

Webb County

Manual for Purchasing Policies and Procedures



Office of the Webb County Purchasing Agent

March 2017

Amended and Approved by:

Webb County Purchasing Board on 3/1/2017

Webb County Commissioners Court on 3/13/2017

WEBB COUNTY PURCHASING BOARD

49 th Judicial District of Texas	Judge Joe Lopez
341 st Judicial District of Texas	Judge Beckie Palomo
406 th Judicial District of Texas	Judge Oscar J. Hale, Jr.
Commissioner Precinct 2	John Galo
Commissioner Precinct 4	Jaime Canales

WEBB COUNTY COMMISSIONERS COURT

County Judge	Tano E. Tijerina
Commissioner Precinct 1	Jesse Gonzalez
Commissioner Precinct 2	Rosaura “Wawi” Tijerina
Commissioner Precinct 3	John Galo
Commissioner Precinct 4	Jaime Canales

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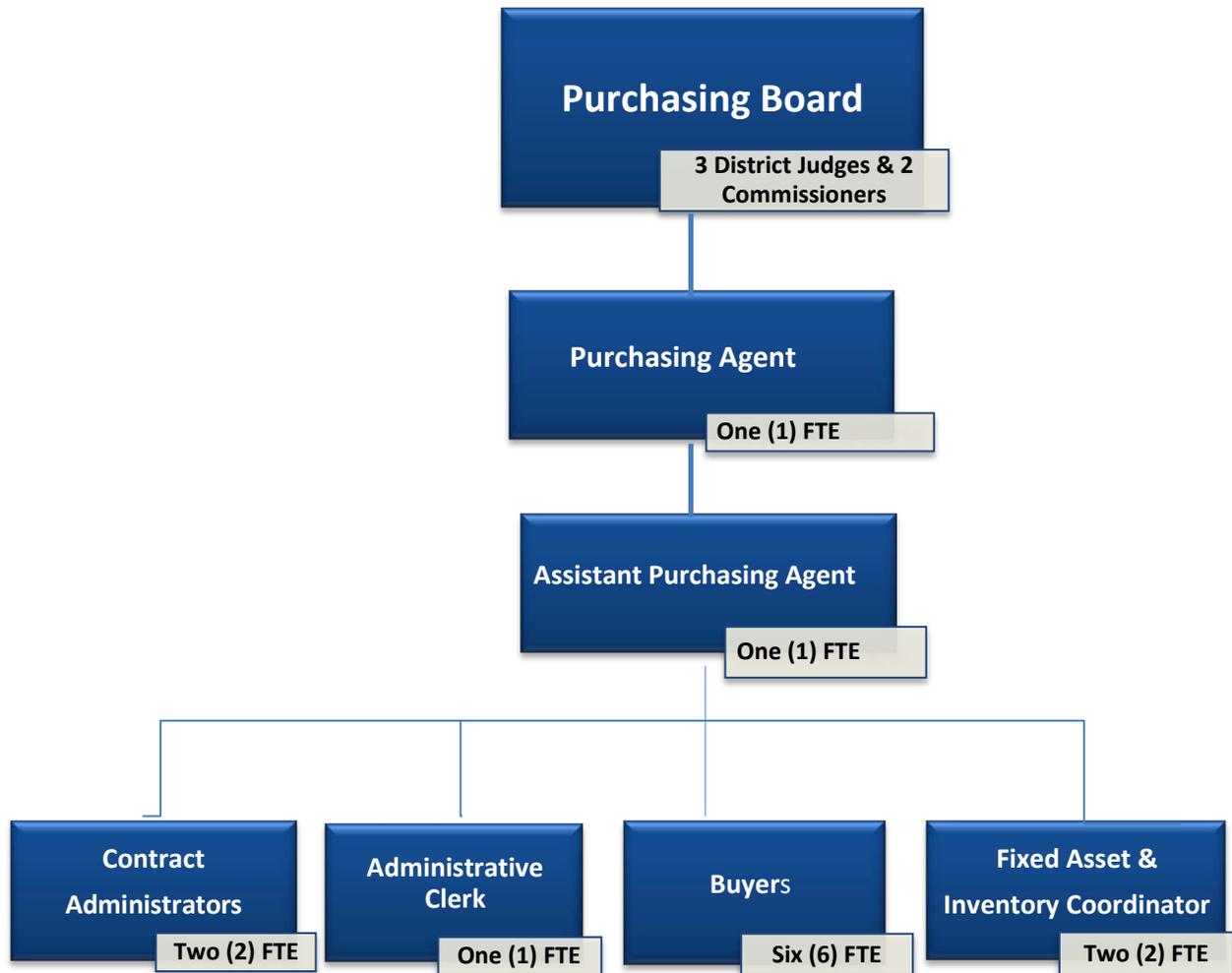
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WEBB COUNTY PURCHASING OFFICE ORGANIZATIONAL CHART



Section One: Purchasing Authority

1.1 Purchasing Authority and Policy

Purchasing Laws – The Texas Legislature had decreed purchasing laws. It is standard operating procedure that Webb County, through their appointed Purchasing Agent, will comply with these laws. It is also understood that the Purchasing Agent will meet the requirements of these laws as they are amended.

A centralized purchasing structure will be provided by the Purchasing Agent and will be directed by the Webb County Purchasing Board.

All members of the Purchasing Department make a commitment to provide all vendors an equitable and competitive access to the Webb County procurement process. All transactions will be transparent and will require integrity of the Webb County procurement process.

Purchasing Policy – The purpose of the Webb County Purchasing policy is to:

- Search for goods that are the best quality and best value.
- Seek best priced goods that meet the needs of Webb County.
- Provide for equitable access for all vendors and contractors.
- Obey all local, state and federal procurement laws.
- Comply with all policies and procedures of this manual.
- Minimize replacement costs of Webb County assets and inventory.
- Account for all Webb County assets.
- Provide a structured process to dispose of all surplus, salvage, seized and abandoned property in accordance with State laws and Webb County purchasing policy

Application – Under the authority of the Texas Local Government Code Section 262, the Webb County Purchasing Agent has adopted policies and procedures for the Webb County Purchasing Office. Webb County Manual for Purchasing Policies and Procedures will be formally approved by the Webb County Purchasing Board and the Webb County Commissioners' Court.

The Purchasing Act of the Texas Local Government Code Section 262 applies to all County employees from Elected Offices, Appointed and Department head officials and any other subdivisions of Webb County. It is further understood that the Webb County Purchasing office will purchase and/or lease all goods and services for all departments and Elected offices of Webb County. Likewise, it is understood that the Webb County Purchasing office will provide services for maintenance and repair for all departments and Elected offices of Webb County.

The Purchasing Act requires that the Webb County Purchasing Agent shall purchase all supplies, materials and equipment for all officials, county executive managers, employees, and precinct employees.

Effective Date - The policies and procedures written in this manual become effective upon approval by the Purchasing Board and the Webb County Commissioners Court.

Precedents and Interpretation – Precedent and interpretation of the laws shall be as follows:

- In order to accomplish the purpose of the policies and procedures, this manual shall be interpreted liberally.
- If a conflict between the policy and procedures of Webb County and State Law occurs, the stricter of the two provisions will govern.
- Headings and titles shall not be used to interpret policy and procedures.
- If at any time a provision of the policies and procedures is deemed to be null and void, the remainder of the policy and procedures manual will not be affected.

Additional Resources – The following references may be used for additional information.

- Comptroller of Public Accounts, State of Texas Cooperative Purchasing Manual
- http://www.window.state.tx.us/procurement/proq/coop/coop_manual.pdf

1.2 Certification and Training

The Webb County Purchasing Agent, during each two-year term of office is required to complete not less than 25 hours in course work that relates to the duties of the county purchasing agent. The courses must be:

- Accredited by a nationally recognized college or university
- Recognized by a nationally purchasing association
- Offered by state agencies, or by state professional associations, related to purchasing.

In addition, all Purchasing Department employees, including the Purchasing Agent will seek state certification from the Texas State Comptroller’s office to be State Purchasers. The certification requires a 16-hour course of Basic and Advance training. Each participant will then prepare for the state examination. Upon certification, each State Purchaser must then take 120 continuing education hours within a five (5) year period, not to exceed 45 hours in one year. Webb County makes a commitment to have a review course for the examination and pay for the training and test for each individual employee of the Purchasing Department.

Additional certifications are encouraged.

1.3 Purchasing Agent Roles and Responsibilities

Appointment – The Webb County Purchasing Board appoints the Purchasing Agent for Webb County for a two (2) year term.

Purchasing Agent Roles and Responsibilities – The Texas Local Government Code, Chapter 262, Subchapter B determines the roles and responsibilities for the Purchasing Agent to include the following:

- The Webb County Purchasing Agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property for the county or subdivision, or officer employee of the county, except purchases and contracts required by law to be made on a 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.**
- The Webb County Purchasing Agent shall supervise all purchases made on a 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.
- A purchase made by the Webb County Purchasing Agent shall be paid for by an electronic transfer, check or warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. The Webb County auditor may not draw and the county treasurer may not honor an electronic transfer, check, or warrant for a purchase unless the purchase is made by the Webb County Purchasing Agent or on competitive bid as provided by law.
- On July 1 of each year the Webb County Purchasing Agent shall file with the county auditor and the Webb County Purchasing Board an inventory of all the property on hand and belonging to the county and each subdivision, officer, and employee of the county.
- In order to prevent unnecessary purchases, the county purchasing agent, with the approval of the commissioner's 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 Webb County Purchasing Agent shall adopt the rules and procedures necessary to implement the purchasing agent's duties under this section and subject to the approval by the Webb County Purchasing Board & Commissioners court. Furthermore, the rules and procedures adopted will include procedures for the use of county purchasing cards by county employees to pay for county purchases under the direction and supervision of the County purchasing agent.
- 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.

1.4 County Roles and Responsibilities

In an effort to have a seamless process for procurement, it is important that both county offices and county departments comply with state and federal laws and county policies by observing the responsibilities identified for each of their respective roles.

Roles	Responsibilities
Webb County Purchasing Board	<ul style="list-style-type: none"> ● Oversight of Purchasing Agent and his responsibilities as the Webb County Procurement Officer as mandated by State Law and County Policy.
Webb County Commissioners Court	<ul style="list-style-type: none"> ● Meet twice a month. Prepare the budget for Webb County. ● Approve budget. ● Allocate needed resources ● Adhere to the Webb County Purchasing Code of Ethics ● Awards all contracts over \$50,000 ● Approve purchases from certain funds, (i.e. Technology, Capital Outlay, Bond & Contingency fund).
Purchasing Agent	<ul style="list-style-type: none"> ● Enforces compliance with All Texas purchasing laws. ● Encourages local business participation in Webb County procurement processes. ● Collaborate with the Webb County auditor and other County officials in the development of fiscal accountability. ● Afford the business community with a central link to Webb County business. ● Produce, implement, and manages the Fixed Asset Management System; ● Adhere to the Webb County Purchasing Code of Ethics by avoiding activities and behaviors that are unethical or may be perceived as having a conflict of interest.
Purchasing Department	<ul style="list-style-type: none"> ● Adhere to the Webb County Purchasing Code of Ethics by avoiding activities and behaviors that are unethical or may be perceived as having a conflict of interest. ● Purchasing staff is prohibited from receiving any gift of any value from vendors. ● Avoid the purchase of any goods or services for personal use. ● Avoid the acceptance of any sample goods that are delivered for use on a trial basis and that would require a purchase. ● Refrain from committing to a purchase of any goods or

	<p>services without an authorized purchase order.</p> <ul style="list-style-type: none"> ● Practice purchasing strategies that promote equal opportunity to compete for Webb County business. ● Adhere to the Purchasing Act. Violation of the Purchasing Act is considered a criminal offense. ● Make sure that funding is available for all requisitions submitted. ● Plan accordingly with County offices and departments to minimize the use of emergency and expedited purchases. ● Make sure that purchasing policies and procedures are understood before an order is placed. ● Assist in the selection of responsible vendors. ● Assist in obtaining pricing information. ● Determine that the purchase price is reasonable and that requirements for competition and performance have been met. ● Assist the individual departments to develop quality and quantity specifications for goods and services to be purchased. ● Encourage competition between vendors through negotiations, competitive bidding, and quantity buying. ● Utilize annual term contract agreements whenever possible to maximize the advantages and economies of quantity buying. ● Be familiar with and research the use of cooperative purchasing programs with the State of Texas and other Local Governments. ● Control the cost of purchasing for Webb County. ● Update fixed assets when goods and services have been received.
<p>County Offices and Departments</p>	<ul style="list-style-type: none"> ● Follow the Webb County Purchasing Code of Ethics. ● Input and approve the requisition electronically. ● Make sure that funding is available before submitting a requisition. ● Follow the requisition process as noted on this manual. ● Follow the Webb County Purchasing Department receiving procedures. ● Avoid the purchase of any goods or services for personal use. ● Do not accept any sample goods that are delivered for use on a trial basis and that would require a purchase. ● Refrain from committing to a purchase of any goods or services without an authorized purchase order. ● Be knowledgeable of the Purchasing Act listed on Section 8.1

	<p>of this manual.</p> <ul style="list-style-type: none"> • Minimize the use of emergency and expedited purchases. • Allow sufficient time to process purchase request.
<p>Responsibilities of Vendors and Suppliers</p>	<ul style="list-style-type: none"> • Call ahead for appointments when possible. • Make sure we have current catalogs and pricing, or access to company website with pricing information. • Recognize our limitations regarding authority. A purchase order is issued only after compliance with Federal, State and County policies. • Conduct your business openly; our records are a matter of public record. • Honor all pricing, delivery, and service agreements as quoted. • Call us with any questions or suggestions you may have. • Participate in any pre-bid conferences you may be invited to attend; this is how we improve our bidding process. • Maintain our Purchasing Department policy regarding gifts.

1.5 Historically Underutilized Businesses

Chapter 2161 of the Texas Government Code defines historically underutilized businesses as “businesses that are at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American and/or American woman. The said business has its principal place of business in Texas and has an owner residing in Texas.”

Webb County in accordance with Texas Administrative Code §20.13 will make a good faith effort to utilize HUB’s in contracts for construction, services that include professional and consulting services and commodities purchases. Furthermore, the Webb County Purchasing Department will honor the Texas HUB program by accepting the HUB certification for minority and woman-owned businesses. Vendors may seek HUB certification as a HUB business by submitting required documentation to complete the HUB certification application. (HUB)

There are several benefits of having a HUB Certification such as:

- HUB certification is free.
- If the businesses meet the eligibility requirements, the certification is valid for four(4) years.
- The business is registered on the Comptroller’s Web-based HUB Directory.
- State agencies use the web-based directory to solicit bids.
- There is increased exposure to the public for entities that have a supplier diversity program.

1.6 Federal Transit Administration – DBE Policy

As a recipient of funding from the Federal Transit Administration (FTA) – U.S. Department of Transportation, Webb County is required to establish a Disadvantaged Business Enterprise (DBE) program in accordance with 49 CFR Part 26. Webb County and El Aguila Transportation Division has received Federal financial assistance FTA, and as a condition of receiving this assistance, Webb County has signed an assurance that it will comply with 49 CFR Part 26 and make every good faith effort to encourage participation from vendors who are eligible DBE participants in the State of Texas.

It is the policy of Webb County to ensure that DBE's as defined by federal regulation, have an equal opportunity to receive and participate in DOT- assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT - assisted Contracts;
2. To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only vendors that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's;
5. To help remove barriers to the participation of DBE's in DOT assisted contracts;
6. Webb County will make every “*Good faith effort*” to encourage participation from DBE vendors for any related purchases funded through FTA - DOT Assisted projects for the rural transportation division.

The Webb County Purchasing Agent has been designated as the DBE Liaison Officer. In that capacity, the Purchasing Agent is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is provided the same priority as with all other legal obligations incurred by the County in its financial assistance agreements with the Department of Transportation.

Webb County has disseminated this policy statement to the Webb County Purchasing Board and the Webb County Commissioners Court and will be accessible to all County departments and the general public. The Purchasing Agent will make every effort to distribute this statement to DBE and non-DBE business communities that perform work for Webb County on DOT-assisted contracts.

This policy statement is listed on our website at <http://www.webbcountytx.gov/PurchasingAgent/>

Jose Angel Lopez III, CTPM
Webb County Purchasing Agent

1.7 CODE OF ETHICS

POLICY – It is the policy of Webb County that the following ethical principles govern the conduct of every employee involved, directly or indirectly, in the County procurement process.

The following is adapted from the American Bar Association’s 2000 Model Procurement Code for State and Local Governments:

Public employment is a public trust. It is the policy of Webb County to promote the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the County. Such policy is implemented by prescribing essential standards of ethical conduct without unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially to assure fair competitive access to County procurement by responsible contractors. Moreover, public employees should conduct themselves in such a manner that fosters public confidence in the integrity of the Webb County procurement process.

It is essential that those doing business with the Webb County Purchasing Office also observe the ethical standards prescribed in this policy.

RESPONSIBILITY TO COUNTY – Purchasing Department employees shall avoid activities that compromise or give the perception of compromising the best interest of Webb County. Employees shall not knowingly use confidential proprietary information for actual or anticipated personal gain.

CONFLICT OF INTEREST – For additional information on conflict of interest, refer to section 3.11 of this manual. Employees shall avoid any activity that would create a conflict between their personal interests and the interest of Webb County. Conflicts exist in any relationship where the County’s best interest may be different from the employee’s best interest or the best interest of someone associated with the employee. Conflicts of interest include an employee participating in any way in any procurement in which:

1. The employee or any member of the employee’s family has a financial interest in the results of the County procurement process.
2. A business or organization in which the employee, or any member of the employee’s family, has a financial interest in the result of the County procurement process; or
3. Any other person, business, or organization with whom the employee or a member of the employee’s family is negotiating for or has an arrangement concerning prospective employment.

PERCEPTION – Employees shall avoid the appearance of unethical or compromising practices in relationships, actions, and communications associated with Webb County procurement.

GRATUITIES – All County Employees regardless of rank or position shall not solicit or accept money, loans, gifts, favors, or anything of value, from present or potential contractors that might influence or appear to influence a purchasing decision. Generally, goods or services with a value of \$50 or less in the aggregate from a vendor during a year do not violate this prohibition unless they influence or appear to influence a specific purchasing decision. If anyone is in doubt about whether a specific transaction complies with this policy, the person should disclose the transaction to the

Purchasing Agent for a determination of compliance. Each employee of the purchasing department will be expected to certify that they have not received any gifts of any value from vendors regardless if they are registered vendors or not.

CONFIDENTIAL INFORMATION – Employees shall keep the proprietary information of vendor confidential. Employees shall keep vendor proposal information obtained from a solicitation confidential until after contract award.

CONFIDENTIAL MEMORANDUM – The Webb County Purchasing Offices uses a confidentiality memorandum to ensure compliance with the ethics policy for keeping proprietary information confidential. Before the evaluation of confidential proposals, the Purchasing Department sends a memorandum to the evaluation committee members for signature and certification. The memorandum contains the following requirements to which the evaluation committee member is expected to adhere during the competitive process and until an award is approved by the Commissioner's Court:

1. All information in the vendor's response is to be kept confidential.
2. No discussion of the proposal is to occur with anyone outside of the proposal evaluation committee members.
3. Proposal responses are not to be reproduced and will be returned to the designated Purchasing Department staff after evaluation is completed.
4. The Purchasing Department is the sole point of communication for any questions from vendors that arise during the evaluation. All questions and request for information should be referred to the Purchasing Department. There should not be any discussion between evaluation committee members and vendors during the evaluation and award process.
5. Evaluation committee members must be familiar with and read the Webb County Purchasing Code of Ethics and agree to comply with its requirements including reporting any potential conflict of interest, undue influence from vendors, or attempted communications from vendors during the evaluation process.

Compliance with the requirements outlined in the Confidentiality Memorandum is crucial. If proprietary information of any vendor is compromised during the procurement process, all proposals may be rejected.

Purchasing Board approval was on April 6, 2011.
Commissioner's Court approval was on March 14, 2011.

Exhibit 5: ATTESTATION FORM

**Webb County Purchasing Department
Jose Angel Lopez III, Purchasing Agent**

ATTESTATION FORM

All County employees as described under 1.7 Code of Ethics section who have access to submit and approve requests for goods or services:

I attest that I will not and have not received goods or services with a value of more than \$50 in the aggregate from a County vendor(s).

All Purchasing employees as described under Section 1.7 Code of Ethics:

I attest that I will not and have not received goods or services of any value from any County vendor(s).

Employee Signature: _____

Print Name: _____

Employee ID: _____

Job Title: _____

Date: _____

**To Be Signed Yearly after Budget Adoption effective October 1st*

2.1 Webb County Purchasing Procedures

General guidelines

- If a request for goods or services is anticipated to exceed \$50,000 the purchase will be made in accordance with Texas Statutes governing political subdivisions of the State.
- If a request for goods or services is under \$50,000, the purchase will be made in accordance with the policies and procedures set by the Purchasing Agent and adopted by both the Purchasing Board and Commissioners Court.
- All purchases from the Technology Fund will require the approval of the Webb County Commissioner's Court.
- All purchases from the Contingency account will require approval of the Webb County Commissioner's Court.
- All purchases from the Capital Outlay account that are valued at \$5,000 or more and are not part of the adopted budget will require approval of the Webb County Commissioner's Court.
- All purchases from Bond funds will require approval of the Webb County Commissioner's Court.
- Departments wishing to purchase items provided by an annual contract awarded by the Commissioner's Court must make the purchase from the annual contract vendor. Using sources outside of the annual contract must be approved first by the Purchasing Agent, in order to secure best value for County. Contracted vendor will be provided an opportunity to match lower pricing prior to using outside vendors who have met the Competitive bidding requirements or wholesale stores with significant price differences that would have a substantial savings to County's budget in accordance with procedures outlined herein "Annual Contracts".
- The Purchasing Act – Local Government Code 262.011 (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 purchasing agent may not make the purchase of the supplies, materials, or equipment or make a contract for repairs.
- The County purchasing agent shall adopt the rules and procedures necessary to implement the agent's duties subject to approval by the Purchasing Board and the Webb County Commissioner's Court.

2.2 Process for Requisitioning

DEFINITION - After identifying a need in the department, the user department formally requests a purchase to be made using an electronic requisition.

PURPOSE - By submitting a requisition, the user department authorizes the Purchasing Department to enter a contract with a vendor for the purchase of goods and services. The requisition is for internal use only and may not be used by the user department to enter a contract with a vendor.

POLICY- Based on approved budget line items, the user department submits an electronic purchase requisition to the Purchasing Department. Prior to Purchasing staff receiving an electronic request for good or services it must first be approved electronically by the Auditor to verify proper use of appropriation accounts and to certify that the budget contains an ample provision for the obligation and that funds are or will be available to pay the obligation when due in accordance with the **Local Government Code; Section 111.093 (APPROPRIATIONS FOR PURCHASES, CONTRACTS, SALARIES, OR LABOR EXPENSES IN COUNTY WITH POPULATION OF MORE THAN 225,000)**.

There are three (3) basic types of requisitions for processing:

Routine requisitions. These requisitions are for daily and/or basic operational items that can be processed using normal procedures. Routine requisitions are normally processed within three to five business days. Processing may occasionally be extended to obtain best value. Departments should plan all requisition requests in a timely manner to avoid any delays. Last minute requests are not guaranteed to be processed outside of the normal processing time.

Priority requisitions. These are requisitions for items needed sooner than the routine processing time. These are also known as “expedited” purchases. Priority purchases are considered items that are needed within 10 days to avoid a work interruption because of unanticipated events. Failure to anticipate recurring needs in a timely manner does not meet priority or emergency criteria. Priority requisitions must be approved by the Purchasing Agent or his designee prior to buyer expediting request.

Emergency requisitions. Emergency purchase will be processed in accordance with the Local Government Code; Section 262.024 (Discretionary Exemptions) when the expenditure will exceed \$50,000. Expenditures that will not exceed \$50,000 and meet similar exemptions as listed by the Section 262.024 will be authorized by the Purchasing Agent and in accordance with policy outline under Section 2.6 of the Webb County Purchasing Manual.

Requisition and Purchase Order Process:

Step	Approval Level	Responsible department
Enter requisition into County system with complete and accurate information	1	End user / Dept.
Complete department approval and electronically forward to Auditor	2	End user / Dept.
Verify accounting information, sufficient funding and forward electronically to Purchasing	3	Audit Dept.
Verify compatibility with County network and system.	4	IT Dept. <i>(Only for IT related requests)</i>
Verify that information is complete and correct on requisition. Seek other quotations, use contracted vendors, seek cooperative purchasing vendors, etc.	5	Purchasing / Assigned Buyer(s)
Final approval of Requisition, promoted to a Purchase Order	6	Purchasing / Purchasing Agent or designee.

Receiving goods/services and processing invoices for payment process:

Step	Approval Level	Responsible department
Receive goods & services electronically.	1	End User – Dept. Purchasing Dept. for specialty funds (i.e. bonds, Tech Funds, contingency).
Receives and processes all original invoices including utilities, input electronically into County system, verifies for completeness & accuracy against purchase orders.	2	Business Office – Accounts Payable Division
Audit claim for correctness and accuracy and approve or reject claim to ensure it was legally incurred as per County policy and State law.	3	Audit Department
Release approved payment(s) upon approval by Governing Body.	4	Office of the Treasurer

For the requisition and purchasing process to work effectively and to avoid delays in the process and comply with County policy and state law, user departments should understand and comply with the following rules:

- 1. Do not use unethical purchasing strategies to avoid competition.** Strategies that are prohibited by law include: requests for component purchases that would normally be purchased as a whole; purchasing items separately in a series of purchases that normally would be purchased as a single purchase; and sequential purchases made over a period of time or from different funding sources that normally would be one purchase. According to Texas Local Government Code §262.034(a), a county officer or employee who intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section §262.023 is committing a Class B misdemeanor.
- 2. Avoid unethical activities/behaviors that create a conflict of interest or the perception of a conflict of interest.** Activities such as soliciting or accepting gratuities of any kind from present or potential vendors/contractors which might influence or appear to influence a purchasing decision; failing to disclose in writing to the Purchasing Agent a conflict of interest and not removing yourself from the procurement process when there is a conflict; and disclosing confidential proprietary information from solicitations to other vendors or using the information for personal gain.
- 3. Ensure appropriation accounts have funding prior to submitting a requisition.** County departments/Offices are not allowed to incur expenditures that exceed available budgets. Purchasing will not process requisitions for which there is inadequate funding or improper use of accounts. Using alternate accounts must be approved by the Auditors Office electronically through the requisition process prior to reaching the Purchasing level.
- 4. Plan all purchases on a timely basis to minimize the use of emergency and expedited purchases.** Expedited purchases may be costlier to County and may cause delays for other requests submitted timely by other departments. Proper planning is essential to avoid paying higher premiums for goods and services.
- 5. Ensure that purchasing policies and procedures are understood before ordering.** Departments must ensure that all employees responsible for making department purchase requests have read and understand the purchasing procedures in this Manual.
- 6. Coordination between Departments and Purchasing for receipt of goods and services.** Since the County does not have a centralized receiving location, each department is responsible for individually receiving goods and services. Departments should contact their assigned buyer to make Purchasing aware of vendor performance issues such as shortages, late delivery, or damaged merchandise. If the item(s) received is a fixed asset that must be tracked and reported, departments should call the Fixed Asset Specialist in Purchasing to coordinate tagging. Ensure that all items accounted for are received electronically in the purchasing system to assist with processing of payment to vendor.

2.3 Purchasing Methods

Exhibit 6 – Purchasing Methods

<p>Informal Solicitations:</p>	<p>Under \$3,001</p> <ul style="list-style-type: none"> • Buyer may select recommended vendor chosen by Department. • Buyer may seek another quote if vendor is debarred or owes Webb County taxes. • Buyer is required to obtain one (1) written quote. • Buyer will confirm if goods or services are on annual contract. Buyer will change vendor if annual contract exists for requested items. • Buyer makes the purchase based on the best value for County.
	<p>\$3,001 - \$15,000</p> <ul style="list-style-type: none"> • Buyer may select recommended vendors chosen by Department. • Buyer may seek other quotes if vendor(s) are debarred or owe Webb County taxes. • Buyer is required to obtain two (2) written quotes. • Buyer will confirm if goods or services are on term contract. Buyer will change vendor if annual contract exists for requested items. • Buyer makes the purchase based on the best value for County.
	<p>\$15,001 - \$49,999</p> <ul style="list-style-type: none"> • Buyer may select recommended vendors chosen by Department. • Buyer may seek other quotes if vendor(s) are debarred or owe Webb County taxes. • Buyer is required to obtain three (3) written quotes. • Buyer will confirm if goods or services are on term contract. Buyer will change vendor if term contract exists for requested items. • Buyer makes the purchase based on the best value for county.
<p>Formal Solicitations:</p>	<p>\$50,000 and Over</p> <ul style="list-style-type: none"> • Purchasing department or county department makes a request to the Commissioners' Court for approval to solicit bids/proposals. • Purchasing Department in collaboration with user department develop the specifications and evaluation criteria for the requested purchase • Purchasing department determines if the request will be an ITB (Invitation to Bid), RFP (Request for Proposals), or RFQ (Request for Qualifications)

	<ul style="list-style-type: none"> ● Solicitation is advertised in the newspaper; a due date is published; package information is posted on the website ● Opening is conducted <ul style="list-style-type: none"> ○ If ITB –vendor name and actual price quotes are read to the public and recorded for the record. ○ If RFP or RFQ – vendor name is read to the public; content of package remains confidential until award is made ● Invitation to Bid (ITB) <ul style="list-style-type: none"> ○ Price quotes are tabulated ○ Recommendation for award is made to the Commissioners’ Court. ○ Webb County Commissioners’ Court awards the contract ○ Contract with vendor is developed <ul style="list-style-type: none"> ▪ Annual Contract (as needed purchases)- Purchasing Department is responsible ▪ Other contract – Webb County Attorney’s Office prepares; approval is by the Webb County Commissioners’ Court ● RFP/RFQ <ul style="list-style-type: none"> ○ Evaluating team is selected – generally the Webb County Commissioners’ Court will evaluate ○ Highest ranking entity is announced and award is made by the Webb County Commissioners’ Court ○ Evaluation may entail review of information submitted and interviews ○ Contract is developed by the Webb County Attorney’s Office and approved by the Webb County Commissioners’ Court.
<p>ANNUAL CONTRACTS</p>	<ul style="list-style-type: none"> ● Annual Contracts are approved by the Webb County Commissioners’ Court for routine purchases that are anticipated to exceed \$50,000 within a fiscal year. ● Annual contract purchases generally have a fixed price and do not require additional quotes. ● The process requires the identification of expected quantities; advertising of the solicitation; compliance with bid opening date and time requirements; preparation of a bid tabulation; and award by the Webb County Commissioner’s Court. ● The Purchasing Agent has the discretion to solicit outside of the annual contract if it’s in the best interest for Webb County and would have a substantial impact on County department’s budget. Contracted vendor will be provided opportunity to match pricing prior to using outside vendor who have met the competitive bidding requirements of the State/Federal procurement regulations. <i>i.e. utilization of cooperative</i>

	<p><i>purchasing vendors, buy-board, DIR, TXMAS, GSA or other State / Federal contracts that have met the competitive bidding process and have an active contract or any major wholesale retailer.</i></p>
<p>DISCRETIONARY EXEMPTIONS FROM COMPETITIVE BIDDING APPROVED BY COMMISSIONERS COURT.</p>	<p>Local Government Code 262.024 (\$50,000 and over)</p> <ul style="list-style-type: none"> • (a) A Contract for the purchase of any of the following items is exempt from the requirements established by Section 263.023 if the Commissioners' Court by order grants the exemption: <ul style="list-style-type: none"> ○ 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 ○ An item necessary to preserve and protect the public health or safety of the residents of the county ○ An item necessary because of unforeseen damages to public property ○ A personal or professional service ○ Any land or right of way ○ An item that can be obtained from one source ○ An item of food ○ Personal property sold ○ Vehicle and equipment repairs
<p>DISCRETIONARY EXEMPTIONS FROM COMPETITIVE BIDDING APPROVED BY THE PURCHASING AGENT.</p>	<p>Under \$50,000</p> <p>A Contract for the purchase of any of the following items is exempt from the requirements under section 2.4 (Purchasing Methods) if the Purchasing Agent grants the exemption:</p> <ul style="list-style-type: none"> • 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 • An item necessary to preserve and protect the public health or safety of the residents of the county • An item necessary because of unforeseen damages to public property • A personal or professional service • Any land or right of way • An item that can be obtained from one source

	<ul style="list-style-type: none"> • An item of food • Personal property sold • Vehicle and equipment repairs
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COMMISSIONER’S COURT APPROVAL - The Webb County Commissioner’s Court meeting of September 12, 2011 approved item No. 105: Discussion and action to grant the discretionary exemption allowed under section 262.024 of the Texas Local Government Code for purchases that do not otherwise require the approval of the Webb County Commissioner’s Court.

Goods/Services not requiring a requisition or purchase order

In most instances, purchases should be requested using an on-line requisition; however, there are specific types of purchases where the use of an on-line requisition is not efficient or effective.

County departments will be permitted to submit general request for payments (GRP) with supporting documentation to the Business Office so the corresponding invoices can be keyed into the New Worlds Accounts Payable module system. The GRP will then be reviewed and approved for payment by the County Auditor once it’s checked for correctness and that it was legally incurred.

Prior to authorizing an expenditure using a GRP, each Elected Official / Department Head is responsible for ensuring that there is sufficient funding in their respective budgets to cover the requested expenditure. If end users require assistance with their corresponding budgets they should contact the Auditors office and/or the Budget office for assistance with account balance information prior to committing to an expenditure using a GRP.

Here is a list of permissible expenditures that do not require a requisition or a Purchase Order approval:

1. Postage
2. Food items for Jurors
3. Utilities (water, gas, electricity, cable/satellite)
4. Cell phones / air cards
5. Court reporter expenses
6. Court Appointed Attorney Fees and related expenses, Substitute Court Reporters, & Interpreter Services
7. Employee reimbursements
8. Shipping costs (i.e. UPS/Federal Express)
9. Professional membership fees
10. Travel related advances (per diem, fuel, lodging, parking fees)
11. Customer refunds
12. 3rd Party Funding Applicants (Approved by Commissioners Court)

Departments are encouraged to contact the Auditor’s Office at 956-523-4016 with any questions on the required GRP form or other questions on required supporting documentation when processing a GRP for the items listed above.

2.4 Purchases under \$50,000- Open Market

POLICY – Section 262.0245 requires the Purchasing Agent to 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. Thus, the Purchasing Agent is authorized to choose the exact goods or services that meet the request of the user department for open market purchases of goods and services totaling less than \$50,000. The Purchasing Agent is also authorized to select the vendor and perform all necessary arrangements to complete a contract for purchase of goods and services. All these activities including the execution of the contract do not require specific approval of the Commissioners Court.

CONSIDERATIONS - In choosing the exact goods or services that have been requested by the user departments, the Buyer needs to consider the following:

- Do the selected goods and services meet the needs of the user department?
- Is there available information about the sources and prices of the goods and services?
- Does the vendor meet the delivery requirements of the user department?
- Is there any additional information that would need to be considered for the purchase?

PROCEDURES - When submitting open market purchase requisitions, the user department must include a detailed description of the goods or services required. The Buyer then reviews the information submitted and follows these procedures:

- Secures quotes in accordance with Sections 2.2 Process for Requisitioning and 2.3 Purchasing Methods.
- Documents in writing the vendors who were notified and the prices that were offered.
- Selects the vendor with the best offer and consider:
 - Price
 - Urgency of the user department
 - Speed of delivery
 - Quality of goods and services offered
- Orders from the vendor who provides the quality, cost and delivery schedule that meets the needs of the County.
- Selects the vendor that provides the lowest price for the quality and delivery terms. If the vendor offering the lowest price is not selected, proper notation of the reason another vendor was selected must be made.

COMMODITY PURCHASES LIMITS - It is important to note that if cumulative purchases from a single commodity code are anticipated to be more than \$50,000 in a fiscal year, then the Purchasing Agent must

proceed with a formal competitive bidding process and the annual term process. Cumulative purchases include county-wide purchases and are not restricted to the user department.

VIOLATIONS AND PENALTIES - It is a violation of the Purchasing Act to intentionally separate purchases to avoid the \$50,000 competitive requirement in accordance with the Local Government Code procurement laws.

2.5 Purchases that exceed \$50,000 – Competitive Bid; Competitive Proposals and Request for Qualifications

DEFINITIONS AND USE – Competitive bidding or solicitations lets available vendors compete with one another to provide goods and services.

The Texas Supreme Court states:

“Competitive bidding requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items and services covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the items and services and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications.” Sterrett v. Bell, 240 S.S. 2d 516 (Tex. Civ. App.-Dallas 1951, no writ).

PURPOSE OF COMPETITIVE BIDDING- The Texas Supreme Court further states:

The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best work and materials at the lowest practicable price for the best interest of the taxpayers and property owners.” Sterrett v. Bell, 240 S.W. 2d 516 (Tex. Civ. App. -Dallas 1951, no writ).

Competitive bidding has two purposes. The first purpose is to make sure that the best possible value is utilized and that public money is used effectively, properly, legally, and only for public projects. The second purpose provides qualified and responsible vendors an equitable opportunity to do business with the County.

Competitive Bidding – Public purchasing that requires approval by the Commissioners Court and must comply with the solicitation process of the Texas Local Government Code, section 262.023.

- “Sealed” bids are petitioned through and Invitation to Bid (ITB) if the bid is expected to be more than \$50,000. Sealed bids may be requested for an Annual Contract where purchases over the year will exceed \$50,000 from one vendor, or for a single purchase of goods or services whose cost will exceed

\$50,000.

- The ITB includes the County’s specifications, contractual terms, and conditions.
- The Commissioners Court will award the contract resulting from the ITB to the lowest responsible bidder.
- In an Annual Contract, a contract between a vendor and the County is formed when the ITB is awarded by the Webb County Commissioner’s Court and Notice of Contract Award is signed by the Purchasing Agent.
- Competitive bids are not negotiated.
- Local Government Code 262.0305 (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 interest 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 a modified contract to be in effect, the Commissioner’s Court must approve the contract.
 - The ITB is the favored method of procuring goods and supplies.
- For a project that has greater detail, a contract between a vendor and the county is formed when the ITB is awarded by the Webb County Commissioner’s Court. A contract is prepared by the Webb County Attorney and approved by the Webb County Commissioner’s Court. The contract is then signed by the vendor, County Judge, County Attorney, and the County Clerk.

Competitive Proposals (RFP and RFQ)– Like competitive bidding, competitive proposals apply to public purchasing that requires approval by the Webb County Commissioner’s Court and must comply with the solicitation process of the Texas Local Government Code, section 262.023.

- “Sealed” proposals are requested through a sealed Request for Proposals (RFP and RFQ) process.
- Qualified vendors send in their responses to the RFP/RFQ for deliberation.
- The RFP/RFQ requests proposals based on the County’s requirements, contractual terms, and conditions.
- The County Attorney’s Office must review the formal contract.
- The Commissioners Court must approve the formal contract.

A formal “sealed” proposal is used to procure insurance, landscape maintenance, travel management, recycling and high technology goods and services that include:

- Data processing equipment, software and firmware used in conjunction with data processing equipment
- Telecommunications, radio, and microwave systems;
- Electronic distributed control systems, including building energy management systems,
- Technical services related to those goods and services, and
- Upon consent of the Webb County Commissioner’s Court and in accordance with the Texas

Local Government Code 262.030 (d), the purchasing agent may use the formal competitive proposal method to purchase other items if the purchasing agent determines that it is in the best interest of the county.

There are several important differences between the competitive proposal (RFP) and competitive bidding (ITB).

- The competitive proposal results in a negotiated contract.
- Cost is important but it is not the only determining factor of importance.
- Proposals are not opened publicly.
- Contents of the proposal are disclosed AFTER the contract is awarded.
- Trademarked or proprietary contents may remain confidential as per the Texas Public Information Act.

PROCEDURES for Invitation to Bid (ITB); Request for Proposals (RFP); Request for Qualifications (RFQ)

– The competitive solicited procurement process calls for the approval of the Webb County Commissioners Court for an expenditure more than \$50,000. This expenditure must comply with the requirements of Subchapter C of the Purchasing Act and are completed using the below identified process. It is important to note that “bids” are vendor responses in ITB process and “proposals” are vendor responses to the RFP process; qualifiers are vendor responses on an IFQ)

- **Defining the Need** – The user department shall contact the Purchasing Department when then need for a good or service costing more than \$50,000 is identified.
- The Purchasing Department does not proceed with the purchases unless it verifies that
 - Sufficient unencumbered funds for the purchase are appropriated in the budget line item, or
 - The budget department verifies that funds are available through a budget transfer
- **Purchasing Department select procurement method**
 - ITB – Invitation to Bid
 - RFP – Request for Proposals
 - RFQ – Request for qualifications
- Webb County Commissioner’s Court approves request by the Purchasing Department to solicit bids, proposals, or qualifications.
- Purchasing Department will work with the user department to develop the specifications for the goods or services to be procured
- To allow for maximum competition, the specifications should be comprehensive and broad
- The specifications should be structured to
 - Utilize best value
 - State the need clearly
 - Be contractually sound
 - Provide fair treatment to vendors
 - Avoid favoritism
 - Inspire innovative solutions

- Allow free and open competition
- For an annual (Term) Contract, the specifications must indicate the expected quantities to be purchased and how the lowest price will be calculated.
- The Technology Department will review specifications for high technology goods and services.
- The Webb County Commissioner's Court delegates to the Purchasing Department the approval of the specifications for the ITB, RFP, and RFQ.
- The Purchasing Department will collaborate with the user department to identify the criteria/requirements for evaluation of the ITB, RFP and RFQ.
- Prepare a solicitation document and publish a notice of the proposed purchase.
- Notice of proposed purchase must be published at least once a week for two weeks in a newspaper of the general circulation in the county.
- The first day of publication must occur before the 14th day before the date of the solicitation opening
- The notice must include
 - Specifications and requirements that describe the goods and services to be purchased or a statement that indicates where the specifications and requirements may be obtained; and
 - Time and location for receiving and opening solicitation and the name and position of the person who will receive the solicitation.
 - The notice will indicate that additional information is to be found in the county website.
 - The notice will indicate who to call and the number to call (if there are any questions).
- Pre-Bid Conference – ITB; RFP and RFQ- A pre-bid conference will be scheduled if the need is identified
- The following guidelines are used for the Pre-Bid; Pre-Proposal; Pre-Qualifier Conference
 - The purchasing agent together with the User Department work to determine if a Pre-Conference is needed and whether attendance will be mandatory or optional.
 - The Pre-Conference is managed by the Purchasing Department and requests that the user department make staff available to answer any vendor questions during the conference.
- Addendum to the Solicitation – The Commissioner's Court authorizes the Purchasing Department to lengthen the proposal opening date on the notice of solicitation if an error is found or if the nature of the goods and services requires additional time. The Purchasing Agent may also amend a solicitation and not change the due date.
 - An addendum may be necessary to clarify an original intent or correct errors
 - Changes may be insignificant and not likely to require additional time
 - An amendment is documented by an Addendum Form.
 - All bidders will be asked to acknowledge the addendum
 - The addendum could result in an increase in price which may or may not be specifically identified.

- The Purchasing Agent must allow at least three (3) days between the date of the addendum and the opening date of the solicitation.
- If the minimum of three days is not possible, the opening date is extended to allow for the minimum of three days between the addendum and the opening days of the solicitation.
- **RECEIPT OF COMPETITIVE SOLICITATIONS (ITB; RFP; RFQ)**
To make sure identification, security, and confidentiality of responses to solicitations are in order, the following procedures and guidelines must be adhered to:
 - The Webb County Clerk will receive all solicitation documents in response to Webb County's ITB, RFP and RFQ
 - The Webb County Clerk's Office will receive, stamp date and time, and record the name of the vendor that has submitted a response to an ITB, RFP and RFQ.
 - The Webb County Clerk's Office must provide a safe and secure place to hold all responses until the opening date.
 - Only sealed responses are accepted.
 - Responses are not opened until the Purchasing Office opens them in a public forum at the advertised date and time.
 - Solicitation documents will be stamped date and time received.
 - All responses arriving after the opening time are returned unopened to the vendor.
 - The Purchasing Department will communicate with the vendor and notify the vendor when a document package has arrived late and will be returned unopened.
 - In some cases, a response is received through the mail or by an independent carrier and is inadvertently opened. The following procedure must be followed:
 - The Purchasing Department is immediately called to act as a witness that the response (especially the price of the bid) was not reviewed.
 - The response is immediately resealed by that employee of the County Clerk's Office and the incident is duly recorded.

By following the above stated procedures, the Purchasing Office makes sure that there is no perception of favoritism and avoids revealing prices or response information. By properly documenting and recording the submission of the response, the Purchasing Office prevents any perception that the Purchasing Office is manipulating the receipt of the solicitations.

PUBLIC OPENING OF SOLICITATIONS – The following guidelines for public opening of solicitations are followed:

- **Invitation for Bid (ITB)** – The Purchasing Agent/designee publicly opens, reads aloud, and records the name of the vendor, bid amount submitted and the date/ time bid was submitted; including the location where bid was submitted; indicate it as designated in the notice.
- **Request for Proposal (RFP) and Request for Qualifications (RFQ)** – The Purchasing Agent/designee publicly opens and records the name of the vendor and indicates the time, date, and place where proposal is submitted and indicating that it is the designated place on the notice. Only the names of the vendors are released.

During the process of negotiation, the contents of the solicitation are kept secret. The proposals are not made public to avoid disclosure of contents to competing proposers. After award, has been granted,

all the proposals submitted are available and open for public inspection, except where trade secrets and confidential proprietary information is concerned. Provisions of the Texas Public Information Act allows for the disclosure of all information obtained from a vendor.

Webb County Procedures for Sealed Procurement opening:

- Sealed bids/RFP/RFQ received prior to the closing date and hour is secured by the Webb County Clerk's Office until they are opened.
- Upon opening, the bids are publicly read in the Bid Room located in the Webb County Clerk's Office, 2nd Floor, 1110 Victoria in Laredo, Texas.
- All bidders are welcomed to attend the opening.
- Personnel opening the bids (Purchasing Department) will verify that the opening date and time corresponds to the closing date and time printed on the announcement.
- No late bids will be opened. When possible, the recording will acknowledge any late bids/RFPs/RFQs received but not opened.
- The name of the person conducting the opening bid will read his/her name into the recording and acknowledge the presence of others.
- A recording of the bid opening is conducted by announcing the bid request number and the project title to be opened along with the actual date and time of the reading.
- Personnel opening and reading the bids reads the name of the bidder; time and date it was received and amount of bid.
- In some instances, the bid amount will be one total while in others, it will include the type of commodity, the unit price, and the total price for that commodity.
- When opening the RFP/RFQ, no monetary amount is read or shared; the reader acknowledges the name of the proposer/qualifier.
- Award results are not made public at this time.
- Alongside the recording, a sign in sheet of those present for the opening will be kept.
- The recording is turned in to the clerk's office for safekeeping.
- The sign in sheet is turned in to the Purchasing Department Administrative Assistant for safekeeping.

- **Evaluation/Award**
 - Invitation to Bid (ITB)
 - The Purchasing Department evaluates the bids with the assistance of the user department and recommends the lowest possible and best value bid to the Webb County Commissioner's Court for award.
 - The evaluation of the bid is based on the following:
 - The compliance of goods and services with specifications
 - The relative price, including cost of repair and maintenance if heavy equipment is being considered or the cost of delivery and hauling if road construction is involved
 - Vendors past performance, vendor's financial ability to perform the

contract and the vendor's safety record if stated in the ITB

- Before the award, the Purchasing Department verifies that all bidders are responsive bidders that they comply with all requirements of the bid.
- A bid tabulation sheet is prepared.
- A recommendation for bid award is made to the Webb County Commissioner's Court.
- In consideration for an Annual Contract award can be made to one primary vendor or to multiple primary vendors; these will be the low bidders. Secondary vendors may be identified.
- In consideration of the awarding a contract for a one-time purchase, the vendor selected will be the lowest responsible bidder.
- In consideration of awarding a bid for a construction project, the bidder selected will be the lowest bidder with the best value.
- The Webb County Commissioner's Court must take action to award a contract before it can be enforced.
- Following action of the Webb County Commissioner's Court, the Purchasing Department will send a letter notifying the vendor of the award.
- In consideration of the award of an Annual Contract, the Purchasing Department will:
 - Send a letter communicating that the Webb County Commissioner's Court has awarded the bid to the identified vendor.
 - Indicate on the letter that the specifications in the Invitation to Bid are the specifics of the contract agreement.
 - Indicate that purchases will be on as needed basis.
 - Include a copy of the bid tabulation that outlines the prices to be a part of the contract agreement for the fiscal year.
 - Indicate the starting and ending date of the contract agreement.
 - Identify the opportunity for contract extension.
 - Make the need to have the contract letter signed and returned to the Purchasing Department.
- **In consideration of a one-time purchase value of \$50,000**
 - An electronic purchase requisition must be submitted by the user department
 - The purchase requisition will make note of the award of the contract by the Webb County Commissioner's Court and note the date of the Commissioner's Court meeting in the resolution field or description area.
 - A Purchase Order is issued.
- **In consideration of the award for a construction contract**
 - o The Webb County Attorney's Office must prepare the contract that accompanies the award that has been made by the members of the court.
 - o The contract must be approved in a separate agenda item by the Webb County Commissioner's Court if the pricing exceeds the project budget and/or award was based on qualifications and not a competitive bidding

process.

- o A notice to proceed will be sent to the vendor being awarded the contract by the Purchasing Agent; this is done only after the contract has been signed by all parties.

Request for Proposals; Request for Qualifications

- The evaluation of the request for proposals is supervised by the Purchasing Department.
 - Purchasing department verifies that all proposer/qualifiers are responsible proposer, that is, they have complied with all requirements of the RFP/RFQ.
 - Purchasing department reviews the identified criteria for the evaluation of the proposal/qualifications.
 - Based on the criteria a scoring tabulation is prepared.
 - Requests for Proposals and Requests for Qualifications are scored by members of the Scoring committee who in turn provide Commissioners Court a staff recommendation(s) based on tabulation scores/rankings of each firm or contractor. Commissioners Court may authorize and approve staff recommendation or may select another qualified proposer.
 - In cases involving high dollar value procurement, the Purchasing Department may take the recommendations to the Commissioner's Court and request their approval to negotiate with the top ranked firm(s) before bidding for best and final offer.
 - If the Webb County Commissioner's Court is to score and evaluate the proposals, a time and a date are scheduled for the evaluation.
 - Copies of the proposals submitted by each vendor are forwarded to the member of the Commissioner's Court with instructions.
 - The evaluation committee will use only the specified factors and their weights to evaluate the proposal in accordance with State procurement law.
- a. Along with the copies of the proposals and the instructions, the Webb County Confidentiality Memorandum and the Webb County Code of Ethics are provided to the evaluation committee members. The Webb County Confidentiality Memorandum is to be signed and returned to purchasing before the evaluation/scoring of the proposals.

- The Purchasing Department must make sure that the evaluation is conducted in a fair and consistent manner and that the integrity of the evaluation process is maintained.
- The Purchasing Department is responsible for:
 - o Tabulating the scores;
 - o Computing the values; and
 - o Reporting the results to the Webb County Commissioner's Court for action to award by the members of the court.

CONFIDENTIALITY MEMORANDUM – Requests for Proposal (RFP) must adhere to the following:

- The Purchasing Office will use a confidentiality memorandum to ensure all proposal information is kept confidential until after an award is made.
- Before evaluation of the confidential proposals, the Purchasing Office will send the “Webb County Confidentiality Memorandum” to the evaluation committee members for signature and certification.
 - The memorandum requires the evaluation committee to keep information confidential UNTIL THE COMMISSIONERS COURT APPROVES AN AWARD.
 - The evaluation committee is expected to adhere to the Confidentiality Memorandum during the competitive process.
 - A copy of the Webb County Purchasing Code of Ethics will be distributed with each confidentiality memorandum.

Exhibit 7: Webb County Confidentiality Memorandum FORM



**Webb County Purchasing Office
Mr. Jose Angel Lopez III, CTPM
Purchasing Agent**

MEMORANDUM

TO: Proposal Evaluation Team Member
FROM: Webb County Purchasing Agent
DATE: _____
SUBJECT: Request for Proposal (RFP)

In accordance with County Purchasing Act, this project was issued as a competitive proposal, and, therefore, all information contained in the responses is to be kept **CONFIDENTIAL** until an award is approved by Commissioner's Court.

Until that time, and due to the confidential nature of these proposals, **no discussion of these proposals shall occur with anyone outside the Proposal Evaluation Committee members**. Proposal documents may not be reproduced for any reason and must be returned to Leticia Gutierrez after the evaluation is complete.

Certain information about the proposal, such as vendor name, is public information but may only be released by the Purchasing Office. **Please refer all questions or request for information to the Purchasing Agent.**

Please note that if any information about these proposals is compromised, it may be cause for rejection of all proposals

I understand the above information and instructions and agree to not reveal any content of any proposal to anyone outside the evaluation committee membership. I will not discuss the deliberations of the committee with anyone outside the evaluation committee. I will report any vendor contact concerning this evaluation process or any undue influence on my evaluation of proposals to the Purchasing Agent.

Additionally, I have read the attached "Webb County Purchasing Code of Ethics", approved by Commissioners Court, and agree to conduct myself in accordance with that code of ethics.

Signature of Evaluation Committee Member

Date

NEGOTIATIONS – To make sure that all proposers are given fair and equitable treatment, the following guidelines must be followed for all negotiations:

- The Purchase Agent administers ALL negotiations.
- Any discussions with proposers **MUST** be organized with the Purchasing Agent.
- A staff member from the Purchasing Office must be present at ALL discussions with proposers.
- At the risk of jeopardizing the integrity of the Webb County procurement process, the User Department must coordinate contact with a proposer through the Purchasing Office.
- With respect to the opportunity for discussion and revision of proposals and the submission of a “Best and Final Offer” (BAFO), the Webb County Purchasing Office will grant all proposers a fair and equitable treatment.
- At the completion of negotiations, the Purchasing Office, requests qualified proposers to submit a “Best and Final Offer” (BAFO) to a specified location and date. In accordance with the negotiations, the (BAFO) must allow the proponent to:
 - Adjust initial offer;
 - Update pricing according to any changes made by the User Department or County has made; and
 - Show any added incentives to improve the overall score in accordance with the evaluation plan and RFP.

CONTRACT AWARD – The Purchasing Agent is responsible for the contract of award as follows:

- **Invitation for Bid (ITB)**- The Purchasing Agent recommends contract award to the Commissioners Court. The courts have two options:
 - Grant the contract to the responsible bidder who submits the lowest and best bid; or
 - Reject all bids and directs Purchasing Agent to publish new notice if the goods and services are still needed.

In case two responsible bidders submit the lowest and best bid, the Commissioners Court will decide between the two by drawing lots in a manner determined by the County Judge.

- In determining the lowest and best bid for a contract for the purchase of earth-moving, material handling, road maintenance or construction equipment, the Commissioner’s Court may consider the cost of repair, maintenance, or repurchase of the equipment.
- In considering the lowest and best bid for a contract for the purchase of road construction material, the Commissioner’s 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 court may award contracts to more than one bidder if each of selected bidders submits the lowest and best bid for the location.

After the award, has been approved by the Commissioners Court, the Purchasing Agent issues a Notice of Contract Award as follows:

- For an annual contract, the Purchasing Department will send a letter to the vendor notifying them of the award that has been made by the Commissioner's Court. Included with the letter is a copy of the bid tabulation that has the agreed upon prices and an acceptance notice that must be signed and returned by the vendor.
 - A contract for a single purchase valued over \$50,000 is the purchase order that is given following the electronic requisition by the user department.
 - A contract for a construction project is prepared by the Webb County Attorney's Office. After the copy of the signed contract is provided to the purchasing department, the purchasing department will issue a Notice to Proceed.
- **Request for Proposal (RFP)** – The Purchasing Agent recommends to the Commissioners Court the contract of the award based on the following:
 - The award is based on the “Best and Final Offer” (BAFO).
 - It is based on the lowest evaluated offer resulting from negotiation.
 - Considers the relative importance of price and other evaluation factors of the (RFP).

RE-SOLICITATION OF ANNUAL CONTRACTS – The Purchasing Office monitors the expiration date all annual contracts.

- The Purchasing Office notifies the User Department by a written memo at least four months before the contract expires and verifies if the goods and services are still needed and the contract needs to be re-bid or extended, if extensions are available.
- The Purchasing Office sends the User Department the existing specifications and/or requirements and requests any changes before the solicitation is advertised.
- The User Department then returns the specifications and/or requirements with any additions, deletions, or corrections.
- The Purchasing Department reviews quantities expected to be procured for the New Year.
- If a new annual contract is to be procured, the information provided by the user departments is used in the new solicitation.
- If the contract qualifies for a renewal/extension and the user department concurs, the contract is recommended to the Commissioner's Court for renewal/extension.

REVERSE AUCTIONS – Under the Texas Government Code, chapter 2155, the Purchasing Agent may use reverse auction procedures to purchase goods and services. Reverse Auction is defined as follows:

- “a real-time bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.”

ON-GOING MAINTENANCE – All on-going maintenance issues regarding the cost of equipment or software should be considered, evaluated, and priced during the initial procurement process.

ADDITIONAL COMPETITIVE PROCEDURES – Section 262.0225 identifies several additional competitive procedures that include:

- 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 per the same standards as set forth in the specifications.
- A county shall receive bids or proposals under this subchapter in a fair and confidential manner.
- A county may receive bids or proposals under this subchapter in hard-copy format. A county shall accept any bids or proposals submitted in hard-copy format.

Exhibit 8: Procurement Methods for Competitively Solicited Purchases Exceeding \$50,000

PROCUREMENT METHOD	USE WHEN	ADVANTAGES	DISADVANTAGES
Competitive Bids Invitation for Bids (ITB)	Adequate competition exists. The product or service is available from more than one source.	Award process is simpler. Award is made to the lowest responsive, responsible bidder by providing the best value to the County.	Defined specifications may be difficult to develop. Does not encourage innovative solutions.
Competitive Proposals Request for Proposals (RFP)	When factors other than price are evaluated. When negotiations are desired. Vendor is expected to provide innovative ideas.	Allow factors other than price to be considered. Allows for customized proposals suggesting different approaches to the same business need. Allow for negotiations in order to obtain the best value for the County.	RFPs can be used for high technology goods and services, landscape maintenance, travel management and recycling, and other determined items when it is determined to be in the best interest of the County. Lead times for procurement may be greater. Evaluations are more complex and subjective.
Request for Information	There is insufficient information to write specifications for any procurement method.	Provides information to prepare a complete bid or proposal document. Allows the business community to have input into the solicitation document based on current industry practices and market factors. Informs the County of any potential problems early in the procurement.	Lengthens the procurement process.
Request for Qualification/Services [This method is required by statute (e.g. Professional Services)]	Selection is made solely on the skills and qualifications of the professional. For Architect/Engineers, price is not a factor until after a qualified vendor is selected.	Emphasizes competency of the proposed professional contract	Contractor is tentatively selected before price is negotiated.

2.6 Exemptions to the Competitive Bid

PURCHASING ACT – The Commissioners Court may order certain procurement purchases exempt from the competitive bidding process. Section 262.024 of the Texas Local Government Code lists all the conditions when exemptions are available for purchases made from current funds, bond funds, or through time warrants. The following is a list of these conditions:

- Goods and services that are needed in case of a disaster. The purchase is considered a necessity to promptly relieve the necessity of the citizens or to safe guard the property of the County;
- Goods and services that are needed for the public health and safety of the residents of the County;
- Goods and services necessary due to unforeseen damage to public property;
- Personal and professional services;
- Daily work that is performed and paid on a daily basis. No individual is compensated for more than 20 days in a three (3) month period. The work progresses to a maximum of 20 days within a three-month period;
- Any land or right of way;
- Sole source goods and services that include:
 - Goods and services for which competition is precluded because of the existence of patent copyrights, secret processes, or monopolies;
 - Films, manuscripts, and books;
 - Electric power, gas, water, and other utility services; and
 - Captive replacement parts or components for equipment.
 - Food goods if purchased after solicitation of at least three bids by telephone or written quotation at intervals specified by the Commissioners Court.
 - Personal property sold
 - At auction by state licensed auctioneer
 - A going out of business sale held in compliance with Subchapter F, Chapter 17 or
 - By a political subdivision, state agency or federal government entity.
 - Work completed under a community and economic development contract under section:
 - 381.004 of the Texas Local Government Code, and
 - **Renewal or extension** of an equipment lease or equipment maintenance agreement if the lease was competitively bid within the last year and the extension does not exceed one year.
 - Vehicle and equipment repairs.

POLICY - The Purchasing Agent will process all exemption orders under \$50,000. For purchases that exceed \$50,000, the Purchasing Agent will request the exemption order from the Commissioners Court as the need arises.

PROCEDURE – The User Department Manager must submit a written memo/email to the Purchasing Agent requesting an exemption to the competitive procurement process. The written memo must state the reason for the exemption (e.g. emergency; sole source; etc.).

The memo must be specific and state details as to the reason for the exemption request and state why the exemption should be granted. The memo should also contain the following:

- Name of vendor;
- Goods and services covered by the order;
- Expected maximum cost; and
- Other important programmatic information that justifies the exemption.

EMERGENCY – In case of a local disaster, the County Judge is the authority to approve purchases. For any other emergency situation, the Purchasing Agent must be contacted to make sure that the County complies with the Purchasing Act.

An emergency occurs because of unforeseeable circumstances and may require an immediate response to avert a public threat. An emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property to avoid undue additional cost. An emergency purchase will require a signed letter from the Elected Official/Department head explaining the emergency to the Purchasing Agent.

Emergency purchases of goods or services should not exceed the scope or duration of the emergency.

EMERGENCY PURCHASES THAT EXCEED \$50,000 NEED AN EXEMPTION ORDER GRANTED BY THE COMMISSIONERS COURT BEFORE A PURCHASE ORDER CAN BE ISSUED.

SOLE SOURCE GOODS AND SERVICES –

- Goods and services for which competition is precluded because of the existence of patent copyrights, secret processes, or monopolies;
- Films, manuscripts, and books;
- Electric power, gas, water, and other utility services; and
- Captive replacement part for equipment

An electronic notation must be made in the requisition process when using a sole source in accordance with State procurement laws and Webb County policy.

The Purchasing Agent is authorized to approve sole source use for purchases under \$50,000; Purchases over \$50,000 require approval from the Webb County Commissioner's Court and specific action to grant the exemption. The minutes of the Webb County Commissioner's Court must reflect the acknowledgement of the sole source item by the court.

2.7 State Purchasing Programs/purchases from federal schedule sources of supply

BACKGROUND - The state of Texas has three kinds of purchasing programs that permit local governments to purchase goods and services. The Texas Comptroller of Public Accounts Procurement and Support Services (TPASS) oversee the State Term Contracts and the Texas Multiple Award Schedule (TXMAS). The Department of Information Resources manages the third state purchasing program which allows local agencies to purchase technology directly from the Department of Information Resources (DIR).

OFFICIAL REPRESENTATIVES – The Webb County Purchasing Agent is responsible for all matters related to the purchase of goods and services from a vendor using the State Purchasing program. Webb County in turn is responsible for making payments directly to these vendors.

CONTRACT AWARD – Before any goods and services are furnished for a purchase order from the State Term Contracts, TXMAS and DIR, the Purchasing Agent, must sign and approved the contract award. Furthermore, the Commissioners Court authorizes the Purchasing Agent to implement all contracts valued under \$50,000 for state contract purchases that are procured in compliance with the statutory authority of this chapter. Purchases more than \$50,000 must be approved by the Webb County Commissioner’s Court before they can be implemented. The Purchasing Agent will implement state contracts valued under \$50,000.

STATE TERM CONTRACT PURCHASES

- **STATUTORY AUTHORITY** – The Texas Local Government Code sections 271.081 through 271.083 authorizes the State Term Contract Purchases. The County, using the same terms and conditions of the State, my purchase from vendors on the same terms. The State has used competitive bidding procedures and has entered into a term contract with the vendor.
- **POLICY** – Webb County is a participant of the TPASS purchasing program for local governments.
- **PROCEDURE** – In compliance with its regulations, the Purchasing Agent:
 - ✓ Submits requisitions to the TPASS under contract or
 - ✓ Sends purchase orders directly to the vendor
 - ✓ Reports to TPASS the actual purchase
 - ✓ Monitors vendor compliance with all conditions of delivery and quality of the purchased goods and services.
 - ✓ May sign and deliver all documents necessary for the purchase under this program.

TEXAS MULTIPLE AWARD SCHEDULES

- **STATUTORY AUTHORITY** – The Texas Local Government Code section 2155.502 authorizes the Texas Multiple Award Schedules. The County, using a schedule of multiple awards contracts developed by the TPASS, may purchase goods and services. The schedule of the multiple awards is gathered from the General Services (GSA) Federal Supply Service contracts. By using the TXMAS contracts, the county can take advantage of the most favored customer (MFC) pricing. On special occasions, the County may negotiate a lower price for the cost of goods and services offered under a scheduled contract.

- **POLICY** – Webb County is eligible to participate in the purchasing program of the TPASS that uses TXMAS contracts that have been competitively awarded to the federal government or any other governmental entity of any state.

- **PROCEDURE** – In compliance with its regulations, the Purchasing Agent:
 - Monitors vendor compliance with all conditions of delivery and quality of the purchased goods and services.
 - May sign and deliver all documents necessary for the purchase under this program.

The user department initiates the process by conducting research on goods and services on the TPASS website and available through TXMAS

- The user department determines if the requested goods and services are offered through TXMAS.
- Based on research available, the user department then submits and “open market” purchase requisition and identifies the possibility of the goods and services are offered through TXMAS.
- The Purchasing Office determines if goods and services are indeed offered through TXMAS and compares prices among the TXMAS vendors to obtain the best possible value.
- The Purchasing Office together with the user department work together to arrive at the best possible value.
- The Purchasing Office then issues a purchase order identifying the selected vendor that provided the best value.

DEPARTMENT OF INFORMATION RESOURCES (DIR)

- **STATUTORY AUTHORITY** – The Texas Government Code, Interlocal Cooperation Act, and Chapter 791 authorizes the Department of Information Resources. By using this statutory authority, the county may procure computer-related equipment through the

DIR and its contracted vendors.

- **POLICY** – For purchases of computer-related equipment, the County uses services through the state Department of Information Resources (DIR) and from its contracted vendors. In addition, the County uses the Go DIRect program to contract with DIR.
- **PROCEDURE** - In compliance with its regulations, the Purchasing Agent:
 - Submits requisitions to the DIR under contract or
 - Sends purchase orders directly to the vendor
 - Monitors vendor compliance with all conditions of delivery and quality of the purchased goods and services.
 - May sign and deliver all documents necessary for the purchase under this program.

The user department initiates the process by conducting research on goods and services on the DIR website to determine if the goods and services available from the DIR or its contracts.

- Based on research available, the user department then submits and “open market” purchase requisition and identifies the possibility of the goods and services are offered through DIR.
- The Purchasing Office determines if goods and services are indeed offered through DIR and compares prices among the DIR vendors to obtain the best possible value.
- The Purchasing Office together with the user department work together to arrive at the best possible value.
- Purchases of larger value or of more complex IT requirements, the Purchasing Office works with the County Attorney to secure a supplemental contract to ensure that the best interest of the County are protected.
- To allow for sufficient time for procurement, the user department should allow sufficient time for the process.
- If the County purchases from a vendor who is part of the Go DIRect program, the county the makes the purchase order directly to the vendor and pay the vendor accordingly.
- If the County purchases from a vendor who is NOT part of the Go DIRect program, the County then issues the purchase order to DIR, which then authorizes a separate purchase order to the vendor

Local Government Code 271.103 Federal Supply Schedule Sources

- A local government may purchase goods and services available under Federal supply schedules of the United States General Services Administration to the extent permitted by federal law.
- A local government that purchases goods and services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods and services.

2.8 Cooperative Purchasing Agreement

Created by Legislation in 1979, the Texas and Support Services Cooperative Purchasing Program (State of Texas CO-OP) provides the State of Texas volume purchasing power to local governments. Members can purchase goods and services from state term contracts TXMAS contracts and travel contracts. Using these services through the State of Texas CO-OP will meet competitive bidding requirements.

The Webb County Purchasing Department holds membership in several Cooperative Purchasing Programs.

1. Among them are: (not all inclusive)

- Buy board
- TCP – The Cooperative Purchasing Network
- TIPS - The Interlocal Purchasing System
- DIR – Department of Information Resources
- TXPASS – Texas Procurement and Support Services
- HCDE – Harris County Department of Education
- TXMAS – Texas Multiple Award Schedule
- HGAC – Houston Galveston Area Council
- NJPA – National Joint Powers Alliance
- Region One Education Service Center
- GSA/GS- General Services Administration
- CCG – Texas Council of Competitive Governments
- Texas correctional Industries
- TIBH – Texas Industries for Blind and Handicapped

2. Interlocal Agreements

BACKGROUND AND STATUTORY AUTHORITY – Webb County has several interlocal agreements.

- The Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, allows Webb County to contract directly with other local governments to increase the value and competence of the Webb County Purchasing Office.
- The Texas Government Code, Section 791.025 (c) declares that local governments that purchase goods and services through the Interlocal Cooperation Act, complies with the requirement of the local government to seek competitive bids for the purchase of goods and services.

Local Government Code 271.102 Cooperative Purchasing Program Participation

- a. A local government may participate in a cooperative purchasing program with another local government or a local cooperative organization
- b. A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local

cooperative organization.

- c. A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of goods and services.

FEDERAL SUPPLY SCHEDULES – The Texas Government Code Section 271.103 affirms that local governments that purchase goods and services from the Federal Supply schedules of the United States General Services Administration to the extent allowed by federal law satisfies the requirement of the local government to seek competitive bids for the purchase of goods and services.

2.9 Procurement of Professional Services

BACKGROUND AND STATUTORY AUTHORITY – There are two statutes for procurement of professional services and Webb County must comply with both.

The first statute is Professional Services Procurement Act (Chapter 2254 of the Texas Government Code).

2.9.1 Includes professional services listed in the Professional Services Procurement Act

2.9.1.1 Accounting

2.9.1.2 Architecture

2.9.1.3 Landscape architecture

2.9.1.4 Land surveying

2.9.1.5 Medicine

2.9.1.6 Optometry

2.9.1.7 Engineering

2.9.1.8 Real estate appraisal

2.9.1.9 Nursing

2.9.2 Selection

2.9.2.1 A governmental entity may **not** select a provider of professional services on a competitive bid.

2.9.2.2 Award may be basis of demonstrated competence and qualifications and for a fair and reasonable price.

The second statute is the County Purchasing Act (Chapter 262 of the Texas Government Code).

2.9.3 Local Government Code 262.024 Discretionary exemptions (a) (4) – a personal or professional service

This states that a contract for the purchase of personal or professional services may be exempt from the requirement of section 262.023 if the Commissioner's Court by order grants the exemption.

Section 262.023 states that before a county may purchase one or more items under a contract that will require an expenditure of \$50,000, the Commissioner's Court must:

- 2.9.3.1 Comply with competitive bidding
- 2.9.3.2 Use reverse auctions procedures, or
- 2.9.3.3 Comply with a method described by Chapter 2267, Government Code

PROFESSIONAL SERVICES PROCUREMENT ACT

REQUEST FOR QUALIFICATIONS (RFQ) – The Request for Qualifications (RFQ) process is used to ensure that professional firms are given a fair and equal opportunity to do business with the County and to make sure that the services of the most qualified professionals are attained.

PROCEDURES – The user department forwards a recommendation memo to the Purchasing Agent when the services of a professional are required. The memo must identify the following:

- range of work
- qualification and experience requirements
- deliverables and project description
- time frames
- budgeted amount and budget line items
- suggested professionals

The Purchasing Agent then decides about initiating a formal RFQ or an informal procurement process based on:

- information listed on the memo
- applicable state laws
- all relevant facts

A formal RFQ process must be in place for all professional services estimated to cost more \$50,000, unless precisely exempted by the Commissioners Court. The Purchasing Agent submits all exemptions to the Commissioners Court; the exemption order should be submitted to the Commissioners Court for approval prior to selecting and negotiating with any firm.

PURCHASE REQUISITION – The initial request can be either:

- A memo or email submitted to the Purchasing Agent
- The memo/email must include:
 - 2.9.3.4 Budget from which the purchase is funded
 - 2.9.3.5 Requirements for the work
 - 2.9.3.6 Necessary qualifications
- If requirements and qualifications are not attached, the user department together with the

Purchasing Office develops the requirements and qualifications.

NOTICE – Once the requirements and qualifications have been established and a RFQ has been prepared, the Purchasing Department publish a notice of the proposed purchase. The Commissioner’s Court must approve all formal solicitations of any RFQ/RFP.

Publication of the notice of the proposed purchase must be published at least once a week in a newspaper of the general circulation of Webb County. The first day of the publication must occur before the 14th day before the date of the solicitation opening. The notice may be extended for a longer period but must be open for at least 15 days before RFQ’s are due.

AMENDMENT OF RFQ – If an error is discovered or the nature of the services requires an extension; the Purchasing Agent may extend the response opening date on the notice of the RFQ. The Purchasing Agent may amend the RFQ to correct clerical errors or to clarify its original intent if:

- Questions about the meaning of the RFQ show the need for an amendment.
- Changes are minimal and will not likely matter to the firm in completing the response, and
- The amendment does not change the scope of the RFQ.

Once the amendment has been made, there must be three (3) days between the date of amendment and the opening date specified in the notice. If the three (3) days are not possible, the opening date should be extended to allow for a minimum of the three (3) days between the date of the amendment and the opening date specified in the amendment.

PRE-PROPOSAL – The Purchasing Agent and the user department work collaboratively to determine if a pre-proposal conference is needed. The staff of the Purchasing Agent manages the pre-proposal conference. The user department makes sure that a representative of the department is available for the conference and can answer questions.

RECEIPT OF RESPONSES – For receiving response and to ensure confidentiality, the following procedures must be adhered to:

- All responses as specified on the RFQ are received by the Webb County Clerk.
- The date and time received are stamped on all responses.
 - 2.9.3.7 The official time clock is the “Date Stamp Clock” in the Office of the Webb County Clerk.
- Responses are not accepted after the opening date and time.
 - 2.9.3.8 Any response received after the opening date and time will be returned

unopened.

- 2.9.3.9 Each unopened response returned will be accompanied by a letter from the Purchasing Agent notifying the firm that the response arrived after the opening time on the day of the opening.

2.9.4 The Webb County Clerk’s Office is responsible for recording the receipt of the responses using the following methods:

- 2.9.4.1 The Webb County Clerk’s Office records the name of the firm who submitted the response.
- 2.9.4.2 The date and time the response was received is recorded.

2.9.4.3 For responses received through mail, courier or express mail, the delivery method is also recorded.

2.9.5 The Webb County Clerk's Office is responsible for securing all submitted responses until the opening date.

2.9.5.1 The sealed responses must remain sealed until they are opened by the Purchasing Department on the assigned date and time.

- In some cases, a response is received through the mail or by an independent carrier and is inadvertently opened. The following procedures MUST be followed:

2.9.5.2 Another employee of the Webb County Clerk's Office is immediately called to act as a witness that the response was not reviewed.

2.9.5.3 The response is immediately resealed by that employee of the Webb County Clerk's Office and the incident is duly recorded.

By following the above stated procedures, the Purchasing Office makes sure that there is no perception of favoritism and avoids revealing response information. By properly documenting and recording the submission of the response, the Purchasing Office prevents any perception that the Purchasing Office is manipulating the receipt of the solicitations.

OPENING OF RESPONSES - The Purchasing Agent publicly opens and records sealed qualifiers at the time and place designated in the notice. Only the names of the firms are released.

During the process of negotiation, the contents of the solicitation are kept secret. After award, has been granted; all the submittals are available and open for public inspection, except where trade secrets and confidential proprietary information is concerned. Provisions of the Texas Public Information Act allows for the disclosure of all information obtained from a vendor.

CONFIDENTIALITY MEMORANDUM

- Before there is an evaluation of the qualifications, the Purchasing Office will send a memorandum to the evaluation committee members for signature and certification. The memorandum requires the evaluation committee to keep information confidential UNTIL THE COMMISSIONERS COURT APPROVES AN AWARD.
- The evaluation committee is expected to adhere to the Confidentiality Memorandum during the process. This process also includes disclosure of any possible conflict of interest, and any attempt of communication by the proposer directly with the evaluation committee members during the evaluation.

EVALUATION – The Purchasing Office is responsible for the evaluation process performed by the User Department and the evaluation committee. This is done to make sure that the evaluation is conducted fairly and reliably and that the integrity of the evaluation process is preserved. Additional technical evaluation assistance may be needed from the individual department such as the technology department.

The RFQ must identify evaluation factors such as experience, financial stability, certifications, etc. to determine minimum qualifications and demonstrated experience. The evaluation committee will only use the specified evaluation factors in evaluating the response. The Purchasing Office supervises the evaluation team and is responsible for:

- Creating the evaluation matrix and criteria
- Tabulating the scores
- Computing values and

WRITTEN CONTRACT – The following procedures for a written contract must be adhered to:

- A written and approved contract must be signed before any services are rendered.
- The Webb County Judge will sign for a contract over \$50,000.
- The Purchasing Agent may execute a contract for Professional Services that comply with the Professional Services Procurement Act and which cost under \$50,000 if Adequate funds are budgeted for it and the Civil/Legal division has reviewed the contract.

ARCHITECTURAL AND ENGINEERING SERVICES

Government Code 2254.004 Contract for professional services

In procuring architectural, engineering, and surveyor services, a governmental entity shall:

- First select the most highly qualified provider of those services based on demonstrated competence and qualifications; and
- Then attempt to negotiate with that provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall;

- Formally end negotiations with that provider;
- Select the next most highly qualified provider and
- Attempt to negotiate a contract with that provider at a fair and reasonable price.

Government Code 2254.005 Void contracts; A contract entered or an arrangement in violation of this subchapter is void as against public policy.

ARCHITECTURAL AND ENGINEERING SERVICES – Price cannot be a factor when procuring for Architectural and Engineering Services. The following procedures must be followed:

- Webb County advertises the Request for Qualifications (RFQ).
- All respondents to the RFQ are evaluated.
- The Purchasing Office together with the Evaluation Committee work at ranking the respondents.

- 2.9.7 Respondents may be scheduled for presentations/interviews with the Commissioner's Court.
- 2.9.8 Commissioner's Court at their discretion may request to rate respondents and the Purchasing Agent will rank qualifiers based on the ratings provided.
- 2.9.9 Rankings are approved and a "short list" of highly qualified firms may be identified to continue evaluating short list of top ranking firms for consideration of award.
- 2.9.10 The Purchasing Agent then recommends the most highly qualified firm and request authorization from the Commissioners Court to negotiate a price based on qualifications and demonstrated competence. Commissioners Court has the discretion to select another qualified firm versus staff recommendation.
- 2.9.11 Webb County attorney meets with selected qualifier to agree on the terms of the contract. Contract is taken to the Commissioner's Court for approval.
- 2.9.12 Once the Commissioner's Court has selected the top ranked qualifier, the Webb County Attorney will negotiate the terms of the contract with the qualifier.

PRE-PROPOSAL CONFERENCE – The Purchasing Agent and the user department work collaboratively to determine if a pre-proposal conference is needed. The staff of the Purchasing Agent manages the pre-proposal conference. The user department makes sure that a representative of the department is available for the conference and can answer questions.

NEGOTIATIONS AND BEST AND FINAL OFFER (BAFO) – The Purchasing Agent oversees all negotiations and coordinates all conversations with the proposers. A staff member of the Purchasing Office must always be present for all discussions with the firms. Departments may not contact any firms with first coordinating with the Purchasing Office. Departments who fail to follow these procedures risk the integrity of the Webb County procurement process.

All firms must be given fair and equitable treatment with respect to opportunity for discussion and revision to the responses and submittal of a Best and Final Offer (BAFO).

After the completion of the negotiations, the Purchasing Office may ask the qualified firms to submit a BAFO by a specified date and specified location. Based on the negotiations, the BAFO must give the firm the following opportunities:

- 2.9.13 Modify the initial order
- 2.9.14 Update the response based on the changes submitted by the user department and
- 2.9.15 Include any added inducement that may help the overall score based on the evaluation of the RTS.

Professional Service procedures for projects funded by the U.S. Department of Transportation – Federal Highway Administration

This policy was developed to provide consistent procedures for Webb County Procurement procedures regarding the advertisement, selection, negotiation, and execution of architectural and engineering (A/E) contracts utilizing funding from the U.S. Department of Transportation – Federal Highway Administration (FHWA) and monitored by the Texas Department of Transportation (TXDOT). Some of the requirements described herein may vary from contract to contract depending upon its size, complexity, and type.

When FHWA Federal funds are used to fund the design of projects, Webb County shall adhere to all applicable Federal and State statutes such as the Texas Government Code; Chapter 2254 (Professional and Consulting Services), Sub-Chapter A. Professional Services and other Local Government regulations during the selection, negotiation, and execution of professional service contract. When State and Local procurement laws, regulations, policies, and procedures conflict with applicable Federal laws and regulations that applies to FHWA federal funded projects, the contracting agency shall comply with Federal Requirements (Title 23, Part 172) to be eligible for Federal-aid reimbursement.

Solicitation

The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and/or out-of-State consultants are given a fair opportunity to be considered for award of the contract. Procurement procedures may involve a single phase process with issuance of a request for proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for qualifications (RFQ) whereby responding consultants are ranked based on qualifications and a RFP is then provided to a minimum of the three (3) highest ranked consultants based on their scores in accordance with the scoring criteria of the RFQ solicitation.

Single Phase Process – Request for Proposals

The RFP shall provide all information and requirements necessary for interested parties to provide a response to the RFP and compete for the solicited. RFP shall provide a clear, accurate, and detailed description of the scope of services, technical requirements, and qualifications of consultant's necessary to render requested services.

Solicitation Process

- After authorization by the Commissioners Court and pre-approval by TXDOT, the Purchasing Agent shall;
- Advertise in a local newspaper of general circulation a public notice of RFP twice within a 14-day period and;
- Post the entire solicitation package online the first working day succeeding the first publication in the newspaper;
- The online solicitation will remain posted until the solicitation is closed.
- The Purchasing Agent will at minimum invite three (3) firms via electronic communication either by email or through the Webb County eBid system for any RFP/RFQ posted that is funded through FHWA where Webb County is listed as a sub-recipient.

Opening of RFP

- All RFP meeting the published deadline will be open publicly at the Webb County Clerk's office by the Purchasing Agent or his designee;
- The Purchasing Agent or his designee will record the audio of the public opening and record who is in attendance, announce the date and time of opening prior to opening sealed envelopes;
- All RFP's meeting the deadline will be read aloud by stating the name of proposer, time submitted and date;
- Once all RFPs are read into the record the Purchasing Agent or his designee will close the public opening;
- All sealed proposals that did not meet the deadline will not be opened and returned to proposer with a written explanation for disqualification.
- Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Single Response Procedure

- To determine why an agency receives only one response to a competitive solicitation, the Purchasing Department or other appropriate employee of the agency should do the following:
- Re-review the solicitation for any unduly restrictive requirements.
- Contact some potential respondents to determine why they did not submit a response.

If it is determined that there were unduly restrictive requirements in the solicitation document, the agency may decide to re-advertise the solicitation. Otherwise, the agency should consider the reasons that other responses were not received and determine if it is in the best interest of the County to make an award, to re-advertise with a revised solicitation, or to determine if a proprietary or single source purchasing justification is required. Single response procedure will also include notification to TXDOT on what action will be taken.

Evaluation Team

- The Purchasing Agent will select key County officials to participate as part of the evaluation team.
- The names of the evaluators will be published with the RFPs to inform interested parties that they are not allowed to contact members of the evaluation team during the RFP process.
- At minimum the Purchasing Agent will appoint three (3) members to the evaluation team. Of which one member must be the County Engineer or his designee.
- The Purchasing Agent or his designee will first provide an initial screening of each proposal to ensure all minimum requirements are met prior to scoring; if proposer does not meet minimum requirements it will be grounds for disqualification. Proposer will be notified in writing by the Purchasing Agent.
- The evaluation team will score the statement of qualification proposals based on published criteria to determine the most qualified proposer.
- Criteria may include but not limited to technical approach, work experience, specialized experience, professional licensure, staff capabilities and past performance. If past performance is part of the criteria selected, a survey will be distributed to all listed agencies on the solicitation

package that have hired the consultants being evaluated in order to determine the score for past performance. The same survey will be used for all consultants being evaluated.

- Each member of the evaluation team will submit their individual scores to the Purchasing agent who in turn will tabulate all scores and present to the Commissioners Court the highest-ranking qualified proposer for award.

Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

Negotiation:

- After final selection of the highest ranking qualified firm, but prior to receipt or review of the most qualified firms cost proposal, Webb County shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours and/or other direct costs for the defined scope of work. Independent estimate may be prepared by Webb County or an outside professional engineer who is independent of the selected firm. Independent estimate must be approved by TXDOT prior to using as a basis for negotiations.
- Webb County will negotiate with selected firm and establish contract costs and other professional service terms and conditions, secure final approval of contract terms from TXDOT prior to finalizing a fully executed contract.
- If the County is unable to negotiate the price and other conditions of the professional contract, the County will terminate negotiations and proceed with the next highest qualified ranking firm. Webb County will continue this process until a contract is established or all proposals are cancelled and solicitation process starts over.

Multiphase Process – Request for Qualifications (RFQ)

The RFQ shall be a two-step process where firms will submit statement of qualifications and a minimum of the three firms will also submit an RFP with additional information to help Webb County determine who is the most qualified and capable firm for the scope of work being solicited.

Solicitation Process

- After authorization by the Commissioners Court and pre-approval by the TXDOT, the Purchasing Agent shall;
- Advertise in a local newspaper of general circulation a public notice of RFQ twice within a 14-day period and;
- Post the entire solicitation package online the first working day succeeding the first publication in the newspaper;
- The online solicitation will remain posted until the solicitation is closed.
- The Purchasing Agent will at minimum invite three (3) firms via electronic communication either by email or through the Webb County e-Bid system for any RFP/RFQ posted that is funded through FHWA where Webb County is listed as a sub-recipient.

Opening of RFQ

- All RFQ meeting the published deadline will be open publicly at the Webb County Clerk's office by the Purchasing Agent or his designee;
- The Purchasing Agent or his designee will record the audio of the public opening and record who is in attendance, announce the date and time of opening prior to opening sealed RFQ proposals;
- All RFQ's meeting the deadline will be read aloud by stating the name of firm, time submitted and date;
- Once all RFQs are read into the record the Purchasing Agent or his designee will close the public opening;
- All sealed RFQ that did not meet the deadline will not be opened and returned to firm with a written explanation for disqualification.
- Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each statement of qualification submitted in relation to the published selection criteria.

Single Response Procedure

- To determine why an agency receives only one response to a competitive solicitation, the Purchasing Department or other appropriate employee of the agency should do the following:
 - Re-review the solicitation for any unduly restrictive requirements.
 - Contact some potential respondents to determine why they did not submit a response.

If it is determined that there were unduly restrictive requirements in the solicitation document, the agency may decide to re-advertise the solicitation. Otherwise, the agency should consider the reasons that other responses were not received and determine if it is in the best interest of the County to make an award, to re-advertise with a revised solicitation, or to determine if a proprietary or single source purchasing justification is required. Single response procedure will also include notification to TXDOT on what action will be taken.

Evaluation Team

- The Purchasing Agent will select key County officials to participate as part of the evaluation team.
- The names of the evaluators will be published with the RFQ to inform interested parties that they are not allowed to contact members of the evaluation team during the RFQ process.
- At minimum the Purchasing Agent will appoint three (3) members to the evaluation team. Of which one member must be the County Engineer or his designee.
- The Purchasing Agent or his designee will first provide an initial screening of each proposal to ensure all minimum requirements are met prior to scoring; if proposer does not meet minimum requirements it will be grounds for disqualification. Proposer will be notified in writing by the Purchasing Agent.
- The evaluation team will score the Statement of Qualifications based on published criteria to determine the most qualified firm.
- RFQ will be short listed based on a minimum of the three (3) highest ranking providers.
- A minimum of the three (3) highest ranking providers will be notified to submit a RFP package (multiphase procedure);

- Criteria may include but not limited to technical approach, work experience, specialized experience, professional licensure, staff capabilities and past performance. If past performance is part of the criteria selected, a survey will be distributed to all listed agencies on the solicitation package that have hired the consultants being evaluated in order to determine the score for past performance. The same survey will be used for all consultants being evaluated.
- Interviews will be conducted by evaluation team. Firms will be notified no later than two (2) weeks prior to interviews.
- After the interviews, each member of the evaluation team will submit their individual scores of the RFP to the Purchasing agent who in turn will tabulate all scores and present to the Commissioners Court the highest-ranking qualified proposer for award.

Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

Negotiation:

- After final selection of the highest ranking qualified firm, but prior to receipt or review of the most qualified firms cost proposal, Webb County shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours and/or other direct costs for the defined scope of work. Independent estimate may be prepared by Webb County or an outside professional engineer who is independent of the selected firm. Independent estimate must be approved by TXDOT prior to using as a basis for negotiations.
- Webb County will negotiate with selected firm and establish contract costs and other professional service terms and conditions, secure final approval of contract terms from TXDOT prior to finalizing a fully executed contract.
- If the County is unable to negotiate the price and other conditions of the professional contract, the County will terminate negotiations and proceed with the next highest qualified ranking firm. Webb County will continue this process until a contract is established or all proposals are cancelled and solicitation process starts over.

2.10 Procurement for Construction

PURCHASING STATUTES – The following statutes are used for the procurement of construction:

- ✓ Texas Local Government Code, Subsection 262.011 (e), states that “The County Purchasing Agent shall supervise all purchases made on competitive bid...”
- ✓ Local Government Code: Chapter 271, Subchapter B provides for competitive bidding on certain public works contracts.
- ✓ Local Government Code: Chapter 271, Subchapter C is used only for publicworks projects funded by Certificates of Obligation.

The procurement of construction follows other procurement procedures stated in this manual and with applicable statutes. The Purchasing Agent supervises all construction procurements. The following process is used for all competitive bids:

- ✓ The Purchasing Department or the county departments will request approval from the court to solicit bids/proposals/qualifications. A funding source is identified at this time.
- ✓ The Purchasing Department in collaboration with the department making the request will consider the use of ITB/RFP/RFQ.
- ✓ The Purchasing Department in collaboration with the department will look at the different alternative options available for the procurement of construction projects.

Local Government Code Subchapter B 271.024

“If a government entity is required by statute to award a contract for the construction, repair or renovations of a structure, road, highway, or other improvement or addition to real property based on competitive bids, and if the contract requires the expenditure of more than \$50,000 from funds of the entity, the bidding on the contract must be accomplished in the manner provided by this subchapter.”

271.025

271.25 The advertisement for bids must include a notice that:

Describes the work:

1. States the location at which the bidding documents, plans, specifications, or other data may be examined by all bidders, and
2. States the time and place for submitting bids and the time and place that bids will be opened.

The advertisement must be published as required by law. The second publication must be on or before the 10th day before the first date bids may be submitted.

271.027

271.26 (b) The contract must be awarded to the lowest responsible bidder, but the contract may not be awarded to a bidder who is not the lowest bidder unless before the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the

governmental entity or the designated representative of the governing body and present evidence concerning the bidder's responsibility.

Local Government Code Subchapter C 271.054

Before the governing body of an issuer may enter into a contract requiring expenditure (of more than \$50,000) by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county, the governing body must

1. Submit the proposed contract to competitive procurement or
2. Use an alternative method (of project delivery) authorized by Chapter 2267, Texas Government Code

271.55 Notice to bidders

If an issuer gives notice under this subsection, the notice must:

- Be published once a week for two consecutive weeks... with the date of the first publication to be before the 14th day before the date set for public opening of the bids and the reading of the bids aloud.
- An issuer may not authorize certificates unless the notice also stated that:
 - The successful bidder must accept the certificate in payment for all or part of the contract price; or
 - The governing body has made provisions for the contractor to sell and assign the certificates and that each bidder is required, at the time of the receipt of the bids, to elect whether the bidder will:
 - Accept the certificates in payment of all or part of the contract price; or
 - Assign the certificates in accordance with arrangements made by the governing body.

271.059 Contractor's Bond

If a contract is for the construction of public works and is required by this subchapter to be submitted to competitive bidding, the successful bidder must execute a good and sufficient payment bond and performance bond in the full amount of the contract price and executed in accordance with Chapter 2253 of the Texas Government Code.

Texas Government Code Sec. 2267.002

This chapter applies to a public work contract made by governmental entity... including (2) (A) a county.

Texas Government Code Sec. 2267.055 (a)

In determining award of a contract... the governmental entity may consider

- The price
- The offeror's experience and reputation;
- The quality of the offeror's goods and services
- The impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses
- The offeror's safety record
- The offeror's proposed personnel
- Whether the offeror's financial capability is appropriate to the size and scope of the project; and
- Any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

Texas Government Code Sec. 2267.056

This government code addresses using methods other than competitive bidding for construction services.

- The governmental entity shall base its selection among offerors on applicable criteria listed. The governmental entity shall publish in the request for proposals or qualifications the criteria that will be used to evaluate the offeror's and the applicable weighted value of each criterion.

Texas Government Code 2267.058(a)

Independently of the contractor, construction manager-at-risk, or design-build firm, the governmental entity shall provide or contract for the construction of materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

- The governmental entity shall select the services for which it contracts under this section in accordance with section 2254.004 of the Texas Government Code

COMPETITIVE BIDDING METHOD

- ✓ Competitive bidding is awarded to the lowest responsible bidder.
- ✓ Must advertise for bids before a contract is awarded.
- ✓ An architect or engineer will be selected in accordance with Chapter 1051 or 1001, Occupational Code, to prepare construction documents
- ✓ County will prepare the request for bids package and include:
 - Construction documents
 - Estimated budget
 - Project scope
 - Estimated project completion date
 - Other
- ✓ County Clerk's office will receive the sealed bid documents
- ✓ Purchasing office will publically open and read aloud the names of the offeror's and their bids.
- ✓ Not later than seven (7) days after the award, the purchasing department will document the basis for the award and make public the evaluation.

COMPETITIVE SEALED PROPOSAL METHOD

- ✓ Method where county will request proposals, rank the offeror's, negotiate as prescribed, and then contract with proposer/a general contractor
- ✓ Must follow procedures prescribed by Texas Government Code 2267 Subchapter D.
- ✓ Architect or engineer will be selected to prepare construction documents.
- ✓ County will prepare a request for competitive sealed proposals that include:
 - Construction documents
 - Selection criteria
 - Weighted value for each criterion
 - Estimated budget
 - Project scope
 - Estimated project completion
 - Other
- ✓ County clerk's office will receive the sealed proposals.
- ✓ Purchasing office will publically open and read aloud the names of the offerors and any monetary proposals made by the offerors.
- ✓ Not less than 45 days after the date on which the proposals are opened, the county shall evaluate and rank each proposal.
- ✓ County will select the offeror that submits the proposal that offers the best value for the county based on:
 - The selection criteria in the request for proposal and the weighted value for those criteria
 - Its ranking evaluation

- ✓ The county will attempt to negotiate a contract with the selected offeror. The county and its architect/engineer may discuss with the selected offeror options for the scope of time modification and any price change associated with the modifications.
- ✓ If the county is unable to negotiate a satisfactory contract with the selected offeror, the county shall formally and in writing end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking.

MANAGER-AGENT METHOD

- ✓ A delivery method where the county contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.
- ✓ Webb County may retain a construction manager-agent for assistance in construction only as provided by Texas Government Code 2267 Subchapter E.
- ✓ Construction manager-agent may be required to provide:
 - Administrative personnel
 - Equipment necessary to perform duties
 - On-site management
 - Other services
- ✓ A construction manager-agent may not:
 - Self-perform any aspect of the construction
 - Be a party to a construction subcontractor for the construction
 - Be required to provide performance and payment bonds for the construction
- ✓ A construction manager-agent represents the governmental entity is a fiduciary capacity.
- ✓ Before the selection of the manager-agent, the county shall select an architect or engineer to prepare the construction documents.
- ✓ If the county chooses a manager-agent method, it shall procure a general contractor who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the county in accordance with applicable laws.
- ✓ The manager-agent shall be selected based on demonstrated competence and qualifications in the same manner that an architect/engineer is selected.
- ✓ A manager-agent shall maintain a professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.

MANAGER-AT-RISK

- ✓ The construction manager at-risk method is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction of the facility.

- ✓ The construction manager at-risk is an entity that assumes the risk for construction of a facility at the contracted price as a general contractor and provides consultation to Webb County regarding construction during and after the design of the facility. The contracted price may be guaranteed maximum price.
- ✓ The county may use the construction manager-at-risk method in selection of a general contractor for the construction as provided by Government code 2267 Subchapter F.
- ✓ On or before the selection of the construction manager-at-risk, the county may select or designate an architect/engineer to prepare the construction documents for the project.
- ✓ The county's engineer or architect for a project may not serve as a construction manager-at-risk unless the architect or engineer is hired to serve as the construction manager-at-risk under separate or concurrent selection process in accordance with Government Code 2267 Subchapter F.
- ✓ Webb County may select the construction manager-at-risk in a one-step or a two-step process.
- ✓ Webb County shall select a single request for proposals in the case of a one-step process and an initial request for qualifications in the case of the two-step process. Request will include:
 - Information whether the selection process is a one-step or a two-step process.
 - General information on the project site, project scope, schedule, selection criteria, the weighted value for each criterion, estimated budget, and time and place for receipt of proposals/qualifications
 - Other information necessary to Webb County
- ✓ Webb County will state the selection criteria in the request for proposals or qualifications.
- ✓ In the use of the one-step process, Webb County may request as part of the offeror's proposal, proposed fees, and prices for fulfilling the general conditions.
- ✓ If a two-step process is used Webb County may not request fees or prices in step one.
 - In step two, Webb County may request that five or fewer offeror's selected solely based on qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.
- ✓ With either method (one or two step) at each step, the governmental entity shall receive, publically open, and read aloud the names of the offeror's. At the appropriate method, the governmental entity shall also read aloud the fees and prices, if any, state in each proposal as the proposal is opened.
- ✓ Not later than the 45th day after the date on which the final proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.
- ✓ A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work
- ✓ A construction manager-at-risk may seek to perform portions of the work itself. If this is the case, Webb County shall select the subcontractor that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.
 - The construction manager-at-risk submits its bids or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and
 - The governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the government entity

- ✓ No later than the seventh day after the date, the contract is awarded; Webb County shall make the rankings public.
- ✓ If the construction manager-at-risk does not seek to perform any of the subcontracting work itself, then subcontractors submit their bids/proposals and the construction manager-at-risk shall review all subcontractor bids/proposals in a manner that does not disclose the contents of the bid/proposal.
- ✓ All bids or proposals shall be made available to Webb County on request and to the public after the later of award of the contract or the seventh day after the date of final selection of bids/proposals.
- ✓ If the construction manager-at-risk evaluates and recommends to Webb County a bid/proposal from a subcontractor but Webb County requires another bid/proposal to be accepted, Webb County shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of Webb County's requirement that another bid/proposal be accepted.
- ✓ If selected subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the construction manager-at-risk may itself fulfill, without advertising, the contract requirement or select a replacement subcontractor.
- ✓ If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to Webb County must be in the amount equal to the construction budget.
- ✓ The construction manager-at-risk shall deliver the bonds not later than the 10th day after the construction manager-at-risk executes the contract, unless the construction manager-at-risk furnishes a bid bond or other security acceptable to Webb County to ensure that the construction manager will furnish the required performance and payment bonds when guaranteed maximum price is established.

DESIGN-BUILD METHOD

- 2.10.1 Design-Build is project delivery method by which Webb County contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.
- 2.10.2 This method applies only to a facility that is a building or an associated structure, including an electric utility structure; it does not apply to:

- 2.10.2.1A highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway, or taxiway, drainage project, or related type of project associated with civil engineering construction; or
- 2.10.2.2A building or structure that is incidental to a project that is primarily a civil engineering construction project.
- 2.10.3 Webb County may use the design-build method for a construction, rehabilitation, alteration, or repair of a building only as provided by Section 2267.Subchapter of the Texas Government Code.
- 2.10.4 In using this section Webb County will enter a single contract with a design-build firm for the design and construction of the building.
- 2.10.5 The design-build firm must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.
- 2.10.6 Webb County shall select or designate an architect or engineer independent of the design- build to act as the governmental entity's representative for the duration of the project.
- 2.10.7 Webb County shall prepare a request for qualifications that include general information on the project site, project scope, budget, special supplies, selection criteria and weighted average of each criterion.
- 2.10.8 Webb County shall prepare the design criteria package that includes more detailed information on the project.
- 2.10.9 If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupation Code, these series shall be provided in accordance with the applicable law.
- 2.10.10 The design-build criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to Webb County's request for qualifications and to provide any additional information requested.
- 2.10.11 The design-build package must specify criteria Webb County considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provision for utilities, parking requirements and any other requirement.
- 2.10.12 Webb County may not require offerors to submit architectural or engineering designs as part of the proposal or a response to a request for qualifications.
- 2.10.13 Webb County shall evaluate each firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, as well as other request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

- 2.10.14 Each firm must certify to Webb County that each architect and engineer that is member of the firm was selected based on demonstrated competence and qualifications, in the manner provide by Section 2254.004 of the Texas Government Code.
- 2.10.15 Webb County shall qualify a maximum of five (5) responders to submit proposals that contain additional information, and if Webb County chooses, to interview for final selection.
- 2.10.16 Webb County shall evaluate the additional information submitted by the offerors based on the selection criteria stated in the request for qualifications and the results of any interview.
- 2.10.17 Webb County may request additional information:
 - 2.10.17.1 Regarding demonstrated competence and qualifications
 - 2.10.17.2 Consideration of the safety and long-term durability of the project
 - 2.10.17.3 Feasibility of implementation the project as proposed
 - 2.10.17.4 The ability of the offeror to meet schedules, or costing methodology
 - 2.10.17.5 Costing methodology means:
 - 2.10.17.5.1 An offeror' s policies on subcontractor mark up
 - 2.10.17.5.2 Definition of general conditions
 - 2.10.17.5.3 Range of cost for general conditions
 - 2.10.17.5.4 Policies on retainage
 - 2.10.17.5.5 Policies on contingencies
 - 2.10.17.5.6 Discount for prompt payment and
 - 2.10.17.5.7 Expected staffing for administrative duties
- 2.10.18 The term costing does not include a guaranteed maximum price or bid for overall design or construction
- 2.10.19 Webb County shall rank each proposal based on the criteria set forth in the request for qualifications
- 2.10.20 No later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings public.
- 2.10.21 After selection of the design-build firm, that firm's architect or engineer shall submit all design elements for review and determination of scope compliance to Webb County.
- 2.10.22 The design-build firm shall supply a set of construction documents for the completed project to Webb County at the conclusion of the construction. The documents must note any changes made during construction.
- 2.10.23 A payment or performance bond is not required and may not provide coverage for design portion of the design-build contract with the design-build firm.
- 2.10.24 The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

DESIGN BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

- Civil Works Projects mean:
 - Roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiway, storm drainage and flood control projects, or transit project-associated with civil engineering construction.
- The Texas Government Code 2267.353 addresses design build contracts for civil work projects.

JOB ORDER CONTRACT METHOD

- Job order contracting is a procurement method used for maintenance, repair, alterations, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.
- This applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land that is associated with a building.
- This does not apply to a highway, road, street, bridge, utility, water supply product, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project related with civil engineering.
- Webb County may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:
 - The work is of a recurring nature but the delivery times are indefinite, and
 - Indefinite quantities and order are awarded substantially based on pre-described and pre-priced tasks.
- Webb County shall establish the maximum aggregate contract price when it advertises for the proposal.
- Webb County Commissioner's Court shall approve each job, task, or purchase order that exceeds \$50,000. (Texas Government Code 2267.403)
- Webb County may establish contractual unit prices for a job order by:
 - Specifying one or more published construction unit price books and the applicable division of line items, or
 - Providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or re-priced work items as the price proposal.
- Webb County may use the competitive sealed proposal method under Texas Government Code 2267, Subchapter D for job order contracts.

- Webb County may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.
 - The order must be fixed price, lump sum contract based on the contractual unit pricing applied to estimated quantities, or
 - A unit price order based on the quantities and line items delivered.
 - The base term for a job order contract may not exceed two (2) years. Webb County may renew the contract annually for not more than three additional year
 - An order for a job order or project under a job order contract must be signed by the governmental entity's representative and the contractor
 - The contractor must provide a payment and performance bond based on the amount of estimated amount of an order.
- The criteria that defines the safety record for a bidder is:
 - At least two (2) cases which have final orders been entered with the Occupational Safety and Health Review Commission (OSHRC) against the bidder within the last three (3) years
 - Webb County, at their discretion, may determine to disqualify the bidder.
 - If within the last five (5) years, the bidder, has receive at least one (1) citation from an environmental protection agency for violations,
 - Webb County, at their discretion, may determine to disqualify the bidder.
 - An environment protection agency includes:
 - U.S. Army Corps of Engineers (USACOE)
 - U.S. Fish and Wildlife Service (USFWS)
 - Environmental Protection Agency (EPA)
 - Texas Commission on Environmental Quality (TCEQ)
 - Texas Natural Resource Conservation commission (TNRCC)
 - Texas Department of Health
 - Texas Parks and Wildlife Department (TPWD)
 - Structural Pest Control Board (SPCB)
 - Agencies of local governments responsible for enforcing environmental protection laws or regulations
 - If within the last ten (10) years, the bidder has been convicted of a criminal offense as a result of serious bodily harm or death,
 - Webb County, at their discretion, may determine to disqualify the bidder.

BONDING - For construction contracts less than \$25,000, bonds are not required.

PERFORMANCE BONDS – BEFORE starting work, vendors for ALL contracts over \$100,000 for construction, repair, or alteration of a public work, or prosecution or completion of any public work, must submit a performance bond that is:

- Payable to Webb County, Texas,
- For the full amount of the contract,

- Conditioned on faithful performance of the work in accordance with the specification, plans and contract documents,
- Solely for the protection of Webb County, Texas,
- Executed by a corporate surety or sureties in accordance with the Insurance Code, and
- In a formal document approved by the Commissioners Court.

Any performance bond submitted by the contractors must be in compliance with the requirements of Texas Government Code, Chapter 2253.

A Letter of Credit cannot be substituted for any Performance Bond related to a public works project if the project is more than \$25,000.

PAYMENT BONDS - BEFORE starting work, vendors for ALL contracts over \$25,000 for construction, repair, or alteration of a public work, or prosecution or completion of any public work, must submit a payment bond that is:

- Solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractors or a subcontractor to supply labor or material for a public work,
- Payable to Webb County, Texas,
- For the full amount of the contract,
- Executed by a corporate surety or sureties in accordance with the Insurance Code, and
- In a formal document approved by the Commissioners Court

Unless releases are obtained from all subcontractors and material suppliers, the payment bonds must be in effect from the beginning of a performance until the end of the fourth month after all work is completed.

Any payment bond submitted by the contractors must be in compliance with the requirements of Texas Government Code, Chapter 2253.

A bond must be state and displayed on the bond the following requirements:

- The name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
- The toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D, Insurance Code, the address where a claim should be sent to with a telephone number of the Texas Department of Insurance.

Webb County may not require a contractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker.

A Letter of Credit cannot be substituted for any Payment Bond related to a public works project if the project is more than \$25,000.

The Texas Government Code 2253.021 Performance and Payment Bonds Require

1. Webb County will require contractors (before beginning work) to execute a
 - Performance bond if the contract is more than \$100,000
 - Payment bond if the contract is more than \$25,000 (in the amount of the contract)
2. Bonds must clearly display
 - Name, mailing and physical address, and telephone number of the surety company
 - To where notice of claims is sent
3. Webb County may not require a contractor to obtain a surety bond from any specific insurance or surety company, agent, or broker
4. Performance and Payment Bonds: Insured loss – Webb County shall insure that an insurance company that is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss, rather than by making cash payments to the governmental entity furnishes a performance bond and a payment bond.
5. If a payment bond required is not furnished – Webb County is subject to the same liability that a surety would have if the surety would issue the payment bond.

PRE BID CONFERENCE – The Purchasing Office is responsible for the Pre-Bid Conference and provides the bidding requirements of the solicitation to make sure that purchasing procedures are adhered to and the user department provides all the technical information needed to ensure that technical standards are complied with. The Purchasing Office schedules the pre-bid conference and assists in conducting the conference as follows:

- Prepare a sign in roster for all attendees to sign.
- Provide a detail agenda to include:
 - Introduction
 - Project title
 - Magnitude
 - Performance period
 - Addendum updates
 - Establishes if addendum(s) may need to be issued
 - Role of Purchasing Office
 - Procurement process
 - Administration process
 - Establishes “cut-of” dates for questions and clarifications
 - Allow the project Engineer or Project Manager time to discuss the specifics of the project. Include review of plans and specifications. Allow time for question and answer session.
- Identify any issues during the conference that require an addendum.
- If needed, the Purchasing Agent may extend the date specified in the notice.

- The Purchasing Agent may issue an amendment only if there are more than three (3) days between the date of the addendum and the date specified for the bid opening.
 - If less than three (3) days exist, the opening date should be extended to allow the minimum of three (3) days between the date of the addendum and the opening date specified in the addendum.
- Make sure that the User Department provides the Purchasing Department with the technical documents such as changes or additions to the plans and/or specifications.
- Prepare addendum if necessary and distribute to all attendees and project document holders.
- Take questions and provide written responses to all attendees and those on the vendor list, and post the questions and answers on the website.

Webb County Procedures for Sealed Bid; Proposal; Qualifications Opening

1. Sealed bid/proposal/qualifications received prior to the closing date and times are secured by the Webb County Clerk's Office until they are to be opened.
2. Upon opening, the bids are publicly read into a recording in the Bid Room, Webb County Clerk's office; 2nd Floor; 1110 Victoria; Laredo, Texas.
3. All bidders are welcomed to attend bid openings
4. Personnel opening bids (Purchasing Department) will verify that the opening date and time corresponds to the closing date and the time printed on the announcement.
5. No late bids will be opened. When possible the recording will acknowledge, any late bids received but not opened.
6. The person conducting the bid opening will read their name into the recording and acknowledge the presence of others.
7. A recording of the bid opening is conducted by announcing the bid request number and the project title to be opened along with the actual date and time of the reading
8. Personnel opening and reading the bids read the name of the bidder, date and time the bid was received and the amount of the bid.
9. In some instances, the bid amount will be one total amount while in others it will include the type of commodity/material, the unit price, and the total price.
10. When opening RFP/RFQ that does not have a monetary price amount, the bidder will acknowledge the proposer/qualifier.
11. Most proposals are to be further negotiated. In these cases, if the proposal includes a price amount, that amount is not made public until the project is awarded.
12. Awards are a function of the Commissioner's Court; thus, no award exists at the time of opening.
13. Alongside the recording, a sign in sheet of those present for the bid opening is kept.
14. The recording is turned in to the Webb County Clerk's Office for safekeeping.
15. Sign in sheets are turned in to the Purchasing Department Administrative Assistant for safe keeping.

PRE-CONSTRUCTION CONFERENCE – The Pre-Construction Conference also known as the Pre-Performance Conference is scheduled by the Purchasing Office. The User Department is responsible for ALL technical presentations and the Purchasing Office makes sure that all procurement procedures are followed. The Purchasing Office will collaborate with the engineering department to conduct the conference by:

- Hosting the pre-construction conference:
 - Preparing agenda
 - Signing in all attendees
 - Introducing attendees
- Discussing contract requirements
- Establishing dates to submit all required documentation
- Receiving required documentation from contractor such as, Performance Bond, Payment Bond, Insurance Certificate, and Notice of Intent Forms.
- Making sure that there is complete understanding by all participants before adjourning.
- Notice to Proceed form is distributed.

NOTE: The Notice-to-Proceed (NTP) is not issued until all documents such as bonds and insurance certificates have been received, reviewed, and verifies with the appropriate agency.

Together, the Purchasing Office, the Engineering Department and the User Department work to issue the Notice-to-Proceed.

2.11 Purchasing with Federal Funds

Procurement Procedures for Use of Federal Funds Department Responsibility

- 2.11.1 Each Webb County Department using Federal funds to obtain goods and/or services will do so in compliance with Federal grant guidelines and Federal regulations
- 2.11.2 Webb County Departments awarded Federal grants will ensure that if subcontractors are hired, they also obtain goods and services in compliance with Federal funds only in compliance with Federal regulations
- 2.11.3 Anytime Federal funds are to be used, the Level I requestor should include in the description: Federal Funds Used – Check for Debarment

Purchasing Department Responsibility

- 2.11.4 One buyer has been assigned the responsibility to purchase items with Federal funds
- 2.11.5 Buyer will submit the name of the proposed vendor to the Excluded Parties List System (EPLS) and verify that the vendor is not on the debarment list

Annual Contracts and ITBs; RFPs; RFQs

- 2.11.6 Solicitation packages for contracts will include information about debarment and the Federal requirement that vendors not be on the Excluded Parties List System
- 2.11.7 All vendors submitting a bid/proposal will be checked in the EPLS
- 2.11.8 Before an award is recommended to the Commissioner's Court, the vendor will have been cleared for debarment

2.12 Sale or Lease of Real Property through Sealed-Bid

The sale or lease of real property through sealed-bid is addressed in the Local Government Code Section 263.007 and states that:

- 2.12.1 The Commissioner's Court may adopt the procedure by which the County may sell or lease through a sealed-bid or sealed-proposal procedure any real property, including a space in a building owned by the County.
- 2.12.2 The procedure must include a requirement that the County publish before a sale or lease is made, a notice of its intent to sell or lease as appropriate, the real property. The notice must include the following:
 - 2.12.2.1 Be published in a newspaper of general circulation in the county the Commissioner's Court represents.
 - 2.12.2.2 Be published in a newspaper of general circulation in the county where the real property is located.
 - 2.12.2.3 Be published on two dates, with the date of the second publication occurring before the 14th day before the date of the award of the sale or lease is made.
 - 2.12.2.4 Include the description of the real property, including its location.
 - 2.12.2.5 Include a description of the procedure by which sealed bids or sealed proposals for the sale or lease may be submitted.
- 2.12.3 Before selling property under this section, the Commissioner's Court shall:
 - 2.12.3.1 Obtain an appraisal of the property's fair market value.
 - 2.12.3.2 Determine a minimum bid amount, based on the appraisal.
- 2.12.4 Under the procedure, the Commissioner's Court may reject any and all bids submitted.

3.1 Solicitation

The ITB/RFP/RFQ (bids/proposals/qualifications) solicitation is the first official notice to the vendors that Webb County intends to procure a goods or service. The solicitation document explains Webb County's requirements and how the vendor will be selected.

Terms and Conditions:

All solicitation documents regardless of the type will include Webb County Terms and Conditions. Terms and conditions connected to the purchasing process are legally binding. While certain terms and conditions are standard, others are specific to the contract agreement.

Solicitation methods include:

- Open market informal solicitation
- Open market formal written solicitation
- Bids/proposals/qualifications – required for purchases over \$50,000

The acceptable methods for soliciting bids are:

- In person
- Direct mail
- Over the telephone
- Fax
- E-mail

The solicitation process for competitive purchases over \$50,000 requires publication in the newspaper.

Occasionally after bids/proposals are solicited, but prior to opening or proposal closing, modifications to the solicitation documents need to be made, unclear language needs to be clarified, or errors need to be corrected. All vendors will be informed in writing by addendum posted on the web site.

If only a short period of time remains prior to the opening or closing, the final submission date may have to be extended to provide vendors with additional preparation time.

3.2 Public Bid Opening Notice

Local Government Code 262.025 (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.

Local Government Code 262.026 (a) The county official who makes purchases for the county shall open the bids on the date specified in the notice. (b) Opened bids shall be kept on file and available for inspection by anyone desiring to see them.

3.3 Specifications

DEFINITION – A specification is a full description of the goods and services that a user department wants to purchase. The specification may include requirements for testing, inspection, preparation of goods and services for delivery or installing them for use.

PURPOSE – The main purpose of the specification is to provide vendors with criteria about the minimum standards suitable for goods and services. In addition, the specifications give the Purchasing Department specific guidelines from which to purchase. Finally, the specifications also:

- encourages competitive bidding,
- reduce cost,
- offers a way to make equitable award to the lowest and best bid from a responsible bidder,
- establishes the minimum acceptability of the goods or services, and
- contains provision for reasonable tests and inspections for acceptability of the goods or services.

Specifications are the primary means of communication between the county and the vendor and should define the needs of the user.

PREPARATION- It is good practice to contact the Purchasing Department and obtain an existing specification to simplify the specification development process of a new specification.

There are several sources for specifications and they may include government entities, professional trade associations, professional purchasing associations and user knowledge.

Specification libraries include:

- Texas Specification Library found at the Texas Comptroller of Public Accounts website: www.window.state.tx.us/procurement/pub/specifications-library/

- General Services Administration, Federal Supply Service – Specifications Section located at www.gsa.gov
- Texas Department of Transportation Standard Specification Index found at http://www.dot.state.tx.us/gsd/purchasing/tssi_alpha.htm
- National Institute of Governmental Purchasing available to members only.

Even though, the user department or an outside agency may propose specifications, the Purchasing Department has final acceptance of the specifications. This process ensures compliance with legal purchasing requirements, quality control, and limits conflicting specifications.

CHARACTERISTICS OF AN EFFECTIVE SPECIFICATION – Effective specifications have the following characteristics:

- **Simple**
 - Do not include unnecessary details but are thorough enough to ensure the correct goods and services fulfill their intended purpose.
- **Clear**
 - Use terminology that is clear to both the user department and vendor.
 - Use correct spelling and sentence structure.
 - Refrain from using jargon.
- **Accurate**
 - Use units of measure that are clear and meet industry standards.
 - Identify quantities
 - Describe all packaging requirements
- **Competitive**
 - Recognize at minimum of two commercially available brands, made and models that can be used for the intended purpose.
 - Refrain from including unneeded “extras” that could increase cost and eliminate competition.
- **Flexible**
 - Avoid situations that could limit the acceptance of a response.

TYPES OF SPECIFICATIONS – There are several types of specifications used by the Purchasing Department:

- **Design-** Design specifications are used mainly for construction projects or custom-produced items and include: 1) description of goods or services, 2) details of construction or production, 3) dimensions, 4) chemical composition, 5) physical properties, 6) materials, and 7) additional information needed to

produce item of minimum acceptability. Design specifications describe how a product is to be manufactured.

- **Performance** – Performance specifications are used mainly for capital equipment purchases and include: 1) required performance parameters such as power, 2) strength of material, 3) test methods, 4) standards of acceptability, and 5) recommended practices. Performance specifications describe the “performance requirements” that a product or service is to meet.
- **Combination** – Design and Performance specifications are combined.
- **Brand Name or Equal- The user department must present justification for brand name. The Purchasing Department will use this method only if there is complete justification.** The specification will list goods and services by brand- name, model, and other identifying specifics. It must also include products with performance equivalent to the characteristics of the named brand. Other manufacturers with almost identical product under a different brand name may be included. Brand is a designation of desired quality.
- **Industry Standard- Details an industry standard that is equivalent regardless of the manufacturer and results in the purchasing of goods of uniform quality. A qualified product list will list various brands.**

Specifications establish minimum standards but do not preclude the acceptance of better quality.

3.4 Receipt of Goods

POLICY – The User Department is responsible to notify the Purchasing Office if the goods are not received by the due date or if the goods received have been damaged.

VERIFY ORDER – User Department employees who received the shipment of goods must make sure that delivery ticket matches the County’s purchase order. The person receiving the goods must:

- Verify that all goods were shipped as stated on the delivery ticket,
- Sign his or her own name IN INK on all the appropriate receiving documentation, especially the County’s paperwork.
- Acknowledge the delivery of goods within five (5) working days through the AS400 system.
 - DO NOT accept damage goods

- Document the receipt on goods in a timely manner to comply with the Texas Government Code, section 251.021 Prompt Payment Act.
 - Payment of goods and services received is considered overdue on the 31st day after the later of:
 - the receives the goods under the contract
 - the date the performance of the service under the contact is complete, or
 - the date the County receives and invoice for the goods or service.

DAMAGED GOODS – The following procedure must be used when a shipment arrives.

- The User Department must check the condition of all cartons.
- If the goods are not damaged, the department who receives the shipment must sign the freight bill.
- If the goods are visibly damaged, the department must instruct the freight line driver to of:
 - Make note of the damage on the freight bill and
 - Sign the freight bill.
- If the damage is concealed:
 - Save the shipping cartons and advise the Purchasing Office
 - Purchasing Office notifies the freight company and requests an “inspection and report of concealed damage.”
 - Complete a receiving report that makes note of the damage.
 - Match the receiving report with the original purchase order.
- Keep all boxes and packing materials in case of visibly damage and concealed damage goods shipment.
- Report damaged goods to the freight lines within 15 days of receiving shipment. Freight lines are not responsible after 15 days.
- All goods that are not received properly or not in compliance must be reported to the Purchasing Office immediately so that the contractor can be advised and instructed about a correction plan.
 - The Prompt Payment Act, states that the Purchasing Office must advise a contractor within 21 days of receiving any damaged goods. This will prevent the payment of interest paid to a contractor for damaged goods.
- Damaged goods must not be returned to the contractor or freight line, unless requested to do so and only if a claim has been filed or if authorization has been given by the contractor or the Purchasing office.

DOCUMENTATION – The User Department keeps and maintains all documentation. The County Auditor receives all invoices. The User Department is responsible to provide documentation to the County Auditor regarding any disputes in receipts of goods.

All warranty information **MUST** be copied to the Purchasing Office.

PURCHASING DEPARTMENT AS THE RECEIVER – The Purchasing Department is the receiver for all merchandize that must be tagged.

Exhibit 9 RECEIVING PROCESS

RECEIVING	<ul style="list-style-type: none"> • Inspect • Check that Purchase Order and packing slip match. • If a discrepancy, contact the vendor and follow up • If necessary, refuse the shipment
DISCREPENCY	<ul style="list-style-type: none"> • Notify vendor of discrepancy in writing • Follow up on resolution regarding damages over shipment shortages, etc.

3.5 Conflict of Interest Requirements for Vendors and Webb County Officials

Chapter 176 of the Local Government Code identifies the requirement for vendors to fill out a Conflict of Interest Questionnaire.

Companies and individuals who seek to contract with Webb County and its agents are to fill out a Conflict of Interest Questionnaire that describes affiliations or business relationships with Webb County officers.

The requirement to fill out a Conflict of Interest Questionnaire applies to a person who

- Enters or seeks to enter a contract with a local government entity

Disclosure Requirements for Vendors

A person described by Section 176.002 (a) shall file a completed Conflict of Interest Questionnaire if the person has a business relationship with a local governmental entity and

- Has an employment or other business relationship with an officer of that local government entity, or a family member of the officer described by Local Government Code Section 176.003 (a) (2) (B) or
- Has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.002 (a)(2) (B), excluding any gift described Section 176.003 (a-1)

The Conflict of Interest Questionnaire (Form CIQ) may be downloaded from http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm and may be found in Section 3.5 of this manual.

Webb County Officials who come within Chapter 176 of the Local Government Code for purposes of the Conflict of Interest filing requirements include:

- Webb County Judge
- Webb County Commissioners
- Webb County Purchasing Board

Conflict of Interest Questionnaire may be turned in to the Contract Administrator at the Webb County Purchasing Department located at 1110 Washington Street, Ste. 101, Laredo, Texas or may be faxed to 956 523-5010.

Section 176.001 of the Texas Government Code defines a “business relationship” as a connection between two or more parties based on commercial activity of one of the parties. The section further defines a “family member” as a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is related to another person by affinity only as described by Section 573.024(b), Government Code.

Exhibit 10: Conflict of Interest Disclosure

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person’s affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filled with the records administrator of Webb County no later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

By submitting a response to this request, the vendor represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

The Webb County Officials who come within Chapter 176 of the Local Government Code relating to filing of Conflict of Interest Questionnaire (Form CIQ) include:

1. Webb County Judge Tano Tijerina
2. Commissioner Pct. 1, Jesse Gonzalez
3. Commissioner Pct. 2 Rosaura “Wawi” Tijerina
4. Commissioner Pct. 3 John Galo
5. Commissioner Pct. 4 Jaime Canales
6. Judge Beckie Palomo, 341st Judicial District
7. Judge Joe Lopez, 49th Judicial District
8. Judge Oscar J. Hale Jr., 406th Judicial District

Please send completed forms to the Webb County Clerk’s Office located at 1110 Victoria, Suite 201, Laredo, Texas 78040.

CONFLICT OF INTEREST QUESTIONNAIRE

Date Received _____

This questionnaire reflects changes made to the law by H.B. 1491, 80th Legislature Regular Session.

1. Name of person who has a business relationship with local government entity.

2. Check this box if you are filing an update to a previously filed questionnaire.

The law requires that you file an updated completed questionnaire with the appropriate filing authority no later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.

3. Name of local government officer with whom filer has employment or business relationship.

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.011 (1-a), Local Government Code. Attach additional pages to the Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer names in this section.

4. _____

Signature of person doing business with the governmental entity

Date

3.6 Contract with Person Indebted to County

Section 262.0276 of the Texas Government Code states:

3.6.1 By an order adopted and entered in the minutes of the commissioner's 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 a contract or other transaction with a person indebted to the county.

3.6.2 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 a transaction with an apparent low bidder or successful proposer that is indebted to the county.

4.1 Inventory Policy and Procedures

A. General Information

The purpose of this document is to provide County department/offices with policies and guidelines regarding the tagging, inventory, and disposal of County controlled and fixed assets.

B. Introduction

Webb County has thousands of controlled and fixed assets. Some of these assets are identified as vehicles, firearms, heavy equipment, raw land, building structures, and computer systems. Assets are classified as either fixed assets (assets with a useful life greater than three years and with a value of \$5,000 or greater or controlled assets (assets with a value of \$500.00 but less than \$5,000 are tagged and tracked), or High Risk Assets (assets that are sensitive in nature because of liability issues).

The process of tagging and inventorying controlled and fixed assets is under the direction of the Purchasing Department. A full cooperative effort of all departments/offices allows the Purchasing Department to maintain inventory records. The Purchasing Department has a responsibility for providing accurate inventory records for controlled, fixed & high risk assets and will perform the following duties in support of this responsibility:

**Conduct periodic reviews of department/office to determine that controlled and fixed assets are recorded and reported.*

**Prepare inventory records of controlled and fixed assets for County departments/offices.*

**Maintain inventory records of controlled and fixed assets reported to the County Auditor's Office and the Webb County Purchasing Board.*

**Tag a controlled and fixed asset as determined by this policy.*

**Input information into the inventory records regarding controlled and fixed assets as determined by this policy.*

**Transfer a controlled and/or fixed asset that is not needed or used by a County department/office.*

**Remove tags, dispose of controlled and fixed assets, and update inventory records upon approval by the Commissioners Court.*

**Provide a report to the County Auditor and the Webb County Purchasing Board an inventory of assets on July 1 of each year. In accordance with the categories identified in this section as fixed, controlled and high risk assets.*

C. Authority

The Texas Local Government Code requires that the County Purchasing Agent perform several duties related to the acquisition, inventory, and disposal of County assets.

D. Inventory

On July 1 of each year, the County Purchasing Agent shall file with the County Auditor and the County Purchasing Agent Board an inventory of assets belonging to the County. The County Auditor shall carefully examine the inventory and make an accounting for the assets purchased or previously inventoried and not appearing in the inventory.

E. Transfer

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.

F. Definition

Fixed assets are defined as items that possess all of the following characteristics: an original unit cost of \$5,000 or more (including costs to install and implement the asset), physical substance, a life expectancy of more than three years, capable of repeated use, identifiable as an individual unit and accounted for separately (this criteria shall exclude construction and improvements to real property), not intended for resale within its expected useful life, not consumable (e.g. office supplies), and not repair or replacement parts of a larger asset. Webb County also tracks and reports assets classified as "Controlled Assets". Controlled Assets are those items with a purchase cost from \$500 through \$4,999.99. Additionally, the County tracks and reports other assets considered "High Risk Controlled Assets". These assets generally have a purchase cost below or at those of Controlled Assets but are tagged and reported because of liability, insurance, licensing, or other factors.

1. Fixed Asset - \$5,000 and up. Examples include (not an all-inclusive list):

- Vehicle
- All Road maintenance equipment (heavy equipment)
- Playground equipment
- Forklift
- Building Structures
- Land

2. Controlled Asset - \$500.00 up to \$4,999.99. Examples include (not an all-inclusive list):

- Mower
- Projector
- Desks
- Credenzas
- File Cabinets
- Bookcases
- Chairs
- Tables

3. High Risk Controlled Asset – \$0 to \$4,999.99. Examples include (not an all-inclusive list):

- Weapons (handguns)
- Bullet proof vests
- Mobile & hand held radios
- Cameras
- Television and/or other components such as DVRs
- Computer Laptops
- Computer Desktops
- Tables (i.e. iPads)

This policy will supersede any reference in the current fixed asset policy identifying controllable assets valued at \$300.00 and over. **New value is set at \$500.00**

4.2 Fixed Assets and Inventory Guidelines

Tagging and account for inventory/fixed assets:

- ✓ All items purchased through the purchasing department will be screened per the individual price. Buyer will provide a copy of the purchase order to the Fixed Asset/Inventory Specialist of those items with a value that require tagging.
- ✓ Fixed Asset / Inventory Specialist is responsible for tagging all fixed assets and inventory in accordance with the Purchasing Policy.
- ✓ Fixed Asset/Inventory Specialist will input into the County's inventory system the tag number along with other identifying information including the cost and the location of where the item is to be found.

The Physical Inventory Review:

- ✓ Each department has an individual assigned to maintain the inventory for the department.
- ✓ Yearly, each department is provided a copy of the existing inventory for the department.
- ✓ The department inventory clerk matches the inventory list to the actual items in the department.
- ✓ The department inventory clerk identifies any items from the inventory list that are not physically found in the department.
- ✓ The department inventory clerk identifies any items that are physically in the department, have a tag and are not on the inventory listing.
- ✓ The department inventory clerk identifies any items physically in the department that maybe should be on the list and do not have a tag.
- ✓ The Fixed Assets/Inventory Coordinator reconciles the information provided by the clerks.
- ✓ Documentation is provided in written form if any items have been disposed and not properly updated.
- ✓ The Fixed Assets/Inventory Coordinator will randomly select one or two departments yearly for an inventory audit.

Disposal of Items:

- Salvage items are identified as items routinely discarded as waste that because of use, time, accident or other cause do not have value for the purpose for which they were originally intended.
- Surplus items are property not salvage items; not currently needed by owner; that possess some usefulness for the purpose for which they were intended.
- Department inventory clerks are to communicate to the Fixed Asset/Inventory Specialist when they have an item they wish to dispose.
- A picture of the item(s) will be circulated thru email to all departments. Any department having a need to have the item transferred to their department may make the request and the item will be transferred to the first department making the request.
- If no County Department request the transfer of the County surplus property within five (5) business days after such property is made available to them, the property remains as surplus property.
- Those items that remain as surplus will be listed in an agenda item of the Webb County Commissioner's Court for authorizations to sell as competitive bids on the website or through auction.
- Items not sold in auction or thru competitive bids on the website will be disposed of at the landfill.
- Items not sold as surplus items that can be sold as salvage items such as scraps(metal, etc.) or paper (books) will be sold.
- All money received from disposed items will be deposited with the Webb County Treasurer.

4.3 Disposition of Salvage or Surplus Property

The Local Government Code, Section 263.152 states that the Commissioner's Court may dispose of salvage or surplus property using the following guidelines:

- Periodically sell the county's salvage or surplus property by competitive bid or auction, except that competitive bidding or an auction is not necessary if the purchaser is another county or a political subdivision within the county that is selling the surplus or salvage property.
- Offer the property as a trade-in for new property of the same general type if the Commissioner's Court considers that action to be in the best interest of the county.
- Order any of the property to be destroyed or otherwise disposed of as worthless if the Commissioner's Court undertakes to sell that property under Subdivision and is unable to do so because no bids are made.
- Dispose of the property by donating it to a civic or charitable organization located in the county if the Commissioner's Court determines that:
- Undertaking to sell the property under Subdivision (1) would likely result in no bids or a bid price below what the county's expenses required for the bid process.
- The donation serves a public purpose.

- The organization will provide the county with adequate consideration like relieving the county of transportation or disposal expenses related to the property.

NOTICE – The Commissioner’s court shall publish notice of a sale of surplus or salvage property in at least one newspaper of general circulation in the county. The notice must be published on or after the 30th day but before the 10th day before the date of the sale.

REJECTION OF OFFER – The Commissioner’s Court or its designated representative conducting the sale may reject any offer to purchase surplus or salvage property if the Court or representative finds the rejection to be in the best interest of the County.

PROCEEDS – Unless otherwise provided by law, the Commissioner’s Court shall deposit the proceeds of the sale of surplus or salvage property to

- the County treasury to credit the general fund or the fund from which the property was purchased;
- the County road and bridge fund, if the property was used for maintenance or construction of county roads and bridges.

5.1 Webb County Commissioner' Court Approvals

5.11 Drug Enforcement Task Force Purchase Order Resolution

7012
S. 3

MARGIE R. IBARRA
COUNTY CLERK
FILED

2011 FEB 28 PM 4:21

WEBB COUNTY, TEXAS

BY *Mrb* DEPUTY

Resolution

Whereas, The Webb County District Attorney's office conducts investigations in support of drug enforcement, and

Whereas, The Webb County District Attorney's office collaborates with the Texas Drug Enforcement Agency in their investigations, and

Whereas, The Texas Drug Enforcement Agency seeks to provide the District Attorney's Office with DEA Task Force equipment appropriate for state investigations, and

Whereas, The Texas Drug Enforcement Agency will reimburse the Webb County District Attorney's Office for DEA Task Force equipment, and

Whereas, The Webb County District Attorney Office will use forfeiture funds for the acquisition of this DEA Task Force equipment, and

Whereas, such funds will be reimbursed to Webb County District Attorney's Office if the purchase is for the items identified by the Texas Drug Enforcement Agency and purchased from the vendor(s) identified by the Texas Drug Enforcement Agency

Whereas, the Local Government Code allows for exemptions to the bidding process under section 262.024, and

Whereas, one allowed exemption is 262.024 (a) (2) an item necessary to preserve or protect the public health and safety of the residents of the county,

NOW THEREFORE, BE IT RESOLVED that the Webb County Commissioner's Court grants the exception to the requirement established by Texas Local Government Code, Section 262.023 Competitive Requirements for Certain Purchases for the acquisition of DEA Task Force equipment as requested by the Webb County District Attorney's Office.

Passed and approved this 28th day of February 2011.

Danny Valdez
The Honorable Danny Valdez
Webb County Judge

Frank Sciaraffa
Honorable Frank Sciaraffa
Commissioner Pct. 1

Jerry Garza
Honorable Jerry Garza
Commissioner Pct. 3

Attest; *Margie Ramirez Ibarra*
Margie Ramirez Ibarra, County Clerk

Rosaura Tijerina
Honorable Rosaura "Wawi" Tijerina
Commissioner Pct. 2
Jaime A. Canales
Honorable Jaime A. Canales
Commissioner Pct. 4

ISIDRO R. ALANIZ
DISTRICT ATTORNEY
49TH JUDICIAL DISTRICT
1110 VICTORIA SUITE 401
LAREDO, TEXAS, 78045

COUNTIES OF



February 11, 2011

Via: Hand-Delivered

Ms. Cecilia M. Moreno, PhD.
Webb County Purchasing Agent
1100 Washington, 1st Floor
Laredo, Texas 78040

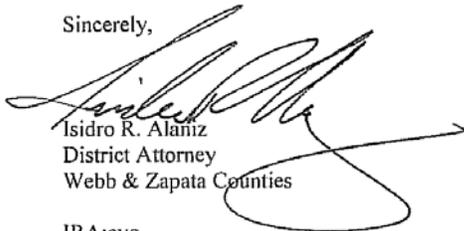
Re: Purchase of DEA Task Force Equipment

Dear Dr. Moreno:

We respectfully request that the purchase of DEA Task Force Equipment for law enforcement be exempt from the bidding process and from obtaining quotes. The requisitions usually have the vendor's name approved for reimbursement from DEA. It is imperative that this equipment is received as soon as possible as it is for the immediate use for DEA Task Force law enforcement investigations.

If you should have any questions regarding this matter, please contact the undersigned immediately.

Sincerely,



Isidro R. Alaniz
District Attorney
Webb & Zapata Counties

IRA:cvg

1110 VICTORIA SUITE 401
P.O. BOX 1343
LAREDO, TEXAS 78042

PHONE: (956)523-4900
FAX: (956)523-5054
523-5070
523-5129
523-5152

**DRUG ENFORCEMENT TASK FORCE PURCHASE ORDER
EXEMPTION APPROVAL FORM**

In compliance with the requirements of set resolution, I attest to the fact that the purchase requisition number _____ is for use of:

- 1. Webb County Drug Enforcement Task Force, and that the**
- 2. District Attorney's Office will submit for cost reimbursement from the Texas Drug Enforcement Agency and that**
- 3. Forfeiture funds are being used to make such a purchase.**

Webb County District Attorney or designee

Date

- 5.12 Action to grant discretionary exemption allowed under Section 262.024 of the Texas Government code for purchases that do not otherwise require the approval of the Webb County Commissioner's Court (09-12-2011)
- 5.13 Action to approve an additional option to salvage surplus removed which isto "post for sale on the Webb County website to be competitively bid" (09-26-2011)
- 5.14 Action to delegate authority to make opening bid extension to the Purchasing Agent (11-14-2011)
Texas Local Government Code

§ 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, § 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., Ch. 505, § 3, eff. Sept. 1, 1999.

- 5.15 Action designating the Purchasing Department as the keeper of the record (for the Webb County Commissioner's Court) of each item of surplus or salvage property sold and the sale price of each (01-01-2012)

Section Six: Definitions

A

Advertise - A public announcement for the intention to purchase goods or services.

After hour emergency purchases- An emergency that occurs as a result of unforeseeable circumstance and may require an immediate response to avert a public threat. An emergency purchase will require a signed letter from the department head explaining the emergency.

Alternate Delivery Method - A method used for procuring construction service other than the customary competitive bidding.

Amendment/Addendum - A document used to add or supplement information to a solicitation document. This document is issued prior to the Invitation for Bid (ITB) opening or the Request for Proposal (RFP) closing date.

Annual Term Contract - Usually a cyclical 12-month contract for goods or services.

Asset Categories – There are four asset categories and they include 1) land, 2) buildings and improvements, 3) furniture and equipment and 4) vehicles. Each category is defined individually.

Assets (Capital) - are identified according to the guidelines set forth in the Financial Accounting Resource Guide (FAR). The requirements are as follows is tangible in substance and nature has an estimated useful life of one (1) year or more is physically separate and identifiable from other assets has a dollar cost of \$5,000 or more and is controllable through a physical inventory.

Assets (Inventory) - are assets that the County has designated to capture for internal control purposes. Those assets are between \$500 - \$4,999 and are included on the annual Inventory Report to Purchasing Board and County Auditor due every July 1st. Asset Catalog Report.

Audit - A formal and independent examination of records to 1) assess the system controls; 2) certify compliance with established policies and procedures and to 3) recommend changes in controls, policies, and requirements.

Auditor - The Webb County Auditor and designees, who assess system controls, certify compliance with policy and procedures and recommends changes to address system control needs and compliance with policy and procedures.

B

Best Value - The lowest price with the highest quality is used in Webb County to promote improvement in the procurement of goods and services.

Bid - An offer to contract with the county that is submitted in response to an invitation to bid that is issued by the Purchasing Agent or an issuing entity.

Bid Bonds – A deposit used to protect the county in case a lower bidder tries to withdraw its bid or fails to enter into the contract with the county. There are several types of deposits that are acceptable. For example, 1) cashier’s check, 2) certified check, 3) irrevocable letter of credit that is issued by a financial institution that is subject to Texas laws, 4) a surety or blanket bond from an authorized or chartered business in Texas and is United States Treasury listed, 5) a United States Treasury bond and 6) a certificate of deposit.

Buildings and Improvements – Cost includes purchase price and any other professional expenditure necessary to put a building or structure in use.

Bidder – An individual or entity that submits a bid. Bidder also refers to anyone acting on behalf of the individual or entity that submitted a bid. For example, an entity may include agents, employees, and representatives.

Bidders List – The list identifies prospective vendors who have shown an interest in doing business with Webb County.

C

Capital Assets – The Financial Accounting Resource (FAR) identifies the requirements for a capital asset to be 1) tangible in substance and nature, 2) has an estimated useful life of one year or more, 3) is physically separate and identifiable from other assets and 4) has a dollar cost of \$5,000 or more and is controlled through a physical inventory.

Centralized Master Bidders List (CMBL) – A mailing list that is maintained by State Comptroller of Public Accounts CPA and the Texas Procurement and Support Services that contains the names of state wide prospective bidders according to their goods and services they provide.

Certification – A Webb County Purchasing Department employee who completes the required training and continued education program will be Certified Texas Purchaser.

Change Order- A document used in construction contracts that changes the contract by 1) modifying the specifications, 2) increasing or decreasing the cost, 3) adjusting the time for performance or 4) changing the goods or services to be delivered.

Commissioners Court – Webb County Commissioners Court consist of four commissioners each elected by the voters of a Commissioners’ precinct, and the County Judge elected by all the voters of the County.

Commodity – Codes used for references supplies, materials or equipment listed by their commodity class and item numbers between Class 005 through 998.

Competitive Bidding – The process of inviting and obtaining bids from competing vendors in response to advertised competitive specifications. The award is then given to the lowest and best bidder who meets the specifications.

Competitive Sealed Bid Procurement Method – The process of advertising an invitation to bid (ITB) that includes 1) receiving the sealed bid from the vendor, 2) conducting a public bid opening and 3) awarding the contract to the lowest responsive and responsible bidder in accordance with state and county law.

Competitive Sealed Proposal Procurement Process – The process of advertising a request for proposal (RFP) that includes 1) receiving proposals, 2) evaluating submitted proposals, 3) discussing with the designated vendors and 4) granting a contract.

Component Purchases – Purchase of component parts of goods that are usually purchased as a whole and are done in succession.

Consultant – A person that provides or proposes guidance or instruction in a specialized area.

Contract – A formal and legal agreement that refers to the agreements between the vendor and Webb County that specifies the terms and conditions of the goods and services that will be provided to Webb County and is enforceable by state law.

Contractor – The vendor who was awarded the contract by Webb County.

County- Webb County is a region in the upper Rio Grande Valley of Texas.

County Attorney - Webb County elected counsel who is qualified lawyer and who will represent Webb County in court proceedings.

COUNTY AUDITOR - Makes sure that all purchase orders, requisitions, contracts, salary, and labor allowances are charged to the appropriate and corresponding department.

County Clerk – Webb County elected official who keeps transcripts and records of legislative updates.

Current Funds – Funds in the county treasury that are available in the current tax year, revenue that may be anticipated with reasonable certainty to come into the county treasury during the current tax year, and emergency funds.

Cycle Time – The time when a purchase requisition is received in the Purchasing Department and the assignment of the purchase order with a vendor.

D

Designed-Build Contract – A distinct contract for the design and construction of a facility that includes an engineer and/or an architect in addition to a builder who is qualified to build the facility in Texas.

Design Criteria Package – Forms, brochures, leaflets that give enough information to allow a vendor to prepare a response to Webb County’s request for qualifications requested. The documents may also include criteria for the selection of the award.

Department – By using county funds, a department consists of all county and precinct offices and their subdivisions. It also includes district offices and their subdivisions.

E

Emergency Purchase – A circumstance that requires Webb County to purchase promptly an item necessary to preserve or protect the public health or safety of the residents of the county.

Employee – An individual who is hired employee or elected official of Webb County.

Executive Manager – Any individual who is authorized to act on his or her behalf.

F

Fiscal Year for Webb County - A financial period that consists of 12 months and begins annually on October 1st

Formal Bid – A sealed written documented submitted according to Webb County Purchasing Procedures Act.

Formal Competitive Bidding – A sealed written document submitted in hard copy format.

Furniture and Equipment - Costs for furniture should include purchase price, transportation charges and installation costs that are required to put the furniture and /or equipment in use. Items valued up to \$4,999 are considered Capital Assets and items valued \$5,000 and over are considered Inventory Assets.

G

Goods – Portable item of trade or commerce that can be bartered or sold. This item does not include services or real property.

Grant funded purchases – Grants that are usually short term in nature and must be administered through a written contractual agreement between Webb County and the funding source. All purchases must comply with grant specifications as well as Webb County purchasing procedures.

H

Historically Underutilized Business – Provides HUB certification for minority and woman- owned businesses in the State of Texas.

I

Information and telecommunications review of data processing equipment- The User Department must first obtain the MIS department approval for the purchase of any electronic goods and services.

Inventory Assets – The Financial Accounting Resource (FAR) identifies the asset to cost between \$500-\$4,999 and is controlled through the internal control purposes and are included in the Inventory Asset Catalog Report.

Invitation for Bid – A written request submitted in response to a bid invitation.

L

Land – Land is an asset that costs include professional and ancillary costs to ready the land for use.

Lease of Equipment – A contract that grants the use of the equipment for specific amount of time in exchange for payment. The vendor keeps the title.

Lease Purchase – A sale based on installment payments that gives the lessee the right to purchase the equipment. Agreed price and conditions are set forth and title passes from seller to purchaser. Purchaser may have option to buy and title passes from vendor to purchaser when this option is exercised.

Lowest and Best Bid – A bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale.

Lowest Responsible Bid – A proposal from a bidder who submits the lowest bid and best value that 1) meets required specifications, terms, and conditions, 2) includes related costs to the county in a total cost concept, 3) has financial and practical skills needed to perform the contract and 4) has positive past performance for completing and complying with the contract.

M

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

N

Negotiations – A bargaining process that is consensual to several parties to reach an agreement on an uncertain or possibly uncertain problem.

Notice of Award – Letter that is signed by the Purchasing Agent or designee and awards the term contract.

O

Official – An elected or appointed individual and any person who is authorized to act in his or her behalf.

Other Professional Services – Services may include professional services not listed in the Professional Services Procurement Act and which require proficiency in labor and skill and which is mainly mental and intellectual. It may include but is not limited to computer programmer, attorney, and facilitators.

P

Payment Bond - A deposit used to protect the county if the contract is more than \$25,000. There are several types of deposits that are acceptable. For example, 1) cashier's check, 2) certified check, 3) irrevocable letter of credit that is issued by a financial institution that is subject to Texas laws, 4) a surety or blanket bond from an authorized or chartered business in Texas and is United States Treasury listed, 5) a United States Treasury bond and 6) a certificate of deposit.

Performance Bond – A deposit or pledge given by the successful bidder to if the contract is more than \$100,000 solely for the protection of the state or governmental entity awarding contract. There are several types of deposits that are acceptable. For example, 1) cashier's check, 2) certified check, 3) irrevocable letter of credit that is issued by a financial institution that is subject to Texas laws, 4) a surety or blanket bond from an authorized or chartered business in Texas and is United States Treasury listed, 5) a United States Treasury bond and 6) a certificate of deposit.

Pre-Bid/Proposal Conference – An opportunity for prospective vendors to meet with the Webb County Purchasing Department to become familiar with services and supplies needed for contract.

Prepayment and advance payment- Prepayment is not usually authorized for purchase of materials, supplies, equipment, or services. If the circumstance required a prepayment, the Webb County Auditor must authorize it.

Procurement Card - Webb County contract credit card used as a payment method for small dollar purchases.

Professional Services – Services related to the professional practices as outlined in the Professional Services Procurement Act. These services are within the scope of the practices of accounting, architecture, optometry and medicine or professional engineering.

Proprietary Information – Information with exclusive rights held by the vendor which are protected by the Texas Public Information Act (Texas Government Code Ann. Chapter 551).

Public Works – The function of 1) constructing, 2) altering, and/or 3) repairing a public building.

Purchase Order - A signed, legal and binding contract between the vendor and the purchasing department.

Purchase Requisition – A preset internal request from a user department submitted to the Webb County Purchasing Department to authorize the Purchasing Department to enter contract with a vendor for the purchase of goods and/or services.

Purchasing – The function of buying goods and services which include professional and construction services.

Purchasing Act – The Act in the Texas Local Government Code, Chapter 262, subchapter C which rules the activities of procurement for counties.

Purchasing Agent – An individual appointed by the Webb County Purchasing Board of County. The term of office of the county purchasing agent is two years. 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 a competitive bid.

Purchasing Board – The governing board made up of three judges district courts an in the county and two members of the Webb County Commissioners Court who is responsible for the appointment of the Webb County Purchasing Agent.

Purchasing Function – Creation of 1) specifications, 2) receipt and processing of requisitions, 3) review of specifications, 4) advertisement of bids, 5) bid evaluation, 6) award of contracts and 7) inspection of merchandise received.

Purchasing Laws – State and federal laws that govern county purchasing including the following:
Bidders from other States and 5% Retainage, (Texas Local Government Code Annotated, chapter 2252)
Interlocal Cooperation Agreement, (Texas Local Government Code Annotated, chapter 791)
Professional Services Procurement Act, (Texas Local Government Code Annotate, chapter 2254, subchapter A)

Prompt Payment Act, (Texas Local Government Code Annotated, chapter 225

Public Property Finance Act, (Texas Local Government Code Annotated, Chapter 271, subchapter B)

Public Works Performance and Payment Bonds, (Texas Local Government Code Annotated, chapter 2253)

Purchasing Act, (Texas Local Government Code Annotated, Chapter 262, subchapter C)
Sales tax exemption for governmental entities, (Texas Local Government Code Annotated, 151.309)
Services and Products of Severely Disabled, (Texas Human Resources Code Annotated, chapter 122)
State Contract, (Texas Local Government Code Annotated, section 262.002, 271.081-3)
Uniform Electronic Transaction Act, (Texas Business and Community Code Annotated, Chapter 322)
Wage Rate for Construction Projects, (Texas Local Government Code Annotated, chapter 2258)
Workers' Compensation Compliance, (Workers Compensation Rule 110.110)

Purchasing Office – The Webb County Purchasing Agent and Department

Purchasing Liaisons – Selected purchasing contact within each Webb County department

R

Request for Information – An instrument used by the purchaser to gather information needed to identify product specifications.

Request for Proposal – A written solicitation for proposals of goods and services the Webb County intends to purchase through a competitive bidding process.

Request for Qualifications – An instrument used to decide who the most qualified person(s) to complete the professional services as determined by the Professional Services Procurement Act.

Request for Quotation – A process to contact at least three vendors for a quotation of prices. This process is used for small purchases or and purchase lower than the amount that is required for competitive sealed bidding.

Request for Services – A written document that seeks information about qualifications and details of services for professional services that are not covered in the Professional Services Procurement Act.

Requisition – A Webb County internal document a department uses to request goods or services.

Responsive Vendor – Vendor that meets all requirements and specifications to fulfill contract requirements.

Responsible Vendor – Vendor that fulfills all timely requirements, terms, and conditions for submitting a bid.

Risk management coverage- After a department sustains a loss or damage of goods and/or building, funding for replacement is coordinated through the Risk Management department. However, the Purchasing Department must process all purchases.

S

Salvage Property – Personal property other than items routinely discarded as waste because of use, time, accident or any other cause is so worn, damage or obsolete that it has no value for the purpose which it was originally intended.

Sealed Bids – A written and seal response to an advertised invitation for bid.

Separate Purchases – Purchases in a series of orders for goods and services that in a normal process would be purchased in one order.

Sequential Purchases – Purchases made over an extended period of time that in a normal process would be purchased at one time.

Services – Work and labor performed by a contractor for Webb County. Services may include 1) maintenance, 2) construction, 3) manual, 4) clerical, 5) personal or 6) professional services.

Sole Source Good or Service – The purchase of a good or service that can only be found from one source and fulfills the requirements stated in the Texas Local Government Code Annotated, section 262.024.

Solicitation – A written invitation for 1) bid, 2) request for proposal, 3) request for offers or 4) request for qualifications made by the Purchasing Office from Webb County that contains specifications for goods and services needed.

Solicitation Conference – A gathering of purchasing employees and prospective vendors for the sole purpose of understanding the requirements of the bid.

Specifications – An explanation of what Webb County requires and what the prospective vendor must provide.

Surplus property – Property that is not salvage property, is not currently needed by its owner, is not required for the owner's foreseeable needs, and possess some usefulness for the purpose for which it was intended.

T

Texas Government Code – The 1997 Regular Session of the 75th Legislation amended the State Purchasing and General Services Act.

U

Unit Price – The value of a selected unit of a good or service for example, price per foot, price per ton or price per labor hour.

User Department – The department from whose budget line item the contract is funded. The department includes all county offices, precinct office, their subdivisions and all district offices and their subdivisions.

V

Vehicle – Costs include total purchase price and additional cost to put the vehicle in use.

Vendor – An individual or business who wants to contract with Webb County for providing goods or services.

Vendors List- A vendor list, categorized is maintained by the Purchasing Department. In addition, the Purchasing Department also maintains a list of all vendors who have requested that they be advised of advertised solicitations. Vendors wishing to be included in the Webb County Vendors List may contact Annual Contracts Manager at (956) 523-5936.

To foster competition, vendors are notified of upcoming bids through various methods that include facsimile transmission (fax) and email when the vendor has provided the contact information. In addition, the Purchasing Department advertises upcoming bids on the Webb County website and as required by law through newspapers.

W

Written Data – Required data that is submitted in writing for the bid invitation. If a bid requires written data to be submitted, the following statement is included on the invitation to bid, “Failure to provide the required information with the bid response will automatically disqualify the bid from consideration for award in connection with this transaction.”

Y

Year 2000 Clause – Required warranty for electronic products purchased.

Section Seven: References

- Comptroller of Public Accounts (2010). Texas Basic Public Purchasing. Retrieved on May 6, 2011 from <http://www.window.state.tx.us/procurement/prog/training-cert/training-resources/bpp-workbook.pdf>
- Glossary of Terms (1998). Texas Procurement Manual. Retrieved on May 6, 2011 from <http://www.window.state.tx.us/procurement/pub/manual/4-6.pdf>
- Pasadena Independent School District (2011) Asset Categories. Retrieved on June 14, 2011 from <http://www.pasadenaisd.org/purchasing/>
- Texas Ethics Commission (2007). Conflict of Interest Questionnaire. Retrieved on June 29, 2011 from http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm
- Travis County (November 2009). Purchasing Policy and Procedures Manual. Retrieved on March 18, 2011 from http://www.co.travis.tx.us/purchasing/pdfs/tcpo_ppm.pdf
- Welcome to County Procurement. Texas County Purchasing Association. Retrieved on September 14, 2011 from <http://tepa.purchasing.co.harris.tx.us>
- Window on State Government (2011). Historically Underutilized Business (HUB) Program. Retrieved on May 11, 2011 from <http://window.state.tx.us/procurement/prog/hub>
- Window on State Government (2011). The State of Texas Procurement Manual. Retrieved on May 2, 2011 from <http://window.state.tx.us/procurement/pub/manual>

Purchasing Act

LOCAL GOVERNMENT CODE

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY SUBTITLE

B. COUNTY ACQUISITION, SALE, OR LEASE OF PROPERTY

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 commissioner's 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 item.

(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:

Acts 2009, 81st Leg., R.S., Ch. [1266](#), Sec. 3, eff. June 19, 2009.

Sec. 262.004. CONTRACT AND OTHER INSTRUMENTS VEST RIGHTS IN COUNTY; SUIT ON CONTRACT OR ANOTHER 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 commissioner's 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 commissioner's 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 commissioner's 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 commissioner's court must be selected, the selection is made by a majority vote of the commissioner's 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 commissioner's 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 commissioner's 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 commissioner's 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 commissioner's 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 commissioner's court.

(c) The commissioner's court may employ other persons necessary to assist the purchasing agent in performing the agent's functions.

(d) Under the supervision of the commissioner's 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 regarding 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 commissioner's 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 262.011.

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, revenue 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.

The term does not include professional services as defined by Section 2254.002, Government Code.

(5-a) "Lowest and best" means a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale.

(5-b) "Normal purchasing practice" means:

(A) an accepted custom, practice, or standard for government procurement in the state: or

(B) a practice recognized by a national purchasing association regarding the purchase of a particular good or service.

(6) "Purchase" means any kind of acquisition, including a lease or revenue contract.

(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.

(d) A county that complies in good faith with the competitive bidding requirements of this chapter and receives no responsive bids for an item may procure and item under Section 262.0245.

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 Chapter 2267, Government Code.

(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 Chapter 2267, Government Code, as provided by Subsection (a)(3), to enter 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 supplier 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., R.S., Ch. [1266](#), 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 commissioner's 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 commissioner's 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 or for which the county receives no responsive bid.

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:

Acts 2009, 81st Leg., R.S., Ch. [1266](#), 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. Notice published in a newspaper must include:

- (1) a general statement of the proposed purchase;
 - (2) the name and telephone number of the purchasing agent; and
 - (3) the county website address, if any.
- (a-1) Subsection (a) does not require more than two notices in one newspaper or limit

the county from providing additional notice for longer periods, or in more locations.

(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 commissioner's 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.

(c) A commissioner's court purchasing personal property under Section 271.083 of this code or Section 791.025, Government Code, may negotiate with a vendor awarded a

cooperative contract under those sections an agreement for the vendor to purchase or accept as trade used equipment owned by the county.

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 commissioner's 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 commissioner's 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 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 commissioner's 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 commissioner's 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 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 commissioner's 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 commissioner's 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 until the first anniversary of the date of opening. Opened bids are subject to disclosure under Chapter 552, Government Code.

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 commissioner's 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 commissioner's 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 commissioner's 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 commissioner's 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 commissioner's 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 commissioner's 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 location or type of material.

(f) Notwithstanding any other requirement of this section, the commissioner's 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.
. 285 (H.B. 1694), § 24.

(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 reasonable health insurance coverage to its employees and requires a subcontractor the bidder intends to use to provide reasonable 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 reasonable health insurance coverage, the commissioner's court of the county may give preference to the bidder who provides and requires reasonable 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 commissioner's court may consider 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 commissioner's 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 commissioner's 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 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 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 a contract or other transaction with the county requiring approval by the commissioner's court.

(d) In this section, "debt" includes delinquent taxes, fines, fees, and delinquencies arising from written agreements with the county.

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 commissioner's 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 commissioner's 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 commissioner's court, discussion may be conducted with responsible offerors who submit priced bids determined to be reasonably susceptible of being selected for award. Offeror(s) 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 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 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 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 commissioner's 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 commissioner's 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 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 commissioner's 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 commissioner's 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 commissioner's 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) Repealed by Acts 2011, 82nd Leg., Ch. 285 (H.B.1694), §24

(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.

Repealed by Acts 2011, 82nd Leg., Ch. 285 (H.B.1694), §24, effective Sept. 1, 2011

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.

§262.037 Qualification

An officer authorized to make a purchase on behalf of a county or a county department or office may not make any purchase until providing to the county judge a signed acknowledgement that the officer has read and understands this chapter. This section does not apply in a county that has appointed a purchasing agent under Subchapter B.

8.2 Attorney General Opinions

July 24, 1990

JM1189

Re: Authority of a commissioner's court to award design/build contracts for construction of public buildings based on competitive bids and related questions

Summary: A commissioner's court is prohibited by article 664-4, V.T.C.S., from awarding a design/build contract for the construction of a public work on the basis of competitive bidding where architectural or engineering services comprise a component of the contract. Neither article 249a, section 16, nor article 3271a, section 19, requires the preparation of architectural and engineering plans and specifications prior to the invitation of bids by a county for a construction contract. But absent a provision to the contrary, such a requirement is implicit in competitive bidding statutes.

August 17, 1990

JR-1209

Re: Authority of a county to directly fund a rural fire prevention district and related questions

Summary: A county has, under Local Government Code chapter 352, and the Interlocal Cooperation Act, article 4413(32c), V.T.C.S., authority to contract with a rural fire prevention district in the county for the latter's provision of fire protection services in non-incorporated areas of the county included in the rural fire prevention district. A county also has authority under chapter 352 to contract with an incorporated volunteer fire department for provision of fire protection services in non-incorporated areas, even if such areas are included in a rural fire prevention district. Adequate controls must be exercised in connection with such arrangements to ensure that public benefits to county residents of such areas are thereby obtained.

September 13, 1990

JM1220

Re: Competitive bidding for a county vehicle maintenance building

Summary: A county is required to award a contract for the construction of a county vehicle maintenance building and public pursuant to the terms works of the County Purchasing Act, Local Government Code sections 262.021 through 262.035. The provisions of subchapter B of Local Government Code chapter 271 does not apply to such contracts. Attorney General Opinion JW-505 (1986) is overruled to the extent of conflict with this opinion.

September 28, 1990

101990067

Letter of Opinion

Re: The Professional Services Procurement Act prohibits governmental entities from procuring the services of certain professionals on the basis of competitive bids. V.T.C.S. art. 664-4. Architects are included within article 664-4; ~ IL s 3. In Attorney General Opinion M-926 (1971), this office concluded that the legislature intended the term "architect*" in article 664-4 to refer to individuals licensed as architects under state law ~and therefore that individuals licensed only as landscape architects were excluded from article 664-4.

You ask that we reconsider our conclusion in Attorney General Opinion M-926 (1971). In support of your request, you refer to the legislature's merger in 1979 of the Texas State Board of Landscape Architects with the Texas Board of Architectural Examiners. That merger was accomplished by passage of Senate Bill 551, which became effective September 1, 1979. Acts 1979, 66th beg., Ch. 619, at 1384. We affirm the conclusion in Attorney General Opinion M-926. Although Senate Bill 551 eliminated the Texas State Board of Landscape Architects and provided for the appointment of licensed landscape architects to the Board of Architectural Examiners, its provisions do not indicate that the legislature intended to treat the practice of landscape architecture as the practice of architecture for purposes of article 664-4. Acts 1979, 66th Deg., Ch. 619, at 1384, 1389.

Prior to passage of Senate Bill 551, separate statutes authorized state regulation of the two professions. Article 249a, V.T.C.S., authorizes the regulation of the practice of architecture, while article 249c, V.T.C.S., provided for the regulation of the practice of landscape architecture. These statutes and their separate regulatory systems continue in effect today. See e.g., V.T.C.S. art. 249a, § 10(e) (practice of landscape architecture not limited by article 249a); V.T.C.S. art. 249c, § 2(a) (article 249 not applicable to architects). While Senate Bill 551 amended various provisions of both article 249a and 249c, it did not combine the separate statutory requirements for the practice of the two professions. Senate Bill 551 also did not eliminate the separate statutory definitions of architecture and landscape architecture. Acts 1979, 66th Leg., Ch. 619. Furthermore, both before and after passage of Senate Bill 551, the definition of landscape architecture in section 1 (b) of article 249 expressly excluded any

services within the definition of the practice of architecture as defined by state law. Compare Acts 1973, (defining 63rd Leg., Ch. 629, 1, at 1731 landscape architecture to exclude architectural services) with Acts 1979, 66th beg., Ch. 619, 8 8, at 1388-89 (reenacting similar language).

In Attorney General Opinion M-926, this office referred to the exclusion of architectural services from the statutory definition of landscape architecture and noted that articles 249a and 249 established separate entry requirements for the two professions. Since state law continues to define the two professions differently and to impose separate legal requirements for the practice of the two professions, the primary reasons for the conclusion in Attorney General Opinion H-926 obtain today. The creation of a single board to oversee the application of separate requirements to separate professions does not alone indicate that the legislature intended the two professions to be treated the same for purposes of article 664-4. Thus, we adhere to the conclusion in Attorney General Opinion M-926.

October 10, 1990

JM -1254

Re: Whether the awarding of a contract precludes a county from making spot purchases from another supplier

Summary: The County Purchasing Act, chapter 262 of the Local Government Code, does not preclude a county from making an isolated spot purchase of supplies or materials when the contractor obligated to meet the county's requirements is unable to furnish the supplies or materials. Spot purchases may not be used to avoid the competitive bidding process.

October 14, 1990

Letter Opinion No. 93-090

Re: Whether a county generally may incur debt by executing a vendor's hen note for the purchase of real property

Summary: Commissioners courts do not have a general power to purchase real property. Whether a county may purchase real property depends on whether the purchase falls within a power expressly conferred by law. Nor do commissioner's courts have a general power to incur debt. Their power to incur debt may be granted expressly or, generally, by necessary implication from a grant of a power to do something that requires the creation of debt. The power to issue negotiable instruments that would deprive the county of a defense asset-table against the original creditor cannot be implied by necessity. There is no general prohibition against a county's voluntarily mortgaging property that it purchases.

November 12, 1990

JM-1243

Re: Whether performance and payment bonds are required for certain county unit price contracts

Summary: The County Purchasing Act, subchapter C, chapter 262 of the Local Government Code, allows counties to purchase items by the unit price method and requires counties to furnish bidders with an estimate of the total quantity needed. Requirements contracts are permitted under that section. With regard to county unit price requirements contracts for the prosecution or completion of public works, the product of the estimated total quantity needed, determined on the best available information, and the established unit price provides an estimated total contract price, which if in excess of \$25,000, will trigger the payment bond requirements of article 5160, V.T.C.S. However, section 262.032(b) of the Local Government Code, which authorizes counties to require performance bonds for certain contracts, controls the acquisition of performance bonds.

December 11, 1991

DM0067

Re: Operation of a jail commissary under section 351.0415 of the Local Government Code

Summary: The county commissioners' court may not interfere with the sheriff's exercise of discretion in contracting for the operation of a jail commissary under section 351.0415 of the Local Government Code. Any funds the sheriff receives that are attributable to the operation of the commissary are to be used for the benefit of inmates in accordance with section 351.0415. The county auditor is authorized to review commissary accounts, even if the accounts are maintained by the operator of the commissary.

April 20, 1992

DM0111

Re: Whether the county sheriff or the county commissioners court has the authority to choose a physician and schedule the physician to provide medical services to inmates incarcerated in the county jails

Summary: A county commissioners' court has the authority to contract with a licensed physician to provide medical services to inmates incarcerated in the county jails. A county sheriff has the authority to schedule medical services for the county jails.

September 3, 1993

DM0246

Re: Whether the County Purchasing Act, sections 262.021-.035 of the Local Government Code applies to the purchases made with funds generated by forfeitures under Chapter 59 of the Code of Criminal Procedure

Summary: The County Purchasing Act ("the Act"), sections 262.021-.035 of the Local Government Code, applies to purchases made out of the special fund in the county treasury for the benefit of the office of the attorney representing the state as provide by article 59.06 of the Code of Criminal Procedure. The commissioners' court has a ministerial duty to initiate the competitive bidding process upon receipt of a request from the prosecutor or law enforcement agency and may not refuse all bid received for the purpose of preventing an expenditure out of

the special fund. Letter Opinions Nos. 88-112 and 89-30 should be disregarded to the extent that they would suggest a contrary conclusion.

October 14, 1993

Letter Opinion No. 93-091

Re: Whether, under section 113.901 of the Local Government Code, a county auditor may refuse to issue a requisition if the county already has ordered or received the goods requisitioned and related question

Summary: For purposes of section 1.13.901 of the Local Government Code, a “purchase” is completed upon the transfer of title to the goods from the vendor to the buyer, in accordance with section 2.401(b) of the Business and Commerce Code. Section 113.901 does not authorize a county auditor to refuse to issue a requisition to any county officer upon request, even if the county officer already has purchased the supplies or materials. Pursuant to section. 113.901, a county auditor may refuse to approve an account for a purchase of supplies or materials if the vendor did not receive the original copy of the properly signed requisition before the county officer made the purchase.

October 25, 1993

DM0268

Re: Whether House Bill 2087 violates article III, section 52 of the Texas Constitution

Summary: House Bill 2087, which amends Local Government Code section 263.152 to authorize a county commissioners’ court to donate to civic or charitable organizations salvage and surplus property that it has been unable to sell by competitive bid or auction, does not on its face violate article III, section 52 of the Texas Constitution. The donation of a particular item may run afoul of this constitutional prohibition if the property is of value to the county and it is not donated for a public purpose for adequate consideration.

December 8, 1994

Letter Opinion No. 94-087

Re: Whether purchases by Smith County of culverts and road sign components would run afoul of the prohibitions on separating purchases in order to avoid competitive bidding requirements

Summary: Determining whether purchases by Smith County of culverts and road sign components would fall within the prohibitions in V.T.C.S. article 6702-1, section 3.211, or section 262.023 of the County Purchasing Act, on the separation of purchases to avoid the competitive bidding requirements would involve questions of fact which cannot be resolved in an attorney general opinion.

March 17, 1995

Letter of Opinion No. 95-010

Re: Scope of performance on requirement for developer participation contracts under

chapter 212, subchapter C, Local Government Code, and relate questions

Summary: A developer must execute a performance bond for the total cost of improvements to be constructed pursuant to a developer participation contract under chapter 212, subchapter C, Local Government Code. The provisions of former V.T.C.S. article 5160, now chapter 2253 of the Government Code which require a performance bond on public works contracts only where the latter are in excess of stated amounts, are inapplicable to the bond requirement under chapter 212, subchapter C. If a developer participation contract does not comply with the requirements of chapter 212, subchapter C, but calls for expenditures of municipal funds in excess of the amount stated in chapter 252, Local Government Code, and is not within any of the listed exceptions to the chapter's requirements the contract must be let in compliance with the notice, bidding, and other requirements of chapter 252.

June 6, 1995

DM0350

Re: Whether purchases made by a local government through the state catalogue purchasing procedure established by article 601b, section 3.081, must be competitively bid

Summary: A local government that participates in the cooperative purchasing program established under sections 271.082 and 271.083 of the Local Government Code satisfies otherwise applicable competitive bidding requirements when it makes a purchase through the catalogue purchasing procedure established by article 601b, section 3.081, V.T.C.S.

February 6, 1996

DM-375

Re: Whether a vendor that offers to sell local exchange, interexchange, cellular telephone, mobile radio, or pager services may offer such services for sale through the catalogue purchase method set forth in Government Code chapter 2157, subchapter B (RQ-705)

Summary: A vendor that offers to sell local exchange, interexchange, cellular telephone, mobile radio, or pager services may not offer such services for purchase or lease through the catalogue purchase method set forth in chapter 2157, subchapter B of the Government Code. Chapter 2170 of the Government Code governs the sale of local exchange and interexchange service for certain state agencies. The General Services Commission may acquire cellular telephone, mobile radio, or pager services pursuant to chapter 2157, subchapter C, which establishes a competitive sealed proposal method for the acquisition of "a telecommunications device, system, or service," but only if the commission "determines by rule that competitive sealed bidding and informal competitive bidding are not practical or are disadvantageous to the state." The acquisition of telecommunications services that is not governed by chapter 2170 also may occur in accordance with chapter 2157, subchapter C. Chapter 2157 of the Government Code does not apply to services provided by a public utility.

February 26, 1996

Letter of Opinion No. 96-017

Re: Whether a commissioner's court may determine what foods are served in the county jail

Summary: The sheriff of a county has the authority under section 351.041 of the Local Government Code to supervise and control the county jail, including the authority to determine which items shall be included in, or excluded from, food service to the inmates. The commissioners court of the county does not have the authority to interfere with the sheriff's selection of food items for the jail food service except to the extent that such interference is necessary to ensure that "food [is] prepared and served in a palatable and sanitary manner according to good dietary practices and of sufficient quality to maintain good health," Local Gov't Code 5 351.010.

May 23, 1996

Letter Opinion No. 96-053

Re: Whether a lease-purchase agreement between a county and an appraisal district is governed by section 292.001 or chapter 263 and section 272.001 of the Local Government Code

Summary: A lease of a building that a county received by donation and does not use for county purposes is not a lease of excess county office space under Local Government Code section 292.001(c); the requirements of Local Government Code chapter 263 would apply, precluding the county *from* merely accepting an offer to lease or purchase the building. In addition, if the transaction constitutes a sale, the requirements of Local Government Code section 272.001 would apply.

October 30, 1996

Letter Opinion No. 96-117

Re: Whether a county may build a detention facility using a design/build firm to provide architectural plans and the facility and using an architect to oversee construction

Summary: As a general matter, the Professional Services Procurement Act, Gov't Code Ch. 2254, Sub Ch. A, prohibits a county from obtaining architectural services by competitive bidding. Therefore, a county may not procure by competitive bidding a design/build contract that includes architectural services. Section 351.102 of the Local Government Code authorizes a county commissioners court to enter into a design/build contract with a private vendor to design and construct a detention facility, however, provided that the county adheres to the statute's procedures to obtain the contract and that the contract meets all statutory requirements in sections 35 1.102 through 351.1035.

February 17, 1997

DM-456

Re: Whether a county may amend a tax abatement agreement entered into pursuant to Tax Code chapter 312 by deleting land from an existing reinvestment zone and related questions

Summary: A county is not authorized to amend a Tax Code chapter 312 tax abatement

agreement by deleting land from an existing reinvestment zone. A county reinvestment zone under chapter 3 12 must be contiguous and may not consist of only a Portion of a building. The legislature intended to leave the substance of criteria for tax abatement agreements to the discretion of each county commissioners court, subject to very general constraints and certain specific limitations imposed by chapter 3 12

April 3, 1997

Letter Opinion No. 97-030

Re: Authority to contract with a private vendor to provide telephone services to county jail inmates, and related question

Summary: The commissioner's court, not the sheriff is empowered to enter into a contract with a private vendor to provide telephone services to county jail inmates. The authority and manner by which a commissioner's court may enter into such a contract depends upon the right or interest that the commissioners court intends to create and convey.

August 14, 1997

Letter of Opinion No. 97-071

Re: If persons other than inmates may purchase items from a county jail commissary

Summary: Persons other than inmates may not purchase items from a county jail commissary when the purchases are not for use of the inmates.

October 13, 1997

Letter of Opinion No. 97-093

Re: Whether Local Government Code section 13 1.903 carves an exception to Local Government Code chapter 171

Summary: With respect to a county commissioner's court's selection of a depository or sub depository, Local Government Code section 13 1.903, which provides for conflicts of interest in a local government's selection of depositories, carves an exception to Local Government Code chapter 171, which provides generally for local government officers' conflicts of interest.

February 6, 1998

DM-88

Re: Whether article 601f, V.T.C.S., pertaining to payments for goods and services contracted for by state agencies or political subdivisions, applies to construction contracts

Summary: Article 601f, V.T.C.S., a statute pertaining to the payment of goods and services contracted for by state agencies and political subdivisions, applies to construction contracts.

June 2, 1999

JC060

Re: Whether a committee appointed by a commissioner's court to recommend the selection of an architect is subject to the Open Meetings Act

Summary: An "Evaluation Committee" appointed by the Smith County Commissioners Court to recommend the selection of an architect and negotiate a contract with the selected firm is, under the facts described, a "governmental body" subject to the Open Meetings Act. If, however, the county judge and one commissioner are excluded from the Committee, it becomes merely an advisory body not subject to the Act.

July 20, 1999

JC-0082

Re: Whether a commissioner's court may purchase tire-fighting equipment for or pay a volunteer fire department without having contracted with the volunteer fire department to provide tire-protection services for county residents

Summary: A county commissioner's court may purchase fire-fighting equipment for or pay a volunteer fire department only if the volunteer fire department has contracted with the county to provide fire-fighting services to county residents living outside the boundaries of a municipality.

August 27, 1999

JC0100

Re: Whether a county commissioner in his or her capacity as ex officio road commissioner or the commissioner's employees may purchase auto parts from a corporation in which the commissioner owns a substantial interest

Summary: Under sections 252.005 and 252.006 of the Transportation Code, a county commissioner, in his or her capacity as precinct road commissioner, may not purchase or authorize a purchase by precinct employees from an auto-parts corporation. The commissioner or a member of the commissioner's road crew may pick up goods from the corporation, however, if the commissioners court has preapproved or subsequently will consider the purchase. In accordance with section 171.004 of the Local Government Code, if the commissioner has a substantial interest in a purchase from the auto parts corporation; he or she must disclose that interest and abstain from participating in the matter when it comes before the full commissioners' court.

September 1, 1999

JC-0104

Re: Whether a county may exchange surplus property for non-monetary consideration

Summary: A county, in disposing of surplus property under section 263.152 of the Local Government Code, has no authority to exchange the surplus property for a non-monetary consideration. The county's authority to sell surplus property under section 263.152 does not include authority to trade it for non-monetary consideration.

October 7, 1999

JC0122

Re: Whether a purchase from jail-commissary proceeds is subject to statutory competitive procurement requirements

Summary: A sheriff may expend commissary proceeds under section 351.0415 of the Local Government Code without complying with the County Purchasing Act, chapter 262, subchapter C of the Local Government Code. To the extent Attorney General Opinion MW-439 (1982) concludes that an expenditure from commissary proceeds must be competitively bid by the county commissioners court, it has been superseded by the enactment of section 351.0415.

November 3, 1999

JC136

Re: Re: Whether a contract for ambulance service may be exempt from competitive- purchasing requirements in the County Purchasing Act, chapter 262, subchapter C of the Local Government Code, and related questions

Summary: A county contract for ambulance service may be exempted by order of the commissioner's court under section 262.024(a)(2) of the Local Government Code from the County Purchasing Act's normal competitive-purchasing requirement as "an item necessary to preserve or protect the public health or safety of the residents of the county." Attorney General Opinion M-806 (1971) is affirmed. The commissioners' court may issue an order exempting the contract for ambulance service from competitive-purchasing requirements as a matter affecting the public health or safety.

If the commissioners' court has sought competitive bids on a contract for ambulance service and rejected them all, it is not thereafter required to continue using the competitive bidding process until it awards a contract. Section 262.027 of the Local Government Code, which provides that the commissioners court shall "reject all bids and publish a new notice," does not nullify the general authority of the commissioner's court to rescind its orders and decisions, assuming no vested rights have been impaired. If the court rescinds its prior decision to seek a contract for ambulance service through competitive bidding, it has authority to issue an order exempting the ambulance service from the competitive bidding requirements of the County Purchasing Act.

June 7, 2000

JC-0230

Re: Whether the repeal of a federal cooperative purchasing program affects authority given to Texas agencies and political subdivisions under Texas law

Summary: To the extent federal law no longer makes federal supply schedules of the United States General Services Administration available to local governments, section 271.103 of the Local Government Code is without effect. As no other state statute relies on or makes specific

reference to the former federal cooperative purchasing program, however, the change in federal law does not appear to affect the purchasing authority of Texas agencies and political subdivisions under other state statutes. Whether a federal agency is authorized to provide particular goods to a state agency or local government will depend upon federal law.

August 7, 2000

JC-0266

Re: Responsibility for enforcement of the Professional Services Procurement Act

Summary: The Comptroller, and to a lesser extent, the State Auditor, by their approval and audit of claims, have the primary responsibility for requiring state agencies to abide by the directives of the Professional Services Procurement Act, subchapter A of chapter 2254 of the Government Code. The County Auditor, by her approval and audit of claims, has the principal duty for requiring county government to conform to the Professional Services Procurement Act. The Texas Board of Architectural Examiners is the proper entity to enforce the provisions of that statute against its individual registrants.

November 20, 2000

JC 0307

Re: Whether a criminal violation of the Open Meetings Act, chapter 55 1 of the Government Code, occurs when a person urges individual members of a commissioner's court to place an item on the commissioner's court's agenda or to vote a certain way on an item on the agenda.

Summary: A person who acts independently to urge individual members of a commissioners' court to place an item on the commissioner's court's agenda or vote a certain way on an item on the agenda does not commit an offense under the Open Meetings Act, even if he or she informs members of other members' views on the matter. A person who is not a member of the commissioner's court may be charged with a violation of section 551.143 or 551.144 of the Open Meetings Act, but only if the person, acting with intent, aids or assists a member or members who knowingly act to violate the Act. Circulation of a claim, invoice, or bill among members of a commissioners court for approval of payment in writing in lieu of consideration of the item at a meeting held pursuant to the Act would violate the Act.

December 22, 2000

JC319

Re: Whether a county commissioners court may condition acceptance of bids for county public works project on attendance at a mandatory pre-bid conference

Summary: A county commissioners' court may not condition acceptance of bids for a county public works project solicited pursuant to the County Purchasing Act, TEX. Lot. Gov't Code ANN. Ch. 262, Sub-Ch. C (Vernon 1999 & Supp. 2000), on attendance at a mandatory pre-bid conference.

May 1, 2001

JC-0374

Re: Whether a registered professional land surveyor may provide a competitive bid to the primary contractor of a contract with a governmental entity

Summary: If a governmental entity's contract with a prime contractor requires professional services, either expressly or in fact, then the governmental entity has entered into a contract that includes professional services as a component part and the contract is subject to the Professional Services Procurement Act, TEX. GOV'T CODE ANN. Ch. 2254, Sub-Ch. A (Vernon 2000). Assuming that the intent of the Texas Board of Professional Land Surveying's competitive bidding rule is to mirror the Act's prohibitions, then the rule prohibits a surveyor from submitting competitive bids to a prime contractor in connection with a governmental contract, at either the planning and design or construction phase of a project. Although the Professional Services Procurement Act does not obligate a professional to determine whether a contract is subject to the Act's prohibition against competitive bidding, a contract or arrangement entered into in violation of the Act is expressly made "void as against public policy" by section 2254.005. See *id.* 8 2254.005.

July 10, 2001

JC-0395

Re: Whether a district attorney may, by contract, bind the use of county funds, and related question

Summary: A district attorney may not enter into a multiyear contract for office equipment that requires the expenditure of county funds and that does not permit the county to terminate the contract at the end of each year. Only a county commissioner's court may execute a contract that binds the county. Additionally, a multiyear contract that does not either provide for levying and collecting a tax to pay the interest and to create a sinking fund or permit the county to terminate the contract at the end of each year violates article XI, section 7 of the Texas Constitution.

December 20, 2001

JC443

Re: Whether a county that contracts with an attorney for the collection of delinquent taxes may accept a gift from that attorney

Summary: When a county contracts with an attorney to collect delinquent taxes pursuant to section 6.30 of the Tax Code, section 33.07 authorizes the county to impose an additional penalty on the delinquent taxes to provide compensation for the contract attorney. The additional penalty authorized by section 33.07 of the Tax Code is solely for the purpose of providing compensation to the contract attorney, and the attorney may not make a donation to the county that in effect refunds part of his or her compensation to the county. Whether a particular donation is a refund of the attorney's compensation under section 33.07 is a fact question.

June 28, 2002

JC521

Re: Whether a county may require prospective contractors to submit affidavits disclosing

their business relationships with officers and employees of the county and county entities

Summary: Under the County Purchasing Act and the Professional Services Procurement Act, a county is authorized to require prospective contractors to submit disclosure statements regarding their business relationships with county officers and employees.

January 15, 2004

GA0136

Re: Whether a company in which the Leon County Judge has a substantial interest may sell fuel and oil products to the county

Summary: A business entity in which the Leon County Judge owns a substantial interest may sell fuel or oil products to the County only if, in accordance with section 17 1.004 of the Local Government Code, the judge has filed an affidavit “stating the nature and extent of’ his interest in the company and abstains from participating in a deliberation or vote on any matter that will “have a special economic effect [on the company,] . . . distinguishable from its effect on the public.” TEX. Lot. GOV’T CODE ANN. § 171.004(a)(1) (Vernon 1999).

August 8, 2004

GA0247

Re: Whether a county auditor may approve a claim for payment on a contract that was not awarded in compliance with the County Purchasing Act

Summary: If the county auditor determines that the county awarded a contract without complying with the County Purchasing Act, section 113.065 of the Local Government Code prohibits the auditor from approving a claim for payment on the contract. Such a contract is not void *ab initio* but may be voided by a court. The fact that the County Purchasing Act does not provide that a contract made in violation of its terms is void does not affect a county auditor’s duty under section 113.065 of the Local Government Code to disapprove a claim for payment on a contract awarded without complying with the County Purchasing Act. A commissioners’ court lacks authority to ratify such a contract or to approve quantum merit contract payments for such a contract.

August 9, 2004

GA0229

Re: Whether a county sheriff is authorized to enter into a contract to house federal prisoners or to accept and dispose of federal surplus property

Summary: In the absence of a statute authorizing another county official to enter into a contract, the commissioners' court has the sole authority to enter into contracts binding the county. Section 35 1.043 of the Local Government Code does not authorize a county sheriff to contract to house federal prisoners in the county jail.

Generally, a contract made by a county is valid and binding only if made under the authority of

a resolution or order duly passed at a meeting of the commissioners' court and entered in the minutes.

Under state law, a county sheriff is not authorized to contract for or to accept federal surplus property as consideration for housing federal prisoners in the county jail. In the absence of a controlling federal statute, title to any personal property paid by the federal government as consideration for housing federal prisoners in the county jail would vest in the county rather than the sheriff, the jail, or the sheriff's department.

Section 81.032 of the Local Government Code generally authorizes the commissioner's court of a county to accept donations on behalf of the county and would authorize a commissioner's court to accept a donation of property to be used by the sheriff in performing that office's statutory functions.

Generally, in the absence of a controlling federal statute, federal surplus property paid to the county as consideration for housing federal prisoners in the county jail would be included in county inventory and disposed of like any other county property. Even if title has not been transferred to the county or the county must obtain federal agency approval before disposing of the property, federal surplus property received by a county officer for county use would be included in county inventory. While section 263.152 of the Local Government Code generally authorizes a commissioner's court to sell, trade in, donate, destroy or otherwise dispose of county salvage or surplus personal property, the authority to donate, sell, trade, or destroy county property would need to be resolved on a case-by-case basis.

August 2, 2006

GA0446

Re: Conflict of interest disclosure requirements for local governments of officers and person who contracts with local government entities

Summary: As used in chapter 176 of the Local Government Code, the threshold phrase "contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity" encompasses one who agrees to, makes, or arranges for, or inquires for, asks for or requests from a local governmental entity a promise creating legal obligations concerning the sale or purchase of property, real or personal, and any goods and services. A "business relationship" is a connection between two or more parties based on a commercial activity of one of the parties. An "affiliation" is an association between persons or between a person and an organization outside of a "business relationship." Whether an affiliation exists is a fact question. Pursuant to the term "business relationship" and "affiliation," a personal or business interest bearing savings account or loan which generated taxable income to either the person subject to chapter 176 or the local government officer would fall within the scope of chapter 176. Chapter 176 includes professional services contracts, Documents filed with the local governmental entity should be retained in accordance with the local governmental entity's records retention schedule. A local governmental entity should create a retention policy for documents maintained on the entity's website. Partnerships, corporations and other

corporate bodies are “persons” subject to chapter 176. As applied to a corporate or legal entity, chapter 176.002’s disclosure requirements apply to only the legal entity that is the “person” contracting or seeking to contract with the local governmental entity. Third-party individuals who act as agents under agency law for a legal entity contracting or seeking to contract with the local governmental entity are independently subject to chapter 176 under~ section 176,002(a) (2).

To the extent a vendor merely adopts the list of the various entities and relationships provided by the local governmental entity, the vendor does not “describe” the required relationships and affiliations and therefore does not comply with chapter 176. Similarly, to the extent a vendor adopts an incomplete list of the various entities and relationships provided by the local governmental entity, the vendor does not “identify” and “describe” all relevant relationships and affiliations and therefore does not comply with chapter 176. A local governmental entity does not have an affirmative duty to require vendors to comply with chapter 176. Nor does a local governmental entity have an affirmative responsibility to enforce chapter 176, or even to notify vendors of its requirements. A contract between a local governmental entity and a vendor who fails to comply with chapter 176 is not void. However, local governmental entities may choose to impose such a requirement on all its vendors and to provide for the void ability of a contract entered into in violation of chapter 176. A vendor must file a conflict of interest questionnaire even if the vendor has no business relationships or affiliations to disclose. Local governmental entities must post such a questionnaire on its website. Vendors with existing contracts with local governmental entities are not required to file a conflict of interest questionnaire. Chapter 176 does not apply to open-enrollment charter schools or regional education service centers. Chapter 176’s disclosure requirements apply even when the vendor is a family member of a local government officer. The reporting requirements of chapter 176 are triggered~ upon receipt of more than \$250 in gifts by the local government officer and the officer’s family as individuals rather than as a family unit. A vendor who provides goods or services at a reduced price to a local governmental entity is subject to chapter 176 by its plain terms and must comply with its disclosure requirements. A related local government officer must also comply with chapter 176’s disclosure requirements if disclosure is required by section 176.003. Whether the identity of a vendor who is also a client of an attorney who is a local government officer may be withheld from disclosure under chapter 176 pursuant to an exception to the attorney-client privilege is a fact question and inappropriate for the opinion process.

February 16, 2007

GA0518

Re: Whether delinquent property taxes not reduced to judgment constitute indebtedness under sections 154.045 and 262.0276 of the Local Government Code

Summary: Under section 154.045 of the Local Government Code, delinquent taxes that have not been reduced to judgment are not “debt” that precludes a county from disbursing funds to a person indebted to the county. For purposes of section 262.0276 of the Local Government Code, a person “indebted to the county” includes a person who owes the county delinquent taxes, regardless of whether the taxes have been reduced to judgment. Whether a particular

obligation other than delinquent taxes is "debt" under section 154.045 or 262.0276 without reducing it to judgment depends on the nature of the obligation.

August 6, 2007

GA0560

Re: Whether the Justice Court Technology Fund may be used to purchase technology equipment and to provide training for constables

Summary: The Justice Court Technology Fund established under Code of Criminal Procedure article 102.0173 may be used only for technological enhancements for the justice court and continuing education and training for justice court judges and clerks regarding technological enhancements. Whether the purchase of a computer for a constable serves as a technological enhancement for the justice court is a fact question to be determined by the commissioner's court in the first instance. The Fund may not, however, be used to finance continuing education and training for a constable.

January 29, 2008

GA 0600

Re: Whether a county commissioners court is prohibited from executing a tax abatement agreement with a wind turbine company for its fixtures and improvements to be located on a commissioner's real property; whether a commissioner who will receive royalties from a wind turbine company must abstain from voting on a tax abatement agreement with the company

Summary: A county may enter into a tax abatement agreement with the owner of taxable real property located in a reinvestment zone, and with the owner of a leasehold interest in or improvements on tax-exempt property located in a reinvestment zone. Assuming that the "fixtures and improvements" owned by a wind turbine company constitute "improvements on tax-exempt real property that is located in a reinvestment zone" under section 312.402 of the Tax Code, the mere fact that a member of a commissioner's court owns the real property on which the fixtures and improvements will be located does not prohibit fixtures and improvements from being the subject of a tax abatement agreement. A member of a commissioner's court generally must abstain from a vote on a matter if it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property distinguishable from its effect on the public. Whether a vote on a tax abatement agreement will have such a special economic effect is generally a question that cannot be resolved in an attorney general opinion.

May 14, 2008

GA 0628

Re: Whether a county may terminate an equipment lease by acquiring the equipment and selling it without competitively bidding the sale

Summary: A county that terminates a lease of a motor grader by acquiring the equipment generally must follow competitive bidding requirements before selling it to a private party.