

From: [Josephine L. Ramirez](#)
To: "Martha Salazar"
Cc: "Darlene Betancourt"; sandra.montalvo@co.hidalgo.tx.us
Subject: RE: Texas Government Code 2254.001 through .004
Date: Friday, December 02, 2011 9:19:20 AM
Attachments: [image002.png](#)

Good morning Marty,

There is no legal requirement to use a Request for Proposal when procuring a professional service. It is only a recommended concept to assist the County in obtaining the best value. An option would be to revise the selection criteria and make the value placed on cost less than what it is now. Your Model Purchasing Manual indicates there is no problem with using a concept based on the competitive proposal to obtain qualifications and rates for professional services. However, again, it is not a legal requirement by statute. Regardless, the auditing/accounting services are exempt from competitive bidding under both the Local Government Code and the Professional Services Procurement Act (Gov't Code) so you can post however you see fit.

Josephine Ramirez Solis
Assistant Criminal District Attorney
County Affairs Section
Office of Criminal District Attorney
Hidalgo County, Texas
100 N Closner Rm 303
Edinburg, TX 78539
(956) 318-2313 ext. 3823
(956) 318-2079 FAX
josephine.ramirez@da.co.hidalgo.tx.us



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From: Martha Salazar [mailto:martha.salazar@co.hidalgo.tx.us]
Sent: Thursday, December 01, 2011 5:03 PM
To: josephine.ramirez@da.co.hidalgo.tx.us
Cc: 'Darlene Betancourt'; sandra.montalvo@co.hidalgo.tx.us
Subject: FW: Texas Government Code 2254.001 through .004
Importance: High

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2254. PROFESSIONAL AND CONSULTING SERVICES

SUBCHAPTER A. PROFESSIONAL SERVICES

Sec. 2254.001. SHORT TITLE. This subchapter may be cited as the Professional Services Procurement Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.002. DEFINITIONS. In this subchapter:

(1) "Governmental entity" means:

- (A) a state agency or department;
- (B) a district, authority, county, municipality, or other political subdivision of the state;
- (C) a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or
- (D) a publicly owned utility.

(2) "Professional services" means services:

- (A) within the scope of the practice, as defined by state law, of:
 - (i) accounting;
 - (ii) architecture;
 - (iii) landscape architecture;
 - (iv) land surveying;
 - (v) medicine;
 - (vi) optometry;
 - (vii) professional engineering;
 - (viii) real estate appraising; or

(ix) professional nursing; or
(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:
(i) a certified public accountant;
(ii) an architect;
(iii) a landscape architect;
(iv) a land surveyor;
(v) a physician, including a surgeon;
(vi) an optometrist;
(vii) a professional engineer;
(viii) a state certified or state licensed real estate appraiser; or
(ix) a registered nurse.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 244, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1542, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 8, eff. Sept. 1, 2001.

Sec. 2254.003. SELECTION OF PROVIDER; FEES. (a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

(b) The professional fees under the contract may not exceed any maximum provided by law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [1213](#), Sec. 14, eff. September 1, 2007.

Sec. 2254.0031. INDEMNIFICATION. A state governmental entity may require a contractor selected under this subchapter to indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify or hold harmless the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.37, eff. Sept. 1, 1999.

Sec. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR. (a) In procuring architectural, engineering, or land surveying services, a governmental entity shall:

- (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
- (2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

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

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider; and
- (3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 119, Sec. 1, eff. Sept. 1, 1997.