County Purchasing Basics

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Competitive Methods Procurement Requirements

Before a county may purchase one or more items that cost more than \$50,000, the Commissioners Court must:

- Comply with the procedures for competitive sealed bids or competitive sealed proposals set out in Chapter 262; or
- 2. Use the reverse auction procedure set out in Section 2155.062(d) of the Government Code; **or**
- 3. Comply with an alternative construction delivery method under Ch. 2269; **or**
- 4. Purchase through a cooperative purchasing program.

Competitive Methods Procurement Requirements, Cont'd.

 $\underline{\textbf{Unless}}$ the transaction is exempt from competitive procurement requirements by statute.

For Example:

For counties with the County Road Department system, all purchases for the county road department in excess of \$25,000 must be competitively bid in conformity with estimates and specifications prepared by the county road engineer.

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Chapter 252 Transportation Code

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Exemptions

A county **<u>does not</u>** have to go through one of these competitive procurement methods if:

- 1. Contract amount is \$50,000 or less; or
- 2. Purchase falls within an exemption under Ch. 262 **and** the commissioners court approves the exemption.

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Exemptions, Cont'd.

Frequently Used Exemptions:

- 1. Item needed for an emergency.
- Item needed to preserve or protect public heath and safety of county residents (doesn't have to be an emergency).
- 3. Land or right of way.
- 4. A professional service (e.g., architect, engineer, attorney).
- 5. Item available from only one source (includes electric power, gas, water, and other utility services).

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Exemptions, Cont'd.

• For exempt purchases, the County Purchasing Agent or Commissioners Court must adopt policies and procedures for competition (e.g., contact three vendors for price quotes).

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Separate, Sequential, or Component Purchases

- County cannot use separate, sequential, or component purchases to avoid competitive procurement requirements (e.g., breaking up a purchase to come in under \$50,000).
- Purchases from the same supplier by the same county officer, department, or institution are treated as purchases under a single contract (the amounts are aggregated).

Exception: Separate purchases of office supplies if there is no intent to avoid requirements.

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Chapter 262 Procurement Methods

Under 262, a county can use competitive sealed $\underline{\text{proposals}}$ for the purchase of:

- Insurance
- High technology items
- Landscape maintenance
- Travel management
- Recycling
- Other items when the County Purchasing Agent determines, with the consent of Commissioners Court, that it is in the best interest of the county to use this method.

Chapter 262 Procurement Methods, Cont'd.

- Notice of the Request for Proposal (RFP) must be given in the same manner as for competitive bids.
- The RFP must list the selection criteria and specify their relative importance.
- The award is to the responsible party whose proposal is determined to be the lowest offer resulting from negotiation.

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Cooperative Purchasing Programs CH. 271 LGC

- Counties may purchase items by participating in a cooperative purchasing program with another governmental entity or with a local cooperative organization, instead of going through a competitive procurement process.
- A local cooperative organization is "an organization of governments established to provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment".
- The county must enter into an agreement with the government or local cooperative organization regarding the participation requirements.

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Alternative Construction Delivery Methods

Government Code Chapter 2269 establishes six alternative construction delivery methods for construction projects:

- 1. Competitive Bid
- 2. Competitive Sealed Proposals
- 3. Construction Manager Agent
- 4. Construction Manager at Risk
- 5. Design Build
 - There are two separate Design Build methods, one for architectural projects and one for civil engineering projects.
- Job Order Contract The job order method cannot be used for civil engineering projects.

Competitive Sealed Bid

This is the traditional method of competitive bid.

Steps:

- The county selects an architect or engineer using the Professional Services Procurement Act (Chapter 2254 Texas Government Code) to design the project and develop the plans and specifications for the project.
- The county issues a Request for Bids in which the county provides the plans, the estimated construction budget, the project scope and schedule, and other relevant information.
- 3. The county selects the lowest bidder.

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Competitive Sealed Proposals

This is similar to the sealed bid procedure described above. However, in this option:

Proposals are used instead of bids;
The award can be made based on criteria other than price; and

• The county may negotiate a proposal with the proposer.

Steps:

- 1. County selects the A/E to design the project and develop the plans.
- 2. County issues an RFP based on the plans and other solicitation documents.
- The proposals are publicly opened, and the names of the proposers and the dollar amount of their proposals are read aloud.

 County ranks each proposal and selects the "best value" based on the selection criteria.
County negotiates with the first-ranked proposer. If negotiations are not successful, the county moves to the next-ranked proposer until a contract is selected or all proposers are rejected.

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Construction Manager as Agent

The county acts as its own general contractor and contracts directly with the subcontractors.

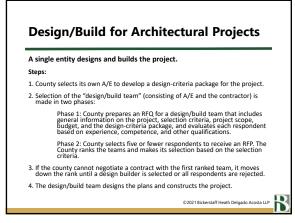
The Construction Manager as Agent (CMA) serves as a "project manager" and does not have any responsibility for construction. They administer the contracts and coordinate performance.

Steps:

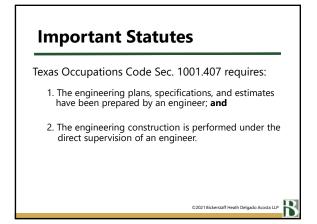
- County selects A/E to design project and prepare plans and contractors to perform construction using one of the other construction delivery methods.
- County selects CMA through an RFP based on demonstrated competence and qualifications in the same manner as under the Professional Services Procurement Act.
- The CMA serves as a consultant to the county and oversees and coordinates work under the construction contract.

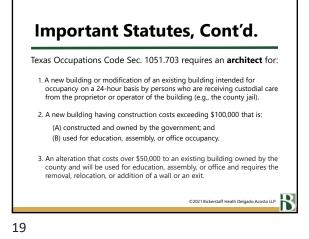
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Important Statutes, Cont'd. Texas Labor Code Sec. 406.096 requires: 1. The contractor and all subs provide workers comp insurance for all government construction contracts.

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Failure to Comply -Enforcement of Provisions

- If the county fails to comply with the County Purchasing Act, the contract is voidable by a court.
 - Any property tax paying citizen of the county can enjoin performance.
- A county officer or employee who intentionally or knowingly makes or authorizes sequential purchases to avoid purchasing requirements commits a Class B misdemeanor.
- County officer or employee who intentionally or knowingly violates any other competitive procurement requirement commits a Class C misdemeanor.

Can You...

• Specify the products be "Made in America?"

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- Require the bidder be local?
- Require a brand name product?
- Use health insurance as a factor?
- Use past performance as a factor?
- Use recycling as a factor?
- Enter into a multi-year contract?

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Conflict of Interest Form

- Local Government Code Chapter 176 requires a Conflict of Interest Questionnaire (Form CIQ) if the vendor has a business relationship with the county, a county officer, or a family member of the county officer.
- Best practice is to attach a Texas Ethics Commission Form CIQ with the solicitation.

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