



## MEMORANDUM

### **"SOLE SOURCE DECLARATION"**

**TO:** Hidalgo County Commissioners' Court

**FROM:** Martha L. Salazar, CPPB  
Hidalgo County Purchasing Agent

**DATE:** October 25, 2011

**RE:** "Sole Source Declaration"- Election System & Software for Refurbished ADA Ivotronic HAVA Compliant Voting Units/Equipment-Software, Repairs, Maintenance and Support Services

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In 2005 Hidalgo County (through its Elections Department) purchased and established an Electronic Voting System. The equipment, software, support, maintenance and repairs were purchased from Election Systems & Software (ES&S) through a non automated contract (#578-NI) awarded on behalf of the Texas Secretary of State's office by the Texas Building Procurement Commission (TBPC). Additional units/equipment, support, maintenance, training and repairs were purchased in 2007 through the same method of procurement.

These purchases have served the County well. But, the County finds the need to increase the number of units to satisfy demand, damage and contractual obligations with other political subdivisions within Hidalgo County.

The Ivotronic (HAVA Compliant Voting Unit) model currently used by Hidalgo County will no longer be manufactured by ES&S. However, ES&S manufactures and sells refurbished/rebuilt HAVA compliant voting units, software, repair, maintenance, and support services. Hidalgo County for the reasons stated herein requires the purchase of additional Ivotronic (HAVA compliant Voting Units) equipment before the current available inventory of ES&S is exhausted. No other vendor has currently sold refurbished/rebuilt Ivotronic Electronic Election Voting System equipment, software, repair, maintenance and support services to Texas political subdivisions.

Therefore, for all the facts contained herein, ES&S is the sole source for the purchase of refurbished/rebuilt Ivotronic Electronic Election System units/equipment, software, repair, maintenance and support services.

plies, 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 23, 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.

<sup>1</sup> V.T.C.A., Local Government Code § 271.041 et seq.

Section 15(a) of Acts 2001, 77th Leg., ch. 1409 provides:

"The changes in law made by this Act apply only to a contract for which requests for bids, requests for proposals, or requests for qualifications are published or distributed after September 1, 2001."

**§ 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, § 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; or

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

(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