire the approved budgeted funds should be also accompany the request.
6. Assist the Purchasing Department by suggesting the names of vendors who have access to the particular goods and/or services being requested, especially those of a technical nature.
 - a. Keep competition in mind in order to provide all vendors an equal opportunity to submit a quote for goods and/or services.
 - b. The Purchasing Agent shall not be confined to the list of vendors suggested.
 - c. Any responsible vendor may be placed on the list upon request by telephone; written request; in person; if found in any other research such as a phone directory, magazine, Internet, etc.; or by any other means.
7. Not obligate, under any circumstances, the Purchasing Department and/or the County.

8. Make sure there are no illegal purchases.
 - a. Purchase from the awarded vendor of an annual bid.
 - 1.) Any purchase for goods and/or services made from a non-awarded vendor will be void, and the County employee making such a purchase may be held personally accountable and liable for the incurred costs.
 - 2.) Purchases from non-awarded vendors may be allowed in certain instances, such as if the awarded vendor did not carry the required item or if they did not have a sufficient supply of the item, to complete a project in a timely manner.
 - b. Any commitment for goods and/or services made in the name of Ector County by any individual and/or department will be void, and the County employee making such a purchase may be held personally accountable and liable for the incurred costs.
 - c. Purchases from annual awarded vendors. Any purchase for goods and/or services made from the non-awarded vendor will be void, and the County employee making such a purchase may be held personally accountable and liable for the incurred costs.
 9. Understand that no County employee has the authority to make a purchase of goods and/or services through the Purchasing Department for personal use.
 10. Be responsible for the inspection of deliveries and/or subject the purchased goods and/or services to such tests as necessary to determine the compliance with the specifications.
 - a. Reject all inferior or unsatisfactory goods and/or services.
 - b. Inform the Purchasing Department on the non-compliance of received goods and/or services.
 11. Report all goods and/or services received from a Purchase Order by submitting the "Receiving Copy".
 - a. This form should be dated and signed, in the lower right corner, on the date the goods and/or services were received.
 - b. This form should be returned to the Purchasing Department for processing of payment upon acceptable receipt of the goods and/or services.
 12. Assist in the administration of the Fixed Asset policy.
- B. RESPONSIBILITIES OF THE PURCHASING DEPARTMENT:**
- The Purchasing Department's responsibilities are to:
1. Ensure that the County Procurement Policies and Procedures and State Purchasing laws are followed.
 2. Provide training to anyone involved with the procurement program.
 3. Designate assistants to aid in the performance of the Purchasing Agent's duties.
 4. Assist in the Budget process to be acquainted with the needs of all the departments of the County, so that goods and/or services will be secured to meet the department's requirements.
 5. Notify Elected Officials or Department Heads if the budget for a requested good and/or service is not sufficient for the purchase.
 6. Obtain or assist in the procurement of goods and/or services needed by the requesting departments in a timely and efficient manner.
 - a. Review and research sources and availability of needed goods and/or services and keep informed of current developments in the field of procurement, in market conditions, and new goods and/or services.
 - b. Investigate and analyze, for the benefit of the County, research done in the field of procurement by other governmental agencies and private industry.
 - c. Explore the possibilities of bulk purchasing and combining of orders to take full advantage of discounts.
 - d. Join with other governmental agencies in cooperative purchasing plans, with the approval of the Commissioners' Court, when in the best interest of Ector County.

7. Reserve the right to accept or reject all or any part of a bid/proposal and to accept the offer considered the most advantageous to the County on goods and/or services under the statutory limit set by the legislature. As of June 19, 2009 that limit was set at \$50,000.
8. Ensure the timely delivery of goods and/or services to avoid interruption of County operations.
 - a. Advise departments of any unusual delay in the delivery schedule of pending orders.
 - b. Assist the departments in the inspection of the delivered goods and/or services.
9. Conduct the Department in such a way that vendors will:
 - a. Be assured of the fairness of the awards.
 - b. Be encouraged to continue participating in the procurement process.
 - c. Furnish competition to assure the County with the highest quality goods and/or services at the lowest cost and/or best value.
10. Ensure that vendors are aware that Ector County is exempt from all Federal excise tax and State sales tax. Exemption certificates will be executed by the Purchasing Agent upon request.
11. Investigate and report any possibilities of collusion among vendors.
12. Obtain from each Elected Official or Department Head a list of departmental employees authorized to sign requisitions and supply orders.
13. Not to discriminate against vendors in awarding of bids with respect to race, religion, color, sex, or national origin, in accordance with the State of Texas statutes.
14. Be responsible for the Fixed Asset policy.

C. RELATIONSHIP WITH VENDOR REPRESENTATIVE:

1. The procurer-seller relationship is one of mutuality. The responsibility of establishing a relationship of mutual confidence and satisfaction between the County and its vendor lies with the Purchasing Department. Therefore, it is necessary that the Purchasing Department be aware of all transactions between the County and its vendors.
2. The requesting department should not be burdened with visits from a vendor or their representatives. By observing the procedures outlined in this manual, the time of both the County and the vendor will be saved.
3. Departments and employees' relationships with the vendor's representatives should be as follows:
 - a. The representatives of all vendors will be received by the Purchasing Department promptly and courteously.
 - b. When it is necessary for the vendor's representative to talk with the Department Head, a meeting should be arranged by the Purchasing Department. If a Department Head is contacted by a vendor or the vendor's representative, they should be courteous and refer such vendor to the Purchasing Department. The County employee cannot obligate the County, and should always so advise the vendor.
 - c. Any useful information received by a department (interviews, catalogs, advertising, and etc.) from a vendor should be forwarded to the Purchasing Department. The Purchasing Department will maintain this information for use by all County departments.
 - d. All correspondence with vendors regarding Purchase Orders should originate in the Purchasing Department, unless an approved arrangement has been made.
 - e. The Purchasing Department shall participate in all procurement negotiations.
 - f. The Purchasing Department has full authority to question the quality and kind of goods and/or services requested by a County department in an effort to ensure that the best interest of the County may be served.

IV. PURCHASING PROCEDURES

- A. **PURCHASES LESS THAN \$500:** Purchases for goods and/or services in the amount of \$499.99 or less may not require a quote or Purchase Order. These types of purchase are designated as “Direct” purchases. A “Direct” purchase is for the purchase of a good and/or service that will be less in total value of \$500 County-wide, taking into consideration of all the County department’s purchases, throughout the budgeted fiscal year.
1. These purchases should be made with the use of the Purchase/Requisition Form. The Form will be completely filled out by the department with the appropriate information. The original and first copy with all documentation attached will be sent to the Purchasing Department. The second copy should be kept and filed in the requesting department.
 2. These types of purchases should be held to a minimum and in no event will “component, partial, separate, and/or sequential purchases” of \$499.99 or less be made with the intent of avoiding the provisions of this policy.
 3. **NOTE: Departments should be cautioned. COUNTY-WIDE purchases of any like goods and/or services that total over \$500, throughout the fiscal year, will be required to obtain three (3) competitive quotes.**
- B. **PURCHASES GREATER THAN \$500:** Purchases for goods and/or services in the amount of \$500 or more will require quotes and a Purchase Order.
1. **\$500 — \$4,999.99:** Purchases will originate with a requisition from the requesting department. The Purchasing Department, or authorized assistants, will obtain verbal or written quotes from the vendors. The original and first copy with all documentation attached will be sent to the Purchasing Department. The second copy should be kept and filed in the requesting department.
 - a. At least three (3) **verbal or written** quotes from vendors or one (1) quote from an approved cooperative vendor, will be obtained when possible.
 - b. **Each quote shall have at least the vendor’s name, the representative’s name, and their phone number.**
 - c. After the quote is obtained, the Purchasing and Requesting Department will determine the lowest and best responsible bid and/or best valued proposal. The Purchasing Department will issue a Purchase Order to award the procurement.
 - d. **NOTE:** Some Website/Internet prices, are not true competitive quotes, and will not be accepted unless these prices also include all freight, shipping and handling charges and/or governmental discounts.
 2. **\$5,000 - \$49,999.99:** Purchases will originate with a requisition from the requesting department. The Purchasing Department, or an authorized assistant, will obtain written quotes from the vendors. The original and first copy with all documentation attached will be sent to the Purchasing Department. The second copy should be kept and filed in the requesting department.
 - a. At least three (3) **written** quotes from vendors or one (1) quote from an approved cooperative vendor, will be obtained when possible.
 - b. **Each quote shall have at least the vendor’s name, the representative’s name, and their phone number.**
 - c. After the quote is obtained, the Purchasing and Requesting Department will determine the lowest and best responsible bid and/or best valued proposal, and after determination of availability of funds from the County budget the Purchasing Department will issue a Purchase Order to award the procurement.
 - d. **NOTE:** Some Website/Internet prices, are not true competitive quotes, and will not be accepted unless these prices also include all freight, shipping and handling charges and/or governmental discounts.

3. **\$50,000 and above:** Specific procedures as required by law and reflected in Vernon's Civil Statutes of the State of Texas Annotated, Local Government Code, Chapter 262, are followed by the County in the procurement of goods and/or services where the cost exceeds the statutory limit set by the legislature. As of June 19, 2009 that limit was set at \$50,000. The original and first copy with all documentation attached will be sent to the Purchasing Department. The second copy should be kept and filed in the requesting department.
 - a. If approved for purchase by the Commissioners' Court, the Department Head and the Purchasing Agent will draw specifications and advertise for bids/proposals according to the law.
 - b. All formal bids/proposals will be received by the Purchasing Agent, who will open and tabulate the bids/proposals, present to the Department for review and the Commissioners' Court for award.
 - c. A quote from an approved cooperative vendor may be used and exempt the process of section a. and b. as described above. However, all pricing must be presented to the Commissioner's Court for approval.
- C. **REQUEST FOR A PURCHASE:** Purchase requests should be made with the use of the Purchase/Requisition Form. The Form will be filled out by the requesting department with the appropriate information. The original and first copy will be sent to the Purchasing Department. The second copy should be kept and filed in the requesting department.
 1. The Purchasing Department will determine if funds are available under the appropriate line-item expense account budget allocation. If funds are not available, the Requisition will be returned to the appropriate Department. The returned Requisition will not receive further consideration until such time that funds become available through an approval, which must be initiated by the requesting department.
 2. The Purchasing Department will determine which vendors to contact, solicit quotes, and award. Then the Purchasing Department will complete the Form with the appropriate information, issue and distribute a Purchase Order.
 3. Upon receipt of the Purchase Order, the selected vendor will send the goods and/or services to the requesting department. The vendor will send the invoice for the purchase directly to the County Auditor.
 4. When the goods and/or services are received, in acceptable condition, by the requesting department, the "Receiving Copy" of the Purchase Order will be completed and sent to the Purchasing Department. The Purchasing Department will process the "Receiving Copy" and forward to the County Auditor for payment. This completes the procurement process.
- D. **REQUEST FOR A PURCHASE FROM AWARDED BIDS/PROPOSALS:** Awarded bid/proposal letters are provided by the Purchasing Department to the appropriate departments. Bid/proposal awards are also posted on the County Website for departments to use. Departments are to submit the completed Purchase/Requisition Form to the Purchasing Department for the issuance of a Purchase Order.
- E. **EMERGENCY PURCHASES:** Emergency purchases and repairs should only be for an unexpected and urgent need to keep buildings and machinery in operating condition when their idleness would result in expense to the County; or for the public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county; and/or for the unforeseen damage to public property.
 1. **The department making such a request must notify the Purchasing Department of the nature of the emergency and obtain a Purchase Order if required.**
 2. Emergency purchases must follow the procedures regarding monetary values as mentioned in sections A & B above.
 3. Emergency purchases are costly and should not be used except when absolutely necessary.

- F. **SOLE SOURCE PURCHASES:** A sole source purchase occurs when only one vendor possesses the unique capability to meet the particular requirements.
1. The Purchasing Department will require the requesting department to provide in writing the justification explaining why this is the only source that can fulfill the requirement.
 2. The Purchasing Department reserves the right to investigate and research other sources.
 3. The Purchasing Agent will present a list of Sole Source vendors to the Commissioners' Court for their approval. This usually occurs in January of each year. See attached, LGC Section 262.011, (i), page 25, and Section 262.024, page 29 – 30, for details.
 4. Sole Source purchases must follow the procedures regarding monetary values as mentioned in sections A & B above.
- G. **BLANKET PURCHASE ORDERS:** A Blanket Purchase Order (BPO) will allow multiple purchases of like type goods and/or services, that have an awarded quote, on "as needed basis" throughout the fiscal budget year. For example these BPOs can be utilized on contracted goods and/or services such as plumbing and/or electrical repair parts, office supplies, printer supplies, etc.
1. BPOs will be issued by the Purchasing Department, with the cooperation of the requesting department, at the beginning of each new fiscal year.
 2. It is the responsibility of the department assigned the BPO to track the order throughout the life of the BPO.
 3. This will require "Partial Payments of the BPO, see Section VI., B., page 16 on procedures for partial payments.
 4. Blanket orders will end when the encumbered funds have been all expensed out the end of the fiscal budget year; the end of the awarded contract period; or cancellation by the requesting department or Purchasing.
 5. These BPOs should not be used for the purchase of fixed assets or individual purchases exceeding \$500.
- H. **PURCHASING CARD PROGRAM:** This Card can be used for purchases as detailed in the Purchasing Card Program. See Purchasing Card Program for policy and procedures.
- I. **PROFESSIONAL SERVICES:** Professional Services should be obtained utilizing the Professional Services Procurement Act, LGC 2254.
- J. **EXEMPTIONS FROM PURCHASE ORDERS:** See attached pages 48 – 49 for details.

V. PURCHASE REQUISITION

The Ector County Departmental Purchase/Requisition is a three (3) part form that is numbered and assigned to each department. These forms can be obtained from the Purchasing Department. The original (white) and first copy (yellow) with all documentation attached will be sent to the Purchasing Department. The second copy (pink) should be kept and filed in the requesting department.

The following is a list of information used to complete a Requisition. See page 15 for details.

- A. REQUISITION NUMBER: Each Requisition will be numbered for tracking references.
- B. DEPARTMENT: This is the name of the requesting Department.
- C. DATE: This is the date the requisition is initiated by the requesting Department.
- D. LINE ITEM ACCT. NO.: This will be the appropriate budgeted expenditure line item account number for the requested goods and/or services.
- E. DESCRIPTIONS AND SPECIFICATIONS: Present the type of goods and/or services desired clearly as to brand, model number, size, dimensions, color, grade, unit of measure ("each", "dozen", "cubic yards", "gallons") and etc., to be used for clarification. When necessary, the information may be put on a separate sheet attached to the requisition and transmitted to the Purchasing Department. NOTE: All shipping, handling and freight costs should be addressed in this area of the Requisition.
- F. QUANTITY: Insert the number or quantity required, per the unit of measure.
- G. UNIT PRICE: The price per the unit of measure.
- H. TOTAL AMOUNT: This will be the sum, of the unit prices times the quantities, of that line.
- I. **TOTAL AMOUNT**: This will be the "Grand Total" of the whole Requisition.
- J. INVOICE NUMBER: To be completed by Department only if requisition is used for "Direct" purchases, as provided in the purchasing policy.
- K. INVOICE DATE: To be completed by Department only if requisition is used for "Direct" purchases under \$500, as provided in the purchasing policy.
- L. COMMENTS: Department may use this space for any special instructions to the Purchasing Department concerning the Requisition.
- M. DEPARTMENT HEAD APPROVAL: The Department Head/Elected Official or authorized departmental employee signature is required. This signature approves the request at the departmental level.
- N. PURCHASING AGENT APPROVAL: The Purchasing Agent or authorized Purchasing Department employee signature is required. This signature approves the request at the Purchasing Department level.
- O. COUNTY AUDITOR APPROVAL: The Auditor or authorized Audit Department employee signature is required. This signature approves the request at the Audit Department level.
- P. TYPE OF TRANSACTION: These are checked off and classified as to the appropriate type of purchase transaction.
- Q. TRANSACTION DATES: These dates are references as to when the Requisition was received and processed in the Purchasing Department.
- R. PURCHASE ORDER NO.: This number is computer generated in the Purchasing Department.
- S. VENDOR NO.: This number is assigned by the Audit department for the payment process. This will be used by the Purchasing and Audit departments.
- T. VENDOR: This is the vendor name who is awarded the prices on this Requisition.

**ECTOR COUNTY
DEPARTMENTAL PURCHASE/REQUISITION**

Purchase Order No. _____

Vendor No. _____

REQUISITION NUMBER A 1741849

Vendor: _____

Department: _____

Date: _____

LINE ITEM ACCT. NO.	Description and Specifications	Quantity	Unit Price	Total Amount	TYPE OF TRANSACTION
-					DIRECT - UNDER \$250
-					OVER \$250 - P.O.
-					EMERGENCY
-					BID ITEM
-					COURT AWARDED
-					SOLE SOURCE
-					OTHER / EXEMPT
-					TRANSACTION DATES
-					RECEIVED IN PURCHASING
-					FUNDS VERIFIED / P.O.
-					SENT TO AUDIT
-					RETURNED TO DEPARTMENT
-					DATE P.O. RECEIVED
TOTAL AMOUNT \$					

Invoice # _____ Invoice Date: _____

Comments: _____

DEPARTMENT HEAD APPROVAL: _____

PURCHASING AGENT APPROVAL: _____

COUNTY AUDITOR APPROVAL: _____

VI. PURCHASE ORDER

The Ector County Purchase Order (PO) is a five (5) part form that is numbered and titled. The PO number is computer generated and will originate from the Purchasing Department.

- A. The five parts of the PO form are:
1. The Vendor Copy (white) is submitted to the awarded vendor.
 2. The Auditor Copy (yellow), along with the original Requisition and PO register are sent to the Audit Department.
 3. The Purchasing Copy (pink) is kept with all other documentation in the Purchasing Department.
 4. The Department Copy (green) is submitted to the requesting department for their files.
 5. The Receiving Copy (blue) is sent to the requesting department.
 - a. The Receiving Copy (blue) is to be kept, by the requesting department, until all of the ordered goods and/or services are received and accepted.
 - b. Upon acceptance the Receiving Copy (blue) should be, dated and signed, and sent back to the Purchasing Department for processing of the payment to the vendor.
- B. Partial Payments of a Purchase Order may be made upon certain circumstances.
1. Partial Receipt of a PO: There may be multiple receipts of goods and/or services throughout the life of the PO.
 - a. The receiving department is to retain their original "Receiving Copy" (blue).
 - b. At each accepted receipt of goods and/or services the department will make a copy of the "Receiving Copy" (blue) and attach the documentation on the amount of goods and/or services that have been received and submit to the Purchasing Department.
 - c. Document and/or correct the copy for the exact goods and/or services that were received.
 2. Blanket Purchase Orders: These type of PO's may be used for the multiple purchases of like type goods and/or services, that have an awarded quote, on "as needed basis" through out the fiscal budgeted year.
 - a. The receiving department is retain their original "Receiving Copy" (blue).
 - b. At each accepted receipt of goods and/or services the department will make a copy of the "Receiving Copy" (blue) and attach the documentation on the amount of goods and/or services that have been received and submit to the Purchasing Department.
 - c. Document and/or correct the copy for the exact goods and/or services that were received.
 3. Upon the "Final" receipt and acceptance of goods and/or services the original "Receiving Copy" (blue) should be submitted to purchasing for the completion of the PO and processing of the payment to the vendor.

VII. DEFINITIONS

Advertisement – A public notice put in a newspaper of general circulation or on a website containing information about a solicitation in compliance with legal requirements.

Amendment/Addendum – A written change, addition, alteration, correction, modification, or revision to the provisions of a solicitation document.

Annual Term Contract – A recurring contract for goods and/or services, usually in effect on a 12 month basis.

Auditor – Ector County Auditor and designated representatives.

Best Value – The best offer that is in the County's best interest. An assessment based on all factors including the total life cycle cost of the item; an analysis of the functionality of the item; the best combinations of quality, services, time, and cost considerations. A procurement method that emphasizes value over price usually achieved through the Request For Proposal (RFP).

Bid – A firm priced response submitted by a vendor to a solicitation.

Bidder/Proposer – A vendor that submits a bid/proposal including anyone acting on behalf of the vendor that submits a bid/proposal, such as agents, employees, and representatives.

Bidder's List – A computerized database of vendors who have shown an interest in submitting bids for particular categories of goods and/or services.

Bond – **Bid/Proposal Bond** - A guarantee that promises the bid will not be withdrawn prior to contract award. Normally it is five percent (5%) of the vendor's bid amount and is in the form of a financial guarantee provided by a surety company chartered or authorized to do business in Texas and entered on a US Department of the Treasury's listing of approved sureties; however, it can be a cashier's check, certified check, U.S. currency, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas. Bonds of unsuccessful bidders/proposers are returned after award. Bond of successful bidder/proposer are returned after award is retained until the contract is executed and any necessary payment/performance bonds are submitted and accepted. If the successful bidder/proposer refuses to execute the contract or submit the payment and performance bonds, then the bid/proposal bond is "called" for.

Payment Bond - A guarantee that promises payment to subcontractors and suppliers on a contract during performance. It must be submitted prior to any work. It is normally one hundred percent (100%) of the contract price and is in the form of a financial guarantee provided by a surety company chartered or authorized to do business in Texas and entered on a US Department of the Treasury's listing of approved sureties; however, it can be a cashier's check, certified check, or U.S. currency. It is normally maintained, in the Purchasing Department, until expiration of any required warranty. If the contractor fails to pay subcontractors and suppliers, then the payment bond is "called" for the amount of non-payment.

Performance Bond – A guarantee that promises that the contract will be performed as required. It must be submitted prior to any work. It is normally one hundred percent (100%) of the contract price and is in the form of a financial guarantee provided by a surety company chartered or authorized to do business in Texas and entered on a US Department of the Treasury's listing of approved sureties; however, it can be a cashier's check, certified check, or U.S. currency. It is normally maintained, in the Purchasing Department, until expiration of any required warranty. If the contractor fails to perform and complete the contract as required, then the performance bond is "called" for the amount required to complete the contract.

Budget Expenditure Line Item Account – This will be the budgeted account the department shall use for the procurement of goods and/or services to be charged to. Account numbers and their respective description and interpretation is established and maintained by the Audit department.

Change Order – A written alteration that is issued to modify or amend a contract or purchase order which will increase or decrease the cost, adjust the time for performance and/or changes the goods and/or services to be delivered. In construction contracts it allows a change caused by unanticipated conditions encountered during construction by modifying the drawings, plans or specifications of the project.

Commissioners' Court – Ector County Commissioners' Court.

Commodity Code – A system of words and/or numbers designed to identify goods and/or services by classes and subclasses.

Competitive Bidding – The Procurement process that allows available vendors to compete with each other to provide goods and/or services.

Competitive Proposal – The Procurement process that allows available vendors to compete with each other to provide goods and/or services and that permits flexibility in product solicitation and negotiations of specifications and costs.

Component Purchases – A series of purchases of component parts of goods that are normally purchased as a whole.

Consultant – A person who provides advice and counsel in a specialized area.

Contract - A formal, written agreement executed by the county and a vendor containing the terms and conditions under which goods and/or services are furnished to the County which commits the County's funds.

Contractor - A vendor who has been awarded a contract by Ector County.

Cooperative Purchases –

Interlocal Cooperation Act, VTCA Government Code Chapter 791 – Allows local governments to contract with and between each other, to provide governmental functions and services, and to join together in contracting with others to provide goods and/or services.

State Cooperation in Local Purchasing Program – VTCA Local Government Code Chapter 271, Subchapter D, Section 271.081.083 – Allows a local government to purchase goods and/or services on the State's purchasing contracts, and allows the State to solicit bids on the local government's behalf, when considered feasible by the state entity of authority.

County – Ector County.

County Attorney - Ector County Attorney or designated representatives.

County Clerk - Ector County Clerk or designated representatives.

Customers - The County's departments and officers.

Cycle Time - The time between when a Purchase Requisition is received in the Purchasing Department and placement of a purchase order with a vendor. Cycle time does not include the time required for delivery or the time it takes for the Purchasing Department to obtain corrections to budget expenditure line item accounts, commodity codes, and other necessary information.

Department - The department that makes a request, ultimately uses the goods and/or services, and from whose budget expenditure line item account for which the contract is paid.

Emergency Purchase – An item that must be purchased due to an unexpected and urgent need where health and safety or the conservation of public resources is at risk.

Employee – Any Agency or County elected official, appointed official, or person that works for the entity.

Formal Competitive Procurement – The procurement process in compliance with the County Purchasing Act which requires approval by the Commissioners' Court.

Goods – Any personal property purchased by the County, including equipment, supplies, material, and component or repair parts.

Incode – The Ector County Financial Software.

Invitation For Bid (IFB) – Bidding document specifications requesting pricing for a specified good and/or service.

Lease – A contract for the use of personal property for a period of time in return for a specified compensation.

Lowest Responsible Bid – The bidder who fully complied with all of the bid requirements and whose past performance, reputation, and financial capability is deemed acceptable and has offered the most advantageous pricing or cost benefit, based on the specified criteria in the bid document.

Master Service Agreement – Is a document, established by the Ector County Commissioners' Court, to separate the County from the vendor as an independent contractor, indemnification, insurability and waiver of subrogation. A set of insurance requirements, depending on the type and monetary value of the project, must be obtained and kept current during the term of the contract award by the vendor.

Modification – A document used to change the provisions of a contract.

Negotiation – A consensual bargaining process in which the County and vendor attempt to reach an mutually satisfactory agreement on or settlement of a matter of common concern.

Official – Any elected or appointed person authorized to represent a department.

Pre-Bid/Proposal Conference – A meeting held by the County with potential bidders/proposers, prior to the opening of the solicitation for the purpose of answering questions and providing clarifications for the understanding all of the requirements of the document's specifications. The conference may result in the issuance of an addendum.

Professional Services – Services directly related to professional practices as defined by the Professional Services Procurement Act, including those services within the scope of the practice of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; and professional nursing.

Prompt Payment Act - Requires the payment not later than the 30th calendar day after the receipt of goods and/or services, or receipt of the invoice for the goods and/or services. Goods and/or services will be considered received when they have been accepted as useable by the end user.

Proposal – A response by a vendor to some type of solicitation to be used as the basis for negotiations or for entering into a contract.

Proprietary Information – Information provided in responses to bids/proposals to which vendor claims ownership or exclusive rights and which is protected from disclosure under the Texas Public Information Act (Tex. Gov't Code, chapter §551).

Purchase Order – A document for the purchase of goods and/or services and which, when accepted by the vendor formalizes all the terms and conditions of a proposed transaction, such as the description of the requested items, delivery schedule, terms of payment, transportation, and the agreed upon price.

Purchase Requisition – A hard copy document used by the requesting department authorizing the commencement of a procurement transaction.

Purchasing – The acquisition of goods and/or services.

Purchasing Act – Chapter §262, of the Texas Local Government Code, which governs the conduct of purchasing activity for Texas Counties.

Purchasing Agent – A person appointed by the Purchasing Board of the County to make contracts on behalf of the County.

Purchasing Board – A board composed of the district judges in the County and the County judge who are responsible for appointing the Purchasing Agent.

Purchasing Department – Ector County Purchasing Department and its staff.

Quote – An informal purchasing process which solicits pricing information.

Reciprocity – A reciprocal condition or relationship dealing with other States Bidder Preference Laws that involves the procurement process. (Tx. Govt. Code, Sect. 2252)

Request for Information (RFI) – A general request, to vendors, for information on a potential future solicitation which is used as a research and information gathering tool for the preparation of specifications and requirements.

Request for Offer (RFO) – A process for soliciting offers/quotes.

Request for Proposal (RFP) – A document used to solicit proposals from vendors, which allows for negotiations of all terms, including price prior to contract award.

Request for Qualifications (RFQ) – A document that requests details about the qualifications of the professionals whose services must be obtained in compliance with the Professional Services Procurement Act.

Responsible – A vendor who has the capability to perform fully and deliver in accordance with the contract requirements based on consideration of past performance, financial capabilities, and business management.

Responsive – A vendor who has complied with all material aspects of the solicitation document, including submission of all required documents.

Sealed Bids/Proposals – A formal submission from a bidder/proposer in response to a solicitation. The solicitation is submitted in a sealed envelope to prevent the contents from being revealed prior to the time and date set for the opening.

Separate Purchases – Acquisitions made in a series of different orders for goods and/or services that in normal purchasing practices that would be purchased in a single order.

Sequential Purchases – Acquisitions made over a period of time that in normal purchasing practices, would be made at one time.

Services – The furnishing of labor by a vendor, that does not include the delivery of a tangible end product, and includes all work or labor performed for the County on an independent contractor basis, including maintenance, construction, manual, clerical, personal or professional services.

Sole Source - A situation created due to the inability to obtain competition. May result because only one vendor possesses the unique ability or capability to meet the particular requirements of the solicitation.

Solicitation – An invitation for bid (IFB), request for proposal (RFP), request for offers/quotes (RFO) or request for qualifications (RFQ) - issued by the Purchasing Department and/or their assistants. This should contain the terms and conditions for a contract and it solicits a response and pricing from vendors to provide goods and/or services needed by the County.

Specifications – A concise description of a good and/or service to be purchased by the County, and the requirements the vendor must meet in order to be considered for an award. A specification may include requirements for testing, inspection, preparing an item for delivery, and preparation or installation for it to be used. The specification is the total description of the item to be purchased.

Vendor – A business entity or individual that seeks to have or has a contract to provide goods and/or services to the County.

VIII. OTHER PROCUREMENT FACTORS

- A. **Purchasing Laws** – The laws that govern county purchasing including the following laws:
1. Purchasing Act, (TEX. LOC. GOV'T CODE ANN., ch. §262,)
 2. Public Property Finance Act, (TEX. LOC. GOV'T CODE ANN., ch. §271, subch. B)
 3. State Contract, (TEX. LOC. GOV'T CODE ANN., sec. §262.002, §271.0813)
 4. State Catalog, (TEX. LOC. GOV'T CODE ANN., ch. §2157 in coordination with TEX. LOC. GOV'T CODE ANN., sections §271.101 through §271.103)
 5. Services and Goods and/or services of Severely Disabled, (TEX. HUM. RES. CODE ANN., chapter. 122.)
 6. Interlocal Cooperation Agreement, (TEX. GOV'T CODE ANN., ch. §791)
 7. Prompt Payment Act, (TEX. GOV'T CODE ANN., ch. §2251) and (VACS 601f)
 8. Other State Bidder Preference Laws (TEX. GOV'T CODE ANN., ch. §2252)
 9. Public Works Performance and Payment Bonds, (TEX. GOV'T CODE ANN., ch. §2253)
 10. Professional Services Procurement Act, (TEX. GOV'T CODE ANN., ch. §2254, subch. A)
 11. Wage Rate for Construction Projects, (TEX. GOV'T CODE ANN., ch. §2258)
 12. Sales tax exemption for governmental entities (TEX. TAX CODE ANN. §151.309)
 13. Texas Public Information Act (Tex. Gov't Code, chapter §551).
 14. Worker's Compensation Compliance (Workers Compensation Rule §110.110)
 15. Uniform Electronic Transaction Act (TEX. BUS. & COM. CODE ANN. Chapter 43)
- B. Attorney General Opinion No. JM-974 further defines requirements for competitive bidding and the authority of the county Purchasing Agent. A copy of the opinion is attached. See attached pages 38 – 42.
- C. Attorney General Opinion No. H-1086 further defines requirements for an award to a bidder which is not a local merchant or businessman. A copy of the opinion is attached. See attached pages 43 – 45.
- D. General Oversight Authority of County Auditor “(a) The county auditor has general oversight of the books and records of a county, district, or state officer authorized or required by law to receive or collect money or other property that is intended for the use of the county or that belongs to the county. (b) The county auditor shall see to the strict enforcement of the law governing county finances”. (LGC 112.006)
- E. Requirement for Approval of Claim “The county auditor may not audit or approve a claim unless the claim was incurred as provided by law”. (LGC 113.065)
- F. County Auditor’s Authority to Determine Time and Manner of Reports to Auditor “The county auditor shall determine (1) the time and manner for making reports to the auditor”. (LGC 114.002)
- G. Penalty for Failure to Furnish County Auditor with Report; Removal “(a) A county official or other person who is required under this subtitle to provide a report, statement or other information to the county auditor and who intentionally refuses to comply with a reasonable request of the county auditor relating to the report, statement or information, commits an offense. (b) An offense under this section is a misdemeanor punishable by: (1) a fine of not less than \$25 or more than \$200, (2) removal from office, or (3) both a fine and removal from office”. (LGC 114.003)
- H. Examination of Records “The county auditor shall have continual access to and shall examine and investigate the correctness of: (1) the books, accounts, reports, vouchers and other records of any officer and (2) the orders of the commissioners court relating to county finances”. (LGC 115.001)
1. Criminal Penalties of the Purchasing Act “A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this act”. (LGC 262.034)

IX. ACKNOWLEDGEMENTS

- A. The following are References and Resources that were used to put this document together.
1. Texas Comptroller of Public Accounts, The Model Procurement Manual for Texas Cities and Counties, March 2005.
 2. The American Bar Association's 2000 Model Procurement Code for State and Local Governments.
 3. Texas County Purchasing Association, Welcome to County Procurement.
 4. Hunt County Purchasing Policy and Procedures Manual, March 2008.
 5. Parker County Purchasing Policy, March 2003.
 6. Tarrant County Purchasing Policy and Procedures, November 2006.
 7. Denton County Purchasing Manual, 2007.
 8. Texas Comptroller, Reciprocity, February 2007.
 9. The Attorney General of Texas, Opinion H-1086 November 7, 1977 and JM-974 October 28, 1988.
 10. Prompt Payment Act, VACS 601f.
 11. Ector County, Purchasing Policy and Procedures Manual.
 12. Ector County, Interpretation of Expenditure Line Items, May 4, 1994.
 13. Ector County, Purchasing Policy Exemptions, November 1, 1991.
 14. Ector County Independent School District, Purchasing Department, Purchasing Manual.
 15. City of Cedar Park, Purchasing Policy, October, 2008.
 16. City of Leander, Purchasing Manual, March 20, 2008.
 17. Introduction to Procurement, Third Edition 2009, Jack T. Pitzer and Khi V. Thai.
 18. Public Procurement Dictionary of Terms, NIGP, 2008.
- B. I want to acknowledge the Purchasing Department Staff, Lucy Soto and Cathleen Hamilton, and my wife Donna in their many hours of assistance and patience in the review and preparation of the draft of this document. I would also like to acknowledge the assistance of a review committee consisting of the 244th District Judge, Stacy W. Trotter; County Judge, Susan M. Redford; Precinct 3 Commissioner, Dale Childers; County Auditor, David Austin; and Human Resources Director, Pat Patton.

LOCAL GOVERNMENT CODE

CHAPTER 262. PURCHASING AND CONTRACTING AUTHORITY OF COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 262.001. APPOINTMENT OF AGENT TO MAKE CONTRACTS.

- (a) The commissioners court of a county may appoint an agent to make a contract on behalf of the county for:
 - (1) erecting or repairing a county building;
 - (2) supervising the erecting or repairing of a county building; or
 - (3) any other purpose authorized by law.
- (b) A contract or other act of an agent appointed under this section that is properly executed on behalf of the county and is within the agent's authority binds the county to the contract for all purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.002. AUTHORITY TO PURCHASE ROAD EQUIPMENT AND TIRES THROUGH COMPTROLLER.

- (a) The commissioners court of a county may purchase through the comptroller road machinery and equipment, tires, and tubes to be used by the county.
- (b) The commission must purchase an item under this section on competitive bids and in accordance with any rules of the commission.
- (c) A purchase under this section must be made on the requisition of the commissioners court. When the court sends the requisition to the commission, the court must include with the requisition a general description of the item desired and a certification of the funds available to pay for the goods and/or services.
- (d) The commission may adopt rules to carry out the purpose of this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 1.101, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 1.102, eff. September 1, 2007.

Sec. 262.003. SMALL, SOLE-SOURCE PURCHASE EXEMPT FROM COMPETITIVE BIDDING.

- (a) Any law that requires a county to follow a competitive procurement procedure in making a purchase requiring the expenditure of \$50,000 or less does not apply to the purchase of an item available for purchase from only one supplier.
- (b) If a county makes a purchase covered by Subsection (a), the county auditor or other appropriate county officer or employee may not refuse payment for the purchase because a competitive bidding procedure was not followed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 12, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 115, Sec. 4, eff. Sept. 1, 2001. Amended by an Act 2009, 81st Leg., Sec. 3, eff. June 19, 2009.

Sec. 262.004. CONTRACT AND OTHER INSTRUMENTS VEST RIGHTS IN COUNTY; SUIT ON CONTRACT OR OTHER INSTRUMENT.

- (a) A note, bond, bill, contract, covenant, agreement, or writing in which a person is bound to a county, to the court or commissioners of a county, or to another person for the payment of a debt or for the performance of a duty or another action for the county vests in the county the same right, interest, or action that would vest in any other person if the contract had been made with that other person.
- (b) A suit may be initiated and prosecuted on an instrument covered by Subsection (a) in the name of a county, or in the name of the person to whom the document was made for the use of the county, in the same manner that any other person may sue on a similar document made to that person.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.005. APPLICATION OF OTHER LAW.

The purchasing requirements of Section 361.426, Health and Safety Code, apply to county purchases made under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 18, eff. Sept. 1, 1991.

Sec. 262.006. LEAST COST REVIEW PROGRAM.

The commissioners court of a county may establish a least cost review program for public improvements to be constructed by the use of personnel, equipment, or facilities of the county that may exceed a cost of:

- (1) \$100,000; or
- (2) an amount less than \$100,000 as determined by the commissioners court.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 13.11(f), eff. Sept. 1, 1999.

Sec. 262.007. SUIT AGAINST COUNTY ARISING UNDER CERTAIN CONTRACTS.

- (a) A county that is a party to a written contract for engineering, architectural, or construction services or for goods related to engineering, architectural, or construction services may sue or be sued, plead or be impleaded, or defend or be defended on a claim arising under the contract. A suit on the contract brought by a county shall be brought in the name of the county. A suit on the contract brought against a county shall identify the county by name and must be brought in a state court in that county.
- (b) The total amount of money recoverable from a county on a claim for breach of the contract is limited to the following:
 - (1) the balance due and owed by the county under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
 - (2) the amount owed for change orders or additional work required to carry out the contract;
 - (3) reasonable and necessary attorney's fees that are equitable and just; and
 - (4) interest as allowed by law.
- (c) An award of damages under this section may not include:
 - (1) consequential damages, except as allowed under Subsection (b)(1);
 - (2) exemplary damages; or
 - (3) damages for unabsorbed home office overhead.
- (d) This section does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity.
- (e) This section does not waive sovereign immunity to suit in federal court.

Acts 2003, 78th Leg., ch. 1203, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER B. PURCHASING AGENTS

Sec. 262.011. PURCHASING AGENTS.

- (a) A board composed as provided by this subsection, by majority vote, may appoint a suitable person to act as the county purchasing agent. In a county with a population of 150,000 or less, the board is composed of the judges of the district courts in the county and the county judge. In any other county, the board is composed of three judges of the district courts in the county and two members of the commissioners court of the county unless the county has fewer than three district court judges, in which case the board is composed of one district court judge and one member of the commissioners court. If members of the board who are district judges must be selected, the selection is made by a majority vote of all the district judges in a county having more than one district judge. If members of the board who are members of the commissioners court must be selected, the selection is made by a majority vote of the commissioners court. The term of office of the county purchasing agent is two years.
- (b) The board may remove the county purchasing agent from office.
- (c) A person appointed under this section must execute a bond in the amount of \$5,000, payable to the county, conditioned that the individual will faithfully perform the duties of county purchasing agent.
- (d) The county purchasing agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used, by the county or a subdivision, officer, or employee of the county, except purchases and contracts required by law to be made on competitive bid. A person other than the county purchasing agent may not make the purchase of the supplies, materials, or equipment or make the contract for repairs.
- (e) The county purchasing agent shall supervise all purchases made on competitive bid and shall see that all purchased supplies, materials, and equipment are delivered to the proper county officer or department in accordance with the purchase contract.
- (f) A purchase made by the county purchasing agent shall be paid for by a warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. The county auditor may not draw and the county treasurer may not honor a warrant for a purchase unless the purchase is made by the county purchasing agent or on competitive bid as provided by law.
- (g) The county purchasing agent may cooperate with the purchasing agent of a municipality in the county to purchase any item in volume as may be necessary. The county treasurer shall honor a warrant drawn by the county auditor to reimburse the municipality's purchasing agent making the purchase for the county.
- (h) The county purchasing agent is not required to make purchases for a municipal county hospital or other joint undertaking of the municipality and county.
- (i) On July 1 of each year, the county purchasing agent shall file with the county auditor and each of the members of the board that appoints the county purchasing agent an inventory of all the property on hand and belonging to the county and each subdivision, officer, and employee of the county. The county auditor shall carefully examine the inventory and make an accounting for all property purchased or previously inventoried and not appearing in the inventory.
- (j) To prevent unnecessary purchases, the county purchasing agent, with the approval of the commissioners court, shall transfer county supplies, materials, and equipment from a subdivision, department, officer, or employee of the county that are not needed or used to another subdivision, department, officer, or employee requiring the supplies or materials or the use of the equipment. The county purchasing agent shall furnish to the county auditor a list of transferred supplies, materials, and equipment.
- (k) The board that appoints the county purchasing agent shall set the salary of the agent in an amount not less than \$5,000 a year, payable in equal monthly installments or by any other distribution at the option of the county. The salary shall be paid by warrants drawn on funds in the county treasury.

- (l) The county purchasing agent may have assistants to aid in the performance of the agent's duties. A person who is authorized by the county purchasing agent to use a county purchasing card while making a county purchase is considered an assistant of the county purchasing agent to the extent the person complies with the rules and procedures prescribed for the use of county purchasing cards as adopted by the county purchasing agent under Subsection (o). The county purchasing agent and assistants may have any help, equipment, supplies, and traveling expenses that are approved and considered advisable by the board that appointed the agent.
- (m) A person, including an officer, agent, or employee of a county or of a subdivision or department of a county, commits an offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$100, by confinement in the county jail for not less than 30 days or more than one year, or by both the fine and confinement. Each act in violation of this section is a separate offense.
- (n) This section applies to all purchases of supplies, materials, and equipment for the use of the county and its officers, including purchases made by officers paid out of fees of office or otherwise, regardless of whether the purchase contract is made by the commissioners court or any other officer authorized to bind the county by contract. An officer making a purchase out of fees of office in violation of this section may not deduct the amount of the purchase from the amount of any fees of office due the county.
- (o) The county purchasing agent shall adopt the rules and procedures necessary to implement the agent's duties under this section subject to approval by the commissioners court. Notwithstanding Subsection (f) or other law, rules and procedures adopted under this subsection may include rules and procedures for persons to use county purchasing cards to pay for county purchases under the direction and supervision of the county purchasing agent.
- (p) During each two-year term of office, a county purchasing agent shall complete not less than 25 hours in courses relating to the duties of the county purchasing agent.
The courses must be:
 - (1) accredited by a nationally recognized college or university;
 - (2) recognized by a national purchasing association, such as the National Association of Purchasing Management; or
 - (3) courses offered by state agencies, or by state professional associations, related to purchasing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(q), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 561, Sec. 1, 2, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 5, 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.02(a), (d), eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 874, Sec. 4, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 367, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 505, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 57, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 321, Sec. 1, eff. Sept. 1, 2001.

Sec. 262.0115. PURCHASING AGENTS IN COUNTIES WITH POPULATION OF MORE THAN 100,000.

- (a) In a county with a population of more than 100,000, the commissioners court may employ a person to act as county purchasing agent. However, this section does not apply to a county that has appointed a purchasing agent under Section 262.011 and that has not abolished the position as authorized by law.
- (b) A purchasing agent employed under this section serves at the pleasure of the commissioners court.
- (c) The commissioners court may employ other persons necessary to assist the purchasing agent in performing the agent's functions.

- (d) Under the supervision of the commissioners court, the purchasing agent shall carry out the functions prescribed by law for a purchasing agent under Section 262.011 and for the county auditor in regard to county purchases and contracts and shall administer the procedures prescribed by law for notice and public bidding for county purchases and contracts.
- (e) A county that has established the position of county purchasing agent under this section may abolish the position at any time. On the abolition of the position, the county auditor shall assume the functions previously performed by the purchasing agent.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 11(g), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 63, Sec. 1, eff. May 9, 1995; Acts 1999, 76th Leg., ch. 369, Sec. 1, eff. May 29, 1999.

Sec. 262.012. COUNTY AUDITORS AS PURCHASING AGENTS IN CERTAIN COUNTIES.

- (a) The commissioners court of a county that employs a county auditor jointly with one or more counties under Section 84.008 may require the auditor to act as the purchasing agent for the county, in addition to performing the regular duties of the auditor as required by law.
- (b) In a county with a population of 41,680 to 42,100, the county auditor shall act as the purchasing agent for the county in addition to performing the regular duties of the auditor as required by law.
- (c) This section applies only to a county in which a county purchasing agent has not been appointed under Section 262.0 11.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 561, Sec. 3, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 204, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER C. COMPETITIVE BIDDING IN GENERAL

Sec. 262.021. SHORT TITLE.

This subchapter may be cited as the County Purchasing Act.
Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.022. DEFINITIONS.

In this subchapter:

- (1) "Bond funds" means money in the county treasury received from the sale of bonds, and proceeds of bonds that have been voted but that have not been issued and delivered.
- (2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
- (3) "Current funds" means funds in the county treasury that are available in the current tax year, evenue that may be anticipated with reasonable certainty to come into the county treasury during the current tax year, and emergency funds.
- (4) "High technology item" means a service, equipment, or good of a highly technical nature, including:
 - (A) data processing equipment and software and firmware used in conjunction with data processing equipment;
 - (B) telecommunications, radio, and microwave systems;
 - (C) electronic distributed control systems, including building energy management systems; and
 - (D) technical services related to those items.
- (5) "Item" means any service, equipment, good, or other tangible or intangible personal property, including insurance and high technology items.
- (6) "Purchase" means any kind of acquisition, including a lease, of an item.

- (7) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
- (8) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.
- (9) "Time warrant" means any warrant issued by a county that is not payable out of current funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(b), eff. Aug. 28, 1989; Acts 1989, 71st. Leg., ch. 1250, Sec. 8(a), eff. Sept. 1, 1989.

Sec. 262.0225. ADDITIONAL COMPETITIVE PROCEDURES.

- (a) In the procedure for competitive bidding under this subchapter, the commissioners court of the county shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.
- (b) A county shall receive bids or proposals under this subchapter in a fair and confidential manner.
- (c) A county may receive bids or proposals under this subchapter in hard-copy format or through electronic transmission. A county shall accept any bids or proposals submitted in hard-copy format.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 1, eff. Sept. 1, 2001.

Sec. 262.023. COMPETITIVE REQUIREMENTS FOR CERTAIN PURCHASES.

- (a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$50,000, the commissioners court of the county must:
 - (1) comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter;
 - (2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or
 - (3) comply with a method described by Subchapter H, Chapter 271.
- (b) The requirements established by Subsection (a) apply to contracts for which payment will be made from current funds or bond funds or through anticipation notes authorized by Chapter 1431, Government Code, or time warrants. Contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271).
- (b-1) A county that complies with a method described by Subchapter H, Chapter 271, as provided by Subsection (a)(3), to enter into a contract for which payment will be made through anticipation notes authorized by Chapter 1431, Government Code, may not issue anticipation notes for the payment of that contract in an amount that exceeds the lesser of:
 - (1) 20 percent of the county's budget for the fiscal year in which the county enters into the contract; or
 - (2) \$10 million.
- (c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this subchapter, from the same vendor by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 57(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 9, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.02(b), eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 757, Sec. 13, 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 442, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th

Leg., ch. 505, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, Sec. 4, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1063, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 12.004, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 689, Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., Sec. 4, eff. June 19, 2009.

Sec. 262.0235. PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS FOR ELECTRONIC BIDS OR PROPOSALS.

The county purchasing agent, before receiving electronic bids or proposals, shall adopt rules in conformance with Section 262.011(o) to ensure the identification, security, and confidentiality of electronic bids or proposals.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 3, eff. Sept. 1, 2001.

Sec. 262.024. DISCRETIONARY EXEMPTIONS.

- (a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:
- (1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;
 - (2) an item necessary to preserve or protect the public health or safety of the residents of the county;
 - (3) an item necessary because of unforeseen damage to public property;
 - (4) a personal or professional service;
 - (5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;
 - (6) any land or right-of-way;
 - (7) an item that can be obtained from only one source, including:
 - (A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
 - (B) films, manuscripts, or books;
 - (C) electric power, gas, water, and other utility services; and
 - (D) captive replacement parts or components for equipment;
 - (8) an item of food;
 - (9) personal property sold:
 - (A) at an auction by a state licensed auctioneer;
 - (B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or
 - (C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government;
 - (10) any work performed under a contract for community and economic development made by a county under Section 381.004; or
 - (11) vehicle and equipment repairs.
- (b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption and if:
- (1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;
 - (2) the renewal or extension does not exceed one year; and
 - (3) the renewal or extension is the first renewal or extension of the lease or agreement.

- (c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.
- (d) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the commissioners' court. Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection. The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the commissioners court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 962, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1001, Sec. 2, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1060, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.03, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 442, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1065, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1272, Sec. 3, eff. September 1, 2007.

Sec. 262.0241. MANDATORY EXEMPTIONS: CERTAIN RECREATIONAL SERVICES.

- (a) This section applies only to a county that:
 - (1) has a population of 20,000 or less; and
 - (2) owns not more than one golf course open for public use.
- (b) The competitive bidding and competitive proposal procedures prescribed by this subchapter do not apply to the purchase of:
 - (1) management services for:
 - (A) a county-owned golf course; or
 - (B) a retail facility owned by the county and located on the premises of the golf course; and
 - (2) landscape maintenance services for a county-owned golf course.

Added by Acts 2001, 77th Leg., ch. 1065, Sec. 2, eff. June 15, 2001.

Sec. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS.

A county purchasing agent shall adopt procedures that provide for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item that is not subject to competitive procurement.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.02(c), eff. Aug. 26, 1991. Renumbered from Sec. 262.0241 by Acts 2001, 77th Leg., ch. 1065, Sec. 2, eff. June 15, 2001. Amended by an Act 2009, 81st Leg., Sec. 5, eff. June 19, 2009.

Sec. 262.025. COMPETITIVE BIDDING NOTICE.

- (a) A notice of a proposed purchase must be published at least once a week in a newspaper of general circulation in the county, with the first day of publication occurring before the 14th day before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening.

- (b) The notice must include:
 - (1) the specifications describing the item to be purchased or a statement of where the specifications may be obtained;
 - (2) the time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;
 - (3) whether the bidder should use lump-sum or unit pricing;
 - (4) the method of payment by the county; and
 - (5) the type of bond required by the bidder.
 - (c) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.
 - (d) In a county with a population of 3.3 million or more, the county and any district or authority created under Article XVI, Section 59, of the Texas Constitution of which the governing body is the commissioners court may require that a minimum of 25 percent of the work be performed by the bidder and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds.
- Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1019, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 669, Sec. 78, eff. Sept. 1, 2001.

Sec. 262.0255. ADDITIONAL NOTICE AND BOND PROVISIONS RELATING TO PURCHASE OF CERTAIN EQUIPMENT.

- (a) A notice of a proposed purchase of earth-moving, material-handling, road maintenance, or construction equipment under Section 262.025 may include a request for information about the costs of the repair, maintenance, or repurchase of the equipment.
 - (b) The commissioners court may require the bidder to furnish, to the county in a contract for the purchase of the equipment, a bond to cover the repurchase costs of the equipment.
- Added by Acts 1991, 72nd Leg., ch. 416, Sec. 1, eff. Sept. 1, 1991.

Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A DISTRICT GOVERNED BY THOSE COUNTIES.

Text of section as amended by Acts 2003, 78th Leg., ch. 660, Sec. 1

- (a) This section applies only to a county with a population of 2.8 million or more.
- (b) The commissioners court of the county or the governing body of a district or authority created under Section 59, Article XVI, Texas Constitution, if the governing body is the commissioners court of the county in which the district is located, may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders.
- (c) After a conference is conducted under Subsection (b), any additional required notice for the proposed purchase may be sent by certified mail, return receipt requested, only to prospective bidders who attended the conference. Notice under this subsection is not subject to the requirements of Section 262.025.

Added by Acts 2001, 77th Leg., ch. 255, Sec. 1, eff. May 22, 2001. Amended by Acts 2003, 78th Leg., ch. 660, Sec. 1, eff. Sept. 1, 2003.

Sec. 262.0256. PRE-BID CONFERENCE.

Text of section as amended by Acts 2003, 78th Leg., ch. 725, Sec. 1

The commissioners court of a county or the governing body of a district or authority created under Section 59, Article XVI, Texas Constitution, if the governing body is the commissioners court of the county in which the district is located, may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders.

Added by Acts 2001, 77th Leg., ch. 255, Sec. 1, eff. May 22, 2001. Amended by Acts 2003, 78th Leg., ch. 725, Sec. 1, eff. Sept. 1, 2003.

Sec. 262.026. OPENING OF BIDS.

- (a) The county official who makes purchases for the county shall open the bids on the date specified in the notice. The date specified in the notice may be extended if the commissioners court determines that the extension is in the best interest of the county. All bids, including those received before an extension is made, must be opened at the same time. The commissioners court may adopt an order that delegates the authority to make extensions under this subsection to the county official who makes purchases for the county.
- (b) Opened bids shall be kept on file and available for inspection by anyone desiring to see them. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 505, Sec. 3, eff. Sept. 1, 1999.

Sec. 262.027. AWARDING OF CONTRACT.

- (a) The officer in charge of opening the bids shall present them to the commissioners court in session. Except as provided by Subsection (e), the court shall:
 - (1) award the contract to the responsible bidder who submits the lowest and best bid; or
 - (2) reject all bids and publish a new notice.
- (b) If two responsible bidders submit the lowest and best bid, the commissioners court shall decide between the two by drawing lots in a manner prescribed by the county judge.
- (c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the commissioners court and present evidence concerning the lower bidder's responsibility.
- (d) In determining the lowest and best bid for a contract for the purchase of earth-moving, material-handling, road maintenance, or construction equipment, the commissioners court may consider the information submitted under Section 262.0255.
- (e) In determining the lowest and best bid for a contract for the purchase of road construction material, the commissioners court may consider the pickup and delivery locations of the bidders and the cost to the county of delivering or hauling the material to be purchased. The commissioners court may award contracts for the purchase of road construction material to more than one bidder if each of the selected bidders submits the lowest and best bid for a particular location or type of material.
- (f) Notwithstanding any other requirement of this section, the commissioners court may condition acceptance of a bid on compliance with a requirement for attendance at a mandatory pre-bid conference under Section 262.0256.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 416, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 127, Sec. 1, eff. May 11, 1993; Acts 2001, 77th Leg., ch. 255, Sec. 2, eff. May 22, 2001.

Sec. 262.0271. CONSIDERATION OF HEALTH INSURANCE PROVIDED BY BIDDER.

- (a) In this section, "comparable health insurance coverage" means health insurance benefits provided by a bidder or a subcontractor a bidder intends to use that are comparable to the health insurance benefits provided for employees of the county.
- (b) In purchasing items under this chapter through a competitive bidding process, if a county receives one or more bids from a bidder who provides comparable health insurance coverage to its employees and requires a subcontractor the bidder intends to use to provide comparable health insurance coverage to the subcontractor's employees and whose bid is within five percent of the lowest bid price received by the county from a bidder who does not provide or require comparable health insurance coverage, the commissioners court of the county may give preference to the bidder who provides and requires comparable health insurance coverage.
- (c) This section does not prohibit a county from rejecting all bids.

Added by Acts 2005, 79th Leg., Ch. 1299, Sec. 1, eff. September 1, 2005.

Sec. 262.0275. SAFETY RECORD OF BIDDER CONSIDERED.

In determining who is a responsible bidder, the commissioners court may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

- (1) the commissioners court has adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
- (3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 58(c), eff. Aug. 28, 1989.

Sec. 262.0276. CONTRACT WITH PERSON INDEBTED TO COUNTY.

- (a) By an order adopted and entered in the minutes of the commissioners court and after notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules permitting the county to refuse to enter into a contract or other transaction with a person indebted to the county.
- (b) It is not a violation of this subchapter for a county, under rules adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the county.
- (c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the county requiring approval by the commissioners court.

Added by Acts 2003, 78th Leg., ch. 156, Sec. 2, eff. Sept. 1, 2003.

Sec. 262.028. LUMP-SUM OR UNIT PRICE METHOD.

A purchase may be proposed on a lump-sum or unit price basis. If the county chooses to use unit pricing in its notice, the information furnished bidders must specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.029. TIME WARRANT ELECTION.

If before the date tentatively set for the authorization of the issuance of time warrants applying to a contract covered by this subchapter or if before that authorization a petition signed by at least five percent of the registered voters of the county is filed with the county clerk protesting the issuance of the time warrants, the county may not issue the time warrants unless the issuance is approved at an election ordered and conducted in the manner provided for county bond elections under Chapter 1251, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.291, eff. Sept. 1, 2001.

Sec. 262.0295. ALTERNATIVE MULTISTEP COMPETITIVE PROPOSAL PROCEDURE.

- (a) (1) If the county official who makes purchases for the county determines that it is impractical to prepare detailed specifications for an item to support the award of a purchase contract, the official shall notify the commissioners court of such determination.
- (2) Upon a finding by the commissioners court that it is impractical to prepare detailed specifications for an item to support the award of a purchase contract, after a notification of such determination by the county official who makes purchases for the county, the county official who makes purchases for the county may use the multistep competitive proposal procedure provided by this section.
- (3) This section applies only to a county with a population of 125,000 or more.
- (b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure, except that the notice may include a general description of the item to be purchased, instead of the specifications describing the item or a statement of where the specifications may be obtained, and may request the submission of unpriced proposals.
- (c) On the date specified in the notice, the county official shall open the proposals and, within seven days after that date, solicit by mailed request priced bids from the persons who submitted proposals and who qualified under the criteria stated in the first solicitation.
- (d) Within 30 days after the date the unpriced proposals are opened under Subsection (c), the county official shall present the priced bids to the commissioners court. The award of the contract shall be made to the responsible offeror whose bid is determined to be the lowest evaluated offer resulting from negotiation. All proposals and bids that have been submitted shall be available and open for public inspection after the contract is awarded.
- (e) As provided in the request for proposals and under rules adopted by the commissioners court, discussion may be conducted with responsible offerors who submit priced bids determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 10, eff. Sept. 1, 1989.

Sec. 262.030. ALTERNATIVE COMPETITIVE PROPOSAL PROCEDURE FOR CERTAIN GOODS AND/OR SERVICES.

- (a) Except for Subsection (d) of this section, the competitive proposal procedure provided by this section may be used for the purchase of insurance, high technology items, and the following special services:
 - (1) landscape maintenance;
 - (2) travel management; or
 - (3) recycling.
- (b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.
- (c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.
- (d) A county in which a purchasing agent has been appointed under Section 262.011 or employed under Section 262.0115 may use the competitive proposal purchasing method authorized by this section for the purchase of insurance or high technology items. In addition, the method may be used to purchase other items when the county official who makes purchases for the county determines, with the consent of the commissioners court, that it is in the best interest of the county to make a request for proposals.
- (e) As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(d), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 464, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 3, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(85), eff. Sept. 1, 1999.

Amended by:

- Acts 2005, 79th Leg., Ch. 640, Sec. 1, eff. September 1, 2005.
- Acts 2007, 80th Leg., R.S., Ch. 1272, Sec. 4, eff. September 1, 2007.
- Acts 2007, 80th Leg., R.S., Ch. 1272, Sec. 5, eff. September 1, 2007.

Sec. 262.0305. MODIFICATION AFTER AWARD.

- (a) After award of a contract but before the contract is made, the county official who makes purchases for the county may negotiate a modification of the contract if the modification is in the best interests of the county and does not substantially change the scope of the contract or cause the contract amount to exceed the next lowest bid.
- (b) For the modified contract to be effective, the commissioners court must approve the contract.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 11, eff. Sept. 1, 1989.

Sec. 262.031. CHANGES IN PLANS AND SPECIFICATIONS.

- (a) If it becomes necessary to make changes in plans, specifications, or proposals after a contract is made or if it becomes necessary to increase or decrease the quantity of items purchased, the commissioners court may make the changes. However, the total contract price may not be increased unless the cost of the change can be paid from available funds.
- (b) If a change order involves an increase or decrease in cost of \$50,000 or less, the commissioners court may grant general authority to an employee to approve the change orders. However, the original contract price may not be increased by more than 25 percent unless the change order is necessary to comply with a federal or state statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made. The original contract price may not be decreased by 18 percent or more without the consent of the contractor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 104, Sec. 1, eff. May 7, 1993; Acts 1993, 73rd Leg., ch. 891, Sec. 1, eff. June 19, 1993; Acts 1995, 74th Leg., ch. 746, Sec. 4, eff. Aug. 28, 1995.

Sec. 262.032. BID OR PERFORMANCE BOND; PAYMENT UNDER CONTRACT.

- (a) If the contract is for the construction of public works or is under a contract exceeding \$100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the total contract price. A bid bond must be executed with a surety company authorized to do business in this state.
- (b) Within 30 days after the date of the signing of a contract or issuance of a purchase order following the acceptance of a bid or proposal and prior to commencement of the actual work, the bidder or proposal offeror shall furnish a performance bond to the county, if required by the county, for the full amount of the contract if that contract exceeds \$50,000. This subsection does not apply to a performance bond required to be furnished by Chapter 2253, Government Code.
- (c) If the contract is for \$50,000 or less, the county may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the county.
- (d) A bidder or proposal offeror whose rates are subject to regulation by a state agency may not be required to furnish a performance bond or a bid bond under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(e), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 109, Sec. 3, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 696, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 33, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 262.033. INJUNCTION.

Any property tax paying citizen of the county may enjoin performance under a contract made by a county in violation of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.034. CRIMINAL PENALTIES.

- (a) A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 262.023. An offense under this subsection is a Class B misdemeanor.
- (b) A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 262.023, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.

- (c) A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a) or (b).

An offense under this subsection is a Class C misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 12, eff. Sept. 1, 1989.

Sec. 262.035. REMOVAL; INELIGIBILITY.

- (a) The final conviction of a county officer or employee for an offense under Section 262.034(a) or (b) results in the immediate removal from office or employment of that person.
- (b) For four years after the date of the final conviction, the removed officer or employee is ineligible:
 - (1) to be a candidate for or to be appointed or elected to a public office in this state;
 - (2) to be employed by the county with which the person served when the offense occurred; and
 - (3) to receive any compensation through a contract with that county.
- (c) This section does not prohibit the payment of retirement or workers' compensation benefits to the removed officer or employee.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 13, eff. Sept. 1, 1989.

Sec. 262.036. SELECTION AND RETENTION OF INSURANCE BROKER.

- (a) Notwithstanding any other provision in this chapter, a county with a population of 800,000 or more may select an appropriately licensed insurance agent as the sole broker of record to obtain proposals and coverages for insurance that provides necessary coverage and adequate limits of coverage in all areas of risk, including public official liability, property, casualty, workers' compensation, and specific and aggregate stop-loss coverage for self-funded health care.
- (b) The county may retain a broker of record selected under this section only on a fee basis paid by the county. A broker of record retained in this manner may not directly or indirectly receive any other remuneration, compensation, or other form of payment from any other source for the placement of insurance business under the broker of record contract.
- (c) A broker of record retained under this section may not submit any insurance carrier proposal to the county or direct any county insurance business to an insurance carrier if the broker has a business relationship or proposed business relationship with the carrier, including an appointment, unless the broker first discloses the nature of that relationship or proposed relationship, in writing, to the county.
- (d) A broker who violates this section is subject to any disciplinary remedy available under Chapter 82, Insurance Code, or Section 4005.102, Insurance Code, including license revocation and fine.

Added by Acts 2005, 79th Leg., Ch. 353, Sec. 1, eff. June 17, 2005.



**THE ATTORNEY GENERAL
OF TEXAS**

October 28, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

Opinion No. JM-974

Re: Competitive bidding in
counties with a county pur-
chasing agent (RQ-1484)

Dear Mr. Driscoll:

You ask:

(1) In counties with county purchasing agents, must the county purchasing agent make all purchases which are not made by competitive bid or can individual officers and departments purchase their own supplies?

(2) Is the County Purchasing Agent subject to the \$5,000 limitation imposed by LOC. GOV'T CODE §262.023 in making purchases of maintenance and repair items the need for which is not foreseeable[?]

In your first question you ask whether the county purchasing agent in Harris County must make all purchases which are not subject to the competitive bid requirements of section 262.023 of the Local Government Code.

You advise that Harris County has a duly appointed purchasing agent subject to the provisions of section 262.011 of the Local Government Code. Section 262.011 provides in pertinent part:

(a) In a county with a population of 74,000 or more, a board composed of the judges of the district courts in the county and the county judge, by majority vote, may appoint a suitable person to act as the county purchasing agent. The term of office of the county purchasing agent is two years.

.

(d) The county purchasing agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used, by the county or a subdivision, officer, or employee of the county, except purchases and contracts required by law to be made on competitive bid. A person other than the county purchasing agent may not make the purchase of the supplies, materials, or equipment or make the contract for repairs.

. . . .

(f) A purchase made by the county purchasing agent shall be paid for by a warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. The county auditor may not draw and the county treasurer may not honor a warrant for a purchase unless the purchase is made by the county purchasing agent or on competitive bid as provided by law.

. . . .

(n) This section applies to all purchases of supplies, materials, and equipment for the use of the county and its officers, including purchases made by officers paid out of fees of office or otherwise, regardless of whether the purchase contract is made by the commissioners court or any other officer authorized to bind the county by contract. An officer making a purchase out of fees of office in violation of this section may not deduct the amount of the purchase from the amount of any fees of office due the county. (Emphasis added.)

You state that your question was prompted by Attorney General Opinion JM-725 (1987). In Attorney General Opinion JM-725 it was concluded that a county officer, department or institution may purchase its own supplies subject to the limitations imposed by section 3 of article 2368a.5, V.T.C.S. (now section 262.023 of the Local Government Code). The request in Attorney General Opinion JM-725 was from a county that did not have a purchasing agent. Hence, the provisions of section 262.011 were not applicable.

In Attorney General Opinion H-1237 (1978), the question arose as to whether the commissioners court of El Paso County had authority to order payment for a purchase made by the sheriff when the county had a purchasing agent duly appointed under then article 1580, V.T.C.S. (now section 262.011). In concluding that the commissioners court did not have authority to direct payment of a claim under a contract which contravened the statute, the opinion stated:

Article 1580 [now section 262.011] establishes the county purchasing agent, an officer not under the supervision of the commissioners court, as the proper party to contract for all county supplies and services except those required to be let on competitive bid. The statute prohibits any other person from entering into such contracts and directs the county auditor not to draw warrants 'for any purchases except by such agent and those made by competitive bid.'

Attorney General Opinion H-1237 (1978), at 1. The county purchasing agent must make all purchases that are not subject to the competitive bid requirements.

In your second question you ask whether the county purchasing agent is subject to the \$5,000 limitation imposed by section 262.023(a), which provides:

Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$5,000, the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter. All bids or proposals must be sealed.

You state that in counties the size of Harris, compliance with the \$5,000 limitation is difficult because of the maintenance of a large inventory of heavy equipment. The statute does not contain an exception based on population. The background information contained in the Bill Analysis to Senate Bill 807, Acts 1985, 69th Leg., ch. 641, at 2377, effective September 1, 1985, (now section 262.023) reflects:

S.B. 807 repeals many of these old purchasing laws and amends others and creates a new, uniform purchasing law for counties

regardless of population. . . . In effect, S.B. 807 gives all counties the same requirements relating to purchasing and removes the disadvantage imposed by earlier methods of regulating the purchasing activity of county officials. . . .

Bill Analysis, Tex. S.B. 807, 69th Leg. (1985). Subsection (d) of section 262.011 expressly excludes from the county purchasing agent's authority "purchases and contracts required by law to be made on competitive bid."

You suggest that the purchase of maintenance and repair items may come within the exceptions to the competitive bidding process under the "captive replacement parts or components for equipment" exception in subsection (a)(7)(D) of section 262.024. Section 262.024 provides in pertinent part:

(a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

. . . .

(7) an item that can be obtained from only one source, including:

. . . .

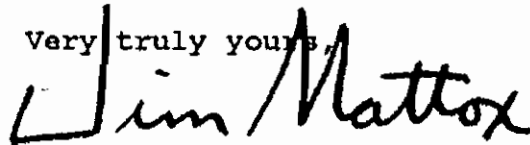
(D) captive replacement parts or components for equipment.

Since the county purchasing agent is subject to the competitive bidding requirements of section 262.023, it follows that the exceptions thereto are applicable. Before there may be an exception to the bidding requirement the parts or components must be items "that can be obtained from only one source." In addition the "maintenance and repair items" must be "captive replacement parts or components." Of necessity the factual determination of whether "maintenance and repair items" constitute "captive replacement parts or components" must be made on a case-by-case basis.

S U M M A R Y

In counties with county purchasing agents, the county purchasing agent must make all purchases that are not subject to the competitive bid requirements of section 262.023 of the Local Government Code. The county purchasing agent is subject to the \$5,000.00 limitation imposed by section 262.023 in making purchases of maintenance and repair items unless such purchases fall within the exceptions set forth in section 262.024 of the Local Government Code.

Very truly yours,



J I M M A T T O X
Attorney General of Texas

MARY KELLER
First Assistant Attorney General

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Executive Assistant Attorney General

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Prepared by Tom G. Davis
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The Attorney General of Texas

November 7, 1977

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An Equal Opportunity
Affirmative Action Employer

Honorable Randall L. Sherrod
Criminal District Attorney
Randall County
Canyon, Texas 79015

Opinion No. H-1086

Re: Whether a county
can reject a low bid
on the sole ground that
the bidder is not a res-
ident of the county.

Dear Mr. Sherrod:

You have requested our opinion concerning the following question:

Whether a county may award a contract to one not a low bidder on the sole basis that the said bidder is a local merchant or businessman and the low bidder is not a local merchant or businessman.

Section 2 of article 2368a, V.T.C.S., provides in part:

No county . . . shall hereafter make any contract calling for or requiring the expenditure of payment of Three Thousand Dollars (\$3,000.00) or more . . . without first submitting such proposed contract to competitive bids . . . and said contract shall be let to the lowest responsible bidder. The Court and/or government body shall have the right to reject any and all bids

(Emphasis added). You have directed our attention to the court's opinion in A & A Construction Co., Inc. v. City of Corpus Christi, 527 S.W.2d 833 (Tex. Civ. App. -- Corpus Christi 1975, no writ). The case involved the right of a low bidder to an injunction prohibiting the city from contracting with another bidder. The court noted the portion of article 2368a emphasized above and stated:

[T]he city by statute had the discretion to reject appellant's bid and it did so. Consequently, the appellant has no right, probable or vested, to the award of the contract.

Id. at 835. Apparently the city had rejected the plaintiff's bid due to its late submission. The court did not address the question of sufficiency of the cause for rejection but disposed of the claim in the above unqualified language.

In Texas Highway Comm'n v. Texas Ass'n of Steel Importers, Inc., 372 S.W.2d 525 (Tex. 1963), the court dealt with a Highway Department rule restricting bids to those with a provision that materials furnished would be manufactured in the United States, its territories and possessions. The court held that the rule was illegal as a violation of the competitive bidding statute, article 6674h, V.T.C.S., quoting with approval a statement regarding competitive bidding in Sterrett v. Bell, 240 S.W.2d 516, 520 (Tex. Civ. App. -- Dallas 1951, no writ):

Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests and benefit of the taxpayers and the property owners. There can be no competitive bidding in a legal sense where the terms of the letting of the contract prevent or restrict competition, favor a contractor or materialman, or increase the cost of the work or of the materials or other items going into the project.

372 S.W.2d at 527.

We believe it clear that since the Highway Department could not limit bids in such a manner, it likewise could not reject a bid solely upon the same grounds, notwithstanding the authority of the Department "to reject any and all . . . bids." V.T.C.S. art. 6674i. Thus, this language which is also contained in article 2368a does not provide a contracting authority with unlimited discretion to reject bids.

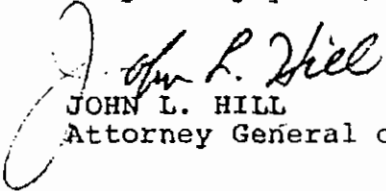
The Texas Supreme Court has held that a limitation regarding the source of materials would be an illegal restriction upon competition; in our view the same would be true of a requirement that a bidder be located within the county. Texas Highway Comm'n v. Texas Ass'n of Steel Importers, Inc., supra. See 10 McQuillin, The Law of Municipal Corporations § 29.49 (3d ed. 1949). Accordingly, in our opinion, a county may, as a general matter, not

award a contract to one not a low bidder on the sole basis that the said bidder is a local merchant or businessman and the low bidder is not a local merchant or businessman. Of course there may exist circumstances in which the proximity of the bidders relates to the determination of the "lowest responsible bidder," which determination is within the reasonable discretion of the contracting authority.

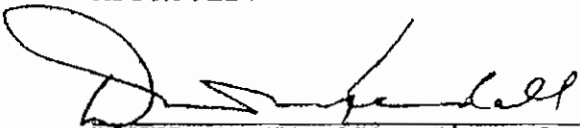
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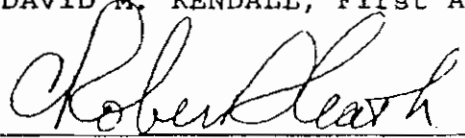
A county may not reject a low bid solely because the bidder is not a local merchant or businessman.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

jst

Reciprocity

Revised 02/09/2007

[Skip Intro and go to Reciprocity Reference Links]

Texas law requires that out-of-state bidders who reside in states that grant resident bidder preferences for that state's purchases be evaluated in the same manner that a Texas resident bidder would be evaluated in the out-of-state bidder's home state. Specifically the law states:

A [Texas] governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.^[1]

This process of evaluating out-of-state bidders is generally known as "reciprocity."

What do we mean when we talk about "reciprocity"? Reciprocity is defined in the dictionary as "the quality or state of being reciprocal: mutual dependence, action, or influence: GIVE-AND-TAKE."^[2] You may think that "reciprocal" and "to reciprocate" means giving back the same. Literally, it means something that is inversely related or the opposite. Take your muscles for example. When you bend your arm, your bicep contracts and your triceps reciprocate by stretching. One muscle contracts while the other stretches. The actions of the muscles are opposite but the amount is equal.

How does this work in a bidding situation? If a nonresident bidder's home state grants a *preference* to its resident bidders, an equal *penalty* is added to the nonresident bidder's proposal when bidding in Texas. The action is opposite, a preference becomes a penalty, but the amount is equal.

For example, state A grants its in-state bidders a 10% preference when bidding on agricultural products. By granting a 10% preference to in-state bidders, state A is essentially penalizing Texas bidders 10% for not being residents.

Now let's look at this same bidding process in Texas. Texas reciprocates by adding a 10% *penalty* to the bidder from state A which essentially gives a 10% *preference* to Texas bidders. The state A bidder gets a 10% *preference* over Texas bidders in state A. Conversely, the state A bidder get a 10% *penalty* when bidding in Texas. That's how reciprocity works: give-and-take. If you get a preference there, you get a penalty here in an equal amount.

Reciprocity and resident bidder preferences *do not* apply in the evaluation of solicitations that involve the use of federal funds.^[3] Further, reciprocity only applies to the

evaluation of the bids and only applies in situations where the preference from the bidder's state is based on residency. Awards are made at the original bid price.

To help governmental entities in their duty to evaluate bids in a reciprocal manner, the Texas Building and Procurement Commission is required to publish a list of the states that give a preference based on residency.[4] The list is published annually in the *Texas Register*. The list provided on this web site will be updated as changes occur. The list is a valuable resource. However, the Commission stresses that statutes should be construed in their entirety. Before relying on any section for evaluation of a bid, the Commission recommends obtaining and reviewing the relevant law or regulation in its entirety.

Reciprocity Reference Documents:

[List of States with Resident Bidder and Reciprocal Preferences revised \[pdf version\]](#)

[State Map with Links to Individual States' Resident Bidder and Reciprocal Preferences](#)

[Statutory Citation Chart—States with Resident Bidder and Reciprocal Preferences \[pdf file revised 02/09/2007\]](#)

[1] [Tex. Gov't Code § 2252.002](#)

[2] Webster's Third New International Dictionary, Unabridged 1895 (1961)

[3] [Tex. Gov't Code § 2252.004](#)

[4] [Id. § 2252.003\(a\)](#)

Purchasing Policy Exemptions

On page 7 of the Ector County Procurement Policies and Procedures Manual, Section II., D., 3., j., provision is made that purchases of certain items or services as approved by the Commissioners' Court may be exempted from issuance of a Purchase Order to support the award of the purchase. Due to the fact that the cost of the following items can only be determined "after the fact", it is recommended that an exemption be granted by the Court.

The following is a list of the exemptions:

1. All Children's Services bills.
2. Travel—including airfare, advances, reimbursements, car rentals, course registration fees, and local mileage reimbursements.
3. Annual membership dues and fees.
4. All line items in 220 non-departmental judicial accounts—including court reporters, court appointed attorneys and medical commitments.
5. Prisoner and deputy expenses:
 - **Medical bills (doctor and hospital)
 - **Psychological tests
 - **Transport expenses
 - **Photos (Adult Probation)
 - **Drugs by prescription (individualized)
 - **Commodities (cost, storage and transportation)
6. Trial expenses:
 - **Witness expense (lodging, travel, etc.)
 - **Investigation expense
 - **Testimony expenses
7. County Advertising:
 - **Legal notices for elections, bids, etc.
 - **Personnel advertising
8. Telephone, utilities and cellular phones.
9. Indigent Burials.
10. Automatic updates to reference books and subscriptions.
11. Library - books, videos, genealogy materials, etc. that can only be purchased from a single source.

Purchasing Policy Exemptions

12. Maintenance repair service calls.
13. Postage including Federal Express, UPS, and DHL.
14. Gasoline credit card bills.
15. Supply items purchased through the Purchasing Department.
16. Warranty or patent repairs.
17. Items where a check must be sent with the order and a purchase order will not be accepted (ex. Book order, sole source).
18. County Agent demonstration items (food and supplies).
19. County Insurance—Dept. 960.
20. Public scale usage.
21. Professional Services:
 - **Legal fees
 - **Pathologist
 - **MHMR
 - **Physicians
 - **Contract Labor (Coliseum, Adult Probation, Election Programming and workers, etc.)
 - **Consultants—Commissioners' Court awarded on an hourly basis
22. Temporary items agreed upon by the County Auditor and Purchasing Agent due to need to process bid items properly.