

AI-14440**20.8.****Exemption-Competitive Bidding Requirements-Food Purchases
CC REGULAR****Date:** 03/17/2009**Submitted By:** Marty Salazar, PURCHASING DEPT.**Submitted For:** Marty Salazar**Department:** PURCHASING DEPT.**Agenda Category:** Purchasing Department **Purchasing only:** Hidalgo County**Information****CAPTION**

A. Requesting exemption from competitive bidding requirement under Texas Local Government Code, Chapter 262, Section .024 (a)(8)(d) "an item of food" for: Sheriff's Office & Adult Detention Facility (aka, County Jail), Juvenile Probation, Adult Probation, Texas Agrilife Extension Service, including all other Hidalgo County departments requiring food purchases;

B. Pursuant to same statute, specifically 262.024 (d), action on the following:

(1) Solicitation of at least three (3) quotes by:

- (a) telephone; or,
(b) written quotations;

(2) Presentation of the proposed draft solicitation quote/bid form including terms, conditions, requirements, and draft agreement for vendors awarded contracts;

BACKGROUND**Fiscal Impact****FISCAL YEAR:** 2009**ACCT. #:** Various accounts**FUNDS AVAILABLE Y/N?:****MATCHING FUNDS Y/N?:****BUDGETARY IMPACT:**

For funding availability please see attached expenditure report.

AttachmentsLink: [144440](#)Link: [Terms and Conditions](#)Link: [Quote Form](#)Link: [Tabulation Form for County](#)Link: [Obj. code 630- Expenditure Report](#)**Form Routing/Status**

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, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 57(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, § 9, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, § 13.02(b), eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 757, §§ 13, 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 442, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 505, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, § 4, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1063, § 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1409, § 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, § 12.004, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 689, § 1, eff. Sept. 1, 2007.

V.T.C.A., Local Government Code § 271.041 et seq.

Section 2 of Acts 2007, 80th Leg., ch. 689 provides:

"The changes in law made by this Act apply only to a contract entered into on or after the effective date (Sept. 1, 2007) of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose."

§ 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(a) to ensure the identification, security, and confidentiality of electronic bids or proposals.

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

§ 262.024. Discretionary Exemptions

(a) A contract for the purchase of any of the following items is exempt from the requirement established

by Section 262.023 if the commissioners court by order grants the exemption:

(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;

(2) an item necessary to preserve or protect the public health or safety of the residents of the county;

(3) an item necessary because of unforeseen damage to public property;

(4) a personal or professional service;

(5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;

(6) any land or right-of-way;

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

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;

(B) films, manuscripts, or books;

(C) electric power, gas, water, and other utility services; and

(D) captive replacement parts or components for equipment;

(8) an item of food;

(9) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government;

(10) any work performed under a contract for community and economic development made by a county under Section 381.004; or

(11) vehicle and equipment repairs.

(b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption and if:

(1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;

(2) the renewal or extension does not exceed one year; and

(3) the renewal or extension is the first renewal or extension of the lease or agreement.

(c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

(d) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the commissioners court. Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection. The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the commissioners court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

Acts 1987, 70th Leg., ch. 119, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 59(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 962, § 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1001, § 2, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1060, § 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 16, § 13.03, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 142, § 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1065, § 1, eff. June 15, 2001; Acts 2007, 80th Leg., ch. 1272, § 3, eff. Sept. 1, 2007.

V.P.C.A. Bus. & Com. Code § 17.81 et. seq.

§ 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, § 2, eff. June 15, 2001.

§ 262.0245. Competitive Bidding Procedures Adopted by County Purchasing Agents

A county purchasing agent shall adopt procedures that provide for competitive bidding, to the extent practicable under the circumstances, for the county purchase of an item under a contract that is not subject to competitive bidding under Section 262.023.

Added by Acts 1991, 72nd Leg., ch. 16, § 13.02(e), eff. Aug. 26, 1991. Renumbered from § 262.0241 by Acts 2001, 77th Leg., ch. 1065, § 2, eff. June 15, 2001.

§ 262.025. Competitive Bidding Notice

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

(b) The notice must include:

(1) the specifications describing the item to be purchased or a statement of where the specifications may be obtained;

(2) the time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;

(3) whether the bidder should use lump-sum or unit pricing;

(4) the method of payment by the county; and

(5) the type of bond required by the bidder.

(c) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

(d) In a county with a population of 3.3 million or more, the county and any district or authority created under Article XVI, Section 59, of the Texas Constitu-

