

§ 262.027. AWARDING OF CONTRACT.

(a) The officer in charge of opening the bids shall present them to the commissioners 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 commissioners 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 commissioners 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 commissioners 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 commissioners 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 commissioners 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 particular location or type of material.

(f) Notwithstanding any other requirement of this section, the commissioners 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, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 416, § 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 127, § 1, eff. May 11, 1993; Acts 2001, 77th Leg., ch. 255, § 2, eff. May 22, 2001.

§ 271.113. PROCUREMENT PROCEDURES.

(a) In entering into a contract for the construction of a facility, a governmental entity may use any of the following methods that provides the best value for the governmental entity:

- (1) competitive bidding;
- (2) competitive sealed proposals for construction services;
- (3) a design-build contract;
- (4) a contract to construct, rehabilitate, alter, or repair facilities

that involves using a construction manager; or

(5) a job order contract for the minor repair, rehabilitation, or alteration of a facility.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the governmental entity may consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the governmental

entity's needs;

- (5) the vendor's past relationship with the governmental entity;
- (6) the impact on the ability of the governmental entity to comply with

rules relating to historically underutilized businesses;

- (7) the total long-term cost to the governmental entity to acquire the

vendor's goods or services; and

(8) any other relevant factor specifically listed in the request for bids or proposals.

Added by Acts 2001, 77th Leg., ch. 1409, § 5, eff. Sept. 1, 2001.

**§ 271.114. EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES.**

(a) The governing body of a governmental entity that is considering a construction contract using a method specified by Section 271.113(a) other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity. The governing body may, as appropriate, delegate its authority under this section to a designated representative.

(b) The governmental entity shall base its selection among offerors on criteria authorized to be used under Section 271.113(b). The governmental entity shall publish in the request for bids, proposals, or qualifications all the criteria that will be used to evaluate the offerors and the relative weights given to the criteria.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

**§ 271.115. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES**

THROUGH COMPETITIVE BIDDING.

(a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a governmental entity may use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility.

(b) Except as otherwise specifically provided by this subsection, Subchapter B

does not apply to a competitive bidding process under this section. Sections 271.026, 271.027(a), and 271.0275 apply to a competitive bidding process under this section.

(c) A governmental entity shall award a competitively bid contract at the bid amount to the bidder offering the best value to the governmental entity according to the selection criteria that were established by the governmental entity. The selection criteria may include the factors listed in Section 271.113(b).

**271.116. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS.**

(a) In selecting a contractor through competitive sealed proposals for construction, rehabilitation, alteration, or repair services for a facility or for construction of a project to which Section 252.043(d-1) applies, a governmental entity shall follow the procedures prescribed by this section.

(b) The governmental entity shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

(c) The governmental entity shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility or project by the governmental entity. The governmental entity shall select those services for which it contracts in accordance with Section 2254.004, Government Code, and shall identify them in the request for proposals.

(d) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The governmental entity shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(e) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date of opening the proposals, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(f) The governmental entity shall select the offeror that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the governmental entity is unable to negotiate a contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(g) In determining best value for the governmental entity, the governmental entity is not restricted to considering price alone, but may consider any other factor stated in the selection criteria.

**§ 271.120. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR.**

(a) A governmental entity may award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and

orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

(c) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(d) The governmental entity may require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

(e) The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

(f) An order for a job or project under the job order contract must be signed by the governmental entity's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line times delivered.

(g) The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(h) The base term of a job order contract is for the period and with any renewal options that the governmental entity sets forth in the request for proposals. If the governmental entity fails to advertise that term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with applicable law.