

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 commissioners 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 OTHER 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

commissioners 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 commissioners 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 commissioners 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 commissioners court must be selected, the selection is made by a majority vote of the commissioners 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 an electronic transfer, check, or 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 an electronic transfer, check, or 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 an electronic transfer, check, or 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 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.

(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 an electronic transfer, check, or warrant 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. 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 commissioners 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 commissioners 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. Procedures for use of purchasing cards may not avoid the competitive bidding requirements of this chapter or other

requirements of county financial law.

(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.

(q) An electronic transfer under this chapter must provide the same level of internal controls and statutory authorizations as required for a check or warrant.

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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 1, eff. September 1, 2011.

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 commissioners 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 commissioners court.

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

(d) Under the supervision of the commissioners court, the purchasing agent shall carry out the functions prescribed by law for a purchasing agent under Section 262.011 and for any administrative function of the county auditor in regard to 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 regarding the notice for and opening of competitive bids or proposals under this chapter and Chapter 271.

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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 2, eff. September 1, 2011.

Sec. 262.012. COUNTY AUDITORS AS PURCHASING AGENTS IN CERTAIN COUNTIES. (a) The commissioners 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 by

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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 3, eff. September 1, 2011.

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 the item under Section 262.0245.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 4, eff. September 1, 2011.

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 into 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.

Acts 2011, 82nd Leg., R.S., Ch. 1129, Sec. 4.04, eff. September 1, 2011.

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 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. 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 OR COMMISSIONERS COURT. A county purchasing agent or, in a county without a purchasing agent, the commissioners court 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.

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 5, eff. September 1, 2011.

Sec. 262.025. COMPETITIVE BIDDING NOTICE. (a) A notice of a proposed purchase must be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county, with the first day of publication occurring at least 14 days 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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 6, eff. September 1, 2011.

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 commissioners 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 commissioners 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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 7, eff. September 1, 2011.

Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A DISTRICT GOVERNED BY THOSE COUNTIES. (a) The commissioners 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 commissioners 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 the purpose of discussing contract requirements and answering questions of prospective bidders.

(b) After a conference is conducted under Subsection (a), 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.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 8, eff. September 1, 2011.

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 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 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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 9, eff. September 1,

2011.

Sec. 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:

(1) notice of the proposed award; and

(2) an opportunity to appear before the commissioners court and present previously unconsidered evidence concerning the lower bid as best, which may include evidence of the 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.

(g) If after the award the successful bidder fails to qualify for required bonds, or is otherwise unable to meet the requirements of the award, the commissioners court may award the contract to the next

bidder in order of ranking as lowest and best bid.

(h) Before a contract is awarded, a bidder must give written notice to the officer authorized to open bids that the bidder intends to protest an award of the contract under Subsection (c). This subsection does not limit the ability of a bidder to speak at a public meeting of the commissioners court under rules established by the court.

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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 10, eff. September 1, 2011.

Sec. 262.0271. CONSIDERATION OF HEALTH INSURANCE PROVIDED BY BIDDER. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(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 and best bid price received by the county from a bidder who does not provide or require reasonable health insurance coverage, the commissioners 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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

Sec. 262.0275. SAFETY RECORD OF BIDDER CONSIDERED. In determining who is a responsible bidder, the commissioners court may take into account 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 commissioners 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 commissioners 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 into a contract or other transaction with a person who owes a debt 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 into 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 into a contract or other transaction with the county requiring approval by the commissioners 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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 12, eff. September 1,

2011.

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 commissioners 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) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(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 commissioners court. The award of the contract shall be made to the responsible offeror whose bid is determined to be the lowest and best 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 commissioners court, discussion may be conducted with responsible offerors who submit priced bids 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 the purpose of obtaining best and final offers.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 10, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 13, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

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 and best 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 so as 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 commissioners 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 commissioners 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 the purpose of 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.

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 14, eff. September 1, 2011.

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 commissioners 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 commissioners 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 commissioners 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., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(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). 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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

Sec. 262.036. SELECTION AND RETENTION OF INSURANCE BROKER.

(a) Notwithstanding any other provision in this chapter, a county 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.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 16, eff. September 1, 2011.

Sec. 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 acknowledgment 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 17, eff. September 1, 2011.