



**WELCOME
TO
COUNTY
PROCUREMENT**

Texas County Purchasing Association

<http://tcpa.purchasing.co.harris.tx.us>

TABLE OF CONTENTS

TITLE	PAGE
Welcome to County Procurement	2
Why Centralized Procurement..	3
The County Purchasing Agent	3
The County Purchasing Objectives.....	4
Stages of Procurement	4
General Procurement Provisions.....	5
Procurement Documents.....	6
County Procurement Laws.....	6
Specifications	8
The Requisitioning Process.....	10
Competitive Bidding for Purchases Exceeding the Statutory Limit.....	10
Competitive Proposals	13
State Contract and Catalogue Purchases	14
- Best Value	15
Procurement of Professional Services...	16
Construction Procurement.....	17
- Bidding Notice.....	17
- Bonding Requirements.....	18
- Bid Bonds	18
- Performance Bonds..	18
- Payment Bonds.....	19

This document is presented by the Texas County Purchasing Association. Thanks to Cyd Grimes, C.P.M., Travis, County Purchasing Agent for her diligence in preparing the initial draft and guidance for completion of the project. Thanks also goes to Texas Association of Counties for assistance in printing and distributing the document.

Welcome to County Procurement

Procurement is an essential county government business function. Procurement activities, which are expenditures made to the private sector for the purchase of goods and services, result in the second largest expenditure of taxpayers dollars. The largest dollars are for personal services that are paid out in the form of employee wages, salaries, and benefits.

The integrity and efficiency of the county procurement process is a crucial component of its credibility. More public officials have been criticized for real or perceived conflicts of interest in the spending of public funds than on any other financial activity. Even with the knowledge of such potential criticism, public officials often misunderstand procurement's significant budgetary and public relations importance.

Even the perception of public officials misusing the procurement process for personal or political gain threatens the public's confidence in it's government. Therefore, the commissioners court, all public officials, and the purchasing agent must ensure a high standard of professional ethics in all personnel who participate in, or who can influence those involved in, making procurement decisions.

The relationship between the purchasing agent and commissioners court is a unique one. On the one hand, the purchasing agent is a customer service function for commissioners court and is responsible for ensuring that all county offices have the goods and services they need to perform the essential functions of their missions. On the other hand, the purchasing agent is an expenditure control function, responsible for supervising the commissioners courts' contracting authority and ensuring compliance with the County Purchasing Act. This unique relationship lends credence to the notion that the purchasing agent be an independent officer of the county.

This document is intended to provide elected officials and others with a basic understanding of procurement activities, the County Purchasing Act and the role of the county's chief procurement officer (the purchasing agent or county auditor). It also offers good business reasons for the centralization of the county procurement function and offers professional procurement principles for public officials committed to improving government operations.

Why Centralized Procurement?

Although not readily evident in the County Purchasing Act, there is the suggestion of a centralized purchasing operation for county governments. Most private and public sector operations recognize and support the centralization of the procurement function. Most procurement techniques are fundamentally the same, however, the significant difference is that public expenditures are made with taxpayer dollars, and therefore, subject to tighter regulations, more intensive scrutiny and a greater degree of accountability than the private sector.

The major advantage of centralized procurement is that it provides the greatest control over taxpayers dollars. It also provides cost savings by consolidating purchases for volume discounts. With the utilization of a professional purchasing staff, the county should benefit from a streamlined administrative function, including the establishment of term (annual requirements) contracts, the use of standardized specifications, and standard contract terms and conditions.

Centralized control improves relations with the business community, by providing a single source of information for businesses. A single source of contact for the public reduces their frustration and confusion regarding public procurement procedures. Also, central procurement control helps to ensure the fair and equitable treatment of all vendors.

The County Purchasing Agent

The Texas Local Government Code (Section 262.001) allows a county to appoint a purchasing agent under different scenarios depending on its size and preference.

Agent Appointed by Purchasing Board (Section 262.011) - 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, 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 court.

Agent Selected by Commissioners Court (Section 262.0115) - In a county with a populations of more than 100,000, the commissioners court may employ a person to act as county purchasing agent.

Under the supervision of the commissioners court, the purchasing agent shall carry out the functions prescribed by law for a purchasing agent under 262.011 and for 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.

County Auditor as Agent (262.012) - The commissioners court of counties with a 25,000 population or less may employ a county auditor jointly with one or more counties and may require the auditor to act as the purchasing agent for the county.

(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.

However the county appoints a purchasing agent, the role is basically the same. The agent is responsible for

procuring all goods and services needed by the county to perform its essential functions and ensuring that those goods and services are procured in compliance with the County Purchasing Act. The agent is responsible for accounting for all county property and maintaining an accurate inventory of that property. The agent is also responsible for the disposition of seized and abandoned property and the auction of surplus and salvaged property. When appropriate, the purchasing agent is responsible for warehouse management, recycling, and cooperative purchasing agreements.

County Procurement Objectives

Procurement in the county is the process through which offices acquire the goods and services needed to perform their specific missions. However, county procurement can only be conducted in ways that are specifically allowed by law.

The fundamental objective of the procurement function is to provide operating departments with the goods and services they need in the right quality and quantity, on a timely basis, as efficiently as possible, and at the lowest overall cost.

In addition, the public procurement objective, by law, is to provide responsible bidders a fair and equal opportunity to compete for county business. This is accomplished by complying with statutory requirements and by the county's purchasing policy and procedures.

Although the purchasing agent does not usually designate what to buy, it should attempt to see that the best value is received for the public dollars spent.

Most importantly, the integrity of the procurement process must be enforced to maintain the public's trust and reduce the governments exposure to criticism and suit. This goal is achieved through by complying with all applicable legal provisions.

Stages of Procurement

The terms "purchasing" and "procurement" are often used interchangeably. However, "purchasing" is only one stage of the procurement cycle. The stages of procurement are:

- *Planning and budgeting* - Planning is necessary for various efficiency reasons that impact commissioners court budgetary processes and operational programs. Planning is necessary in order to consolidate purchases to achieve economies of scale. Good market data helps control estimated budgets accuracy. Good planning ensures that goods and services are delivered timely to meet operational needs.
- *Source selection (purchasing)* - The process through which solicitations are issued, offers are made, contracts awarded, and goods or services received; and
- *Contract administration* - The process of ensuring the terms of the purchase agreement are enforced, goods and services delivered satisfactory, and the bills are paid.

Since procurement activities result in legal contracts, every procurement action is a legal action. County procurement activities are governed by common and case law, by the Uniform Commercial Code, by the County Purchasing Act, other state and federal laws, and the rules and procedures of the purchasing agent and commissioners court. Thus,

those persons making procurement decisions are subjected to legal constraints and exposure well beyond what other financial officials may routinely experience.

General Procurement Provisions

The National Association of State Purchasing Officials and the National Institute of Governmental Purchasing define the essential elements of procurement as follows: (County context provided)

- Purchasing structure, policy, and authority: (Rules and procedures are adopted by the purchasing agent and approved by commissioners court.)
- Competitive processes: (Purchasing Act gives specific instructions that must be followed.)
- Planning, budgeting, and scheduling: (All partners, (purchasing agent, department, county attorney, county budget officer, and county auditor, should work together throughout the budget process and throughout the year to ensure that timelines, budgets, etc. are met.)
- Specifications: (Jointly developed between the user department and purchasing.)
- Provisions for and restrictions on processes that limit competition: (The Purchasing Act specifically defines how and what can be exempted from competition.)
- Bid evaluation and contract award: (All procurement documents should be controlled and maintained by the purchasing office.)
- Quality assurance: (Program officials must administer the contract and must provide documentation to purchasing agent when contractual terms and conditions are not adhered to by the contractor. Purchasing agent should be liaison with contractor on county's behalf when corrective actions or termination must be taken. Any contract modification must be approved by either the purchasing agent or commissioners court.)
- Safeguards: (Centralized procurement function provides some of these safeguards, which are internal controls to prevent misuse of taxpayer's dollars.)
- Materials management: (Accurate accounting of all county assets must be a priority of the county and can have an impact on the financial standing of the county.)
- Cooperative purchasing: (Will become a more efficient process with changes in technology and legislative changes.)
- Professional development: (Trained professional procurement personnel facilitate and help to ensure the effectiveness of the procurement process.)
- Clear written procedures available to the public: (A brochure should be written specifically for the public with information on how to do business with the county.)
- Environmental concerns: (Recycling efforts, environmentally safe products, etc.)

Procurement Documents

It is important to have a basic understanding of what is meant by “procurement documents”. These documents describe the full contractual relationship between a county and a supplier of goods or services. Procurement documents are:

- *Solicitations* - These are invitations for bid, requests for quotations, and requests for proposals. These documents may result in a binding contract.
- *Offers* - These are bids, proposals, and quotes made by businesses to supply goods or services.
- *Contracts* - These are the final signed agreements between the government and the supplier to buy/sell. (Note that a purchase order is a type of contract.)
- *Amendments/modifications* - These are changes to solicitation documents, to offers, and to contracts.
- *RFQ – Request For Qualifications in compliance with the Professional Procurement Act.*

Many other documents are created during the process of making a purchase and kept in the purchase file, but they are not technically "procurement documents." These other documents include requests (requisitions) by offices for purchase of items; notes to file to explain why a particular course of action was chosen; original specifications from requesting department; final specifications; bidders notified of solicitations; copy of advertisements, etc.

County Procurement Laws

Texas has procurement laws modeled on the American Bar Associations (ABA) Model Procurement Code for State and Local Governments. Most counties have adopted procurement policy and procedures modeled on the Texas State Comptroller’s Model Procurement Code.

COUNTY PURCHASING ACT

The County Purchasing Act provides a general legal and procedural framework that emphasizes price (rather than total cost and value), openness, control, and accountability rather than efficiency. It is the duty of the county’s chief procurement official to review and to recommend periodic modifications for improvements that will enhance the efficiency and effectiveness of the procurement function.

In Texas counties there are usually ONLY TWO entities that have the authority to sign procurement documents: the commissioners court as a voting body only, and the county purchasing agent. The commissioners court must approve all contracts exceeding the statutory limit and the purchasing agent must approve all contracts under the statutory limit. Program officials typically do not have procurement authority unless specifically authorized by commissioners court under authority of the Purchasing Act or other government code.

The Purchasing Act specifically states (Section 262.011(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 the county, except purchases and contract 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 repair.” (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 purchasing agent shall be paid for by a 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 a warrant for a purchase unless the purchase is made by the purchasing agent or on competitive bid as provided by law.”

(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 property on hand and belonging to the County and each department and employee...”

(j) ”To prevent unnecessary purchases, the county purchasing agent, with 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” office. The purchasing agent shall furnish to the Auditor a list of transferred goods.

(p) ”During each two-year term of office, a county purchasing agent shall complete not less than 25 hours in courses related to the duties of the county purchasing agent.”

VIOLATIONS OF THE ACT

Additional PURCHASING LAWS that govern county purchasing including the following laws:

- Public Property Finance Act, (TEX. LOC. GOV'T CODE ANN., ch. 271, subch. B)
- Services and Products of Severely Disabled, (TEX. HUM. RES. CODE ANN., sec. 122.014)
- Interlocal Cooperation Agreement, (TEX. GOV'T CODE ANN., ch. 791)
- Prompt Payment Act, (TEX. GOV'T CODE ANN., ch. 2251)
- Bidders from other States and 5% Retainage, (TEX. GOV'T CODE ANN., ch. 2252)
- Public Works Performance and Payment Bonds, (TEX. GOV'T CODE ANN., ch. 2253)
- Wage Rate for Construction Projects, (TEX. REV. CIV. STAT. ANN., Art. 5159a)
- Sales tax exemption for incorporated purchases (TEX. TAX CODE ANN. § 151.131)
- Worker's Compensation Compliance (Workers Compensation Rule 110.110)

Any person who knowingly violates or authorizes the violation of the Purchasing Act commits a criminal offense which is a misdemeanor. This offense is punishable by a fine between \$10 and \$100, by not less than 30 days or more than one year in the county jail, or by both. Each act in violation of the law is a separate offense. {Section 262.011(m)}

The following purchasing strategies that are made with the intention of avoiding formal competitive bidding are in violation of the law: (TEX. LOC. GOV'T CODE ANN., § 262.023)

- ? COMPONENT PURCHASES: purchasing a series of component parts of goods that normally would be purchased as a whole.
- ? SEPARATE PURCHASES: purchasing goods and services in a series of separate purchases, that

in normal purchasing practices, would have been purchased in one purchase.

? SEQUENTIAL PURCHASES: purchases made over a period of time that in normal purchasing practices, would be made as one purchase.

CAUTION: Intentionally separating purchases/invoices to avoid the statutory limit competitive bidding is a violation of the Purchasing Act.

A final conviction of a county officer or employee for this violation results in the immediate removal from office or employment of that person. For four years after the date of the final conviction, the removed officer or employee is ineligible:

1. to be a candidate for or to be appointed or elected to a public office in this state;
2. to be employed by the county with which the person served when the offense occurred; and
3. to receive any compensation through a contract with that county.

Any commitment to acquire goods or services without an authorized purchase order is prohibited. **Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment.**

Counties must also comply with a host of other procurement and financial requirements, including federal procurement requirements which flow through to states and localities receiving federal funds (grants).

Specifications

A specification is a concise description of goods or services that an entity seeks to buy, and the requirements the vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection, or preparing any goods or services for delivery, or preparing or installing them for use. The specification is the total description of the goods or services to be purchased.

The purpose of any specification is to provide purchasing personnel with clear guides from which to purchase, and to provide vendors with firm criteria of a minimum standard acceptable for goods or services. A good specification has four characteristics:

1. It establishes the minimum acceptability of the goods or services;
2. It promotes competitive bidding;
3. It contains provision for reasonable tests and inspections for acceptability of the goods or services; and
4. It provides for an equitable award to the lowest and best bid from a responsible bidder .

Specifications may be proposed by the user department, occupant department, or an outside agency. **THE FINAL ACCEPTANCE OF THE SPECIFICATIONS, OTHER THAN THOSE FOR CONSTRUCTION PROJECTS,**

WILL REST WITH THE PURCHASING OFFICE FOR COMPLIANCE WITH LEGAL PURCHASING REQUIREMENTS. This will ensure proper quality control and avoid the proliferation of conflicting specifications in the different departments of county. The budget office should verify for the purchasing agent that the goods and services were considered and approved in the budget process. Any purchases that were not approved in the budget process will be submitted to commissioners court before specifications are prepared and advertised.

There are a number of specification types which can be employed by the county. They include:

DESIGN - A detailed description of goods or services, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and all other details needed for the provider to produce goods and services of minimum acceptability. Design specifications are usually required for construction projects, custom produced goods, and for many services.

PERFORMANCE - Where the goods or services are described in terms of required performance. They may include such details as required power, strength of material, test methods, and standards of acceptability and recommended practices. This type specification should be used more often for capital equipment.

BRAND-NAME OR EQUAL - Lists goods or services by brand-name, model, and other identifying specifics, except that products equal to the characteristics of the named brand are specified as acceptable. Usually the composition of a brand-name good and service are provided through labeling, but broader tolerances and less consistency from item to item may be expected as compared with standard goods. Other manufacturers may provide a nearly identical good under their own brand name. **THIS METHOD WILL BE EMPLOYED BY COUNTY PURCHASING OFFICE IF AND ONLY IF THERE IS SOUND JUSTIFICATION. THE BURDEN OF JUSTIFICATION WILL REST WITH THE USER DEPARTMENT.**

INDUSTRY STANDARD - This is one of the simplest specifications available. All goods made to an industry standard are identical, regardless of manufacturer and will result in acquisition of goods of uniform quality. An example is the UIL standard for electrical products.

Exemptions to the Competitive Procurement Process

Many goods and services can be exempt from competitive procurement process if the commissioners court orders the purchase exempt. Section 262.024 of the Texas Local Government Code lists all the circumstances when exemptions are available for purchases made out of current funds, bond funds, or through time warrants. The following is a list of these circumstances:

1. Goods and services 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. Goods and services necessary to preserve or protect the public health or safety of the residents of the county;
3. Goods and services necessary because of unforeseen damage to public property;
4. Personal or professional service;
5. Work performed and paid for by the day, as the work progresses;

6. Any land or right of way;

7. Goods and services that can only be obtained from one source, including:
 - a. Goods and services 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.
8. Food goods;
9. Personal property sold at auction by a state licensed auctioneer, in a going out of business sale held in compliance with the Business and Commerce Code, or by a political subdivision, state agency or federal government entity;
10. Work performed under a community and economic development contract under 381.004; and
11. Renewal of a lease or equipment maintenance agreement.

The Requisitioning Process

Requisitioning is the formal request for a purchase to be made. It is the first step after the need for goods or services is recognized. The user department's purchase requisition authorizes the purchasing office to enter into a contract with a vendor to purchase goods or services.

Purchase requisitions should fully describe to the purchasing office what to buy, when it is required, and where the goods are to be delivered or the services to be performed counties should establish a system that Counties should establish a system that adequate budget funds are proceed with the purchase of the requested goods and services.

After the purchasing office receives a purchase requisition, it determines the appropriate purchasing procedures based on the cost of the purchase, the goods and services to be purchased, the existing contracts for goods and services and other relevant factors.

Competitive Bidding for Purchases Exceeding the Statutory Limit

Competitive bidding means letting available vendors compete with each other in order to provide goods and/or services. The Texas Supreme Court described it as: "Competitive bidding requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material item and services covered by the contract; upon the same thing. It requires that all bidders be placed upon the same plane of equality and that they each bid upon the same terms and conditions involved in all the item and services and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications". The Court further states, "It's (competitive bidding) purpose is to stimulate competition, prevent favoritism, and secure the best work and materials at the lowest practicable price for the best interest of the taxpayers and property owners."

INVITATION FOR BID

The term "Formal Competitive Bidding" is generally used in public purchasing, when the bidding process is in compliance with TEX. LOC. GOV'T CODE ANN., § 262.023 and requires approval by a governing board, such as Commissioners Court.

"Sealed" bids (Invitation for Bid) are used for contracts exceeding the statutory limit. The Invitation for Bid (IFB) will solicit bids from vendors in response to the county's specifications and contractual terms and conditions. The returned, signed, and awarded IFB usually forms the contract between the county and the vendor.

The first purpose of competitive bidding is to ensure that public monies are spent properly, legally, and for public projects only, and that the best possible value is received for the money. (This is, in fact, always the main purpose of public procurement, even when purchases do not require the formal approval of a governing board).

The second purpose is to give those qualified and responsible vendors who desire to do business with the county a fair and equitable opportunity to do so. The use of a standard and consistent procurement process, provides the public with an assurance that their tax dollars are being spent properly.

PUBLIC NOTICE

After development of specifications and preparation of the IFB, a notice of the proposed purchase is published by the Purchasing office. The 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. Less than 15 days would be a violation of the Purchasing Act.

The notice must include:

1. The specifications describing the goods and services 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 employee to whom the bids are sent;
3. Whether the bidder should use lump-sum or unit pricing;
4. The type of bond required of the bidder; and
5. The method of payment by the county.

If unit pricing is required, county must specify approximate quantities estimated on the best available information. The purchasing agent shall explain how the lowest price will be calculated in the bid specification.

PUBLIC BID OPENING

The commissioners court can authorize the purchasing agent, by adoption of an order to delegate such authority, to extend the bid opening date on the notice of an Invitation For Bids if it is determined it is in the best interest of the county. The purchasing agent may amend an IFB to clarify their original intent or to correct clerical errors if

inquiries about the meaning of the IFB indicate the need for an amendment; if the changes are so insignificant that they are not likely to matter to the vendor in determining price or ability to respond, if there is no change to the quantity, or delivery requirements; and if the amendment does not change the scope of the IFB.

All bids should be stamped with the time and date received. The official receiving office should serve as the OFFICIAL time clock for the purpose of identifying the date and time bids were received in the purchasing office.

No bids should be accepted after the opening time on the day of bid opening. All bids received after the opening time should be returned unopened to the bidder notifying the bidder that the submitted bid was received subsequent to the due date and time.

After bids are received, a secure place should be provided by the receiving office for the holding of the bids until the bid opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the purchasing office in a public forum.

BID EVALUATION AND CONTRACT AWARD

The purchasing office will evaluate all bids, with assistance from the user department, and a recommendation about the lowest responsible bid will be made to commissioners court. The purchasing office will evaluate bids based on the relative price of the bids, including the cost of repair and maintenance if heavy equipment is the subject of the bid and the cost of delivery and hauling if road materials are involved; the compliance of goods and services with specifications; and the responsibility of the vendor, including the vendor's financial and practical ability to perform the contract, the vendor's safety record if stated in the invitation for bids, and the past performance of the vendor.

The purchasing agent shall recommend contract award to Commissioners Court in session. The Commissioners 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.

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.

A contract may not be awarded to a bidder who is not the lowest priced 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.

CONTRACT ADMINISTRATION

The user department usually is responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be shared with purchasing. If poor performance or non-compliance with the contract is evidenced, purchasing will be responsible to initiate corrective action with the vendor.

The purchasing agent will take all steps related to obtaining compliance with the contract but will consult with legal counsel (if available) before taking any steps toward suspension or termination of the contract. All correspondence between county and contractor should be sent from the purchasing agent.

Most importantly, user departments do not have authority to change any contractual terms or conditions of the contract. User departments must request any changes be made by the purchasing agent who will process according to the Purchasing Act and county policy.

This aspect of the procurement process is often overlooked and is perhaps one of the most important. To enforce contractual terms, documentation of specific non-compliance must be available. Specific dates, locations, examples, etc. must be documented.

Competitive Proposals for Insurance, High Technology Goods and Services and Special Services Exceeding the Statutory Limit

Competitive proposals allow for negotiation of contractual terms and conditions and price. Competitive proposals may be solicited through a Request for Proposals (RFP).

REQUEST FOR PROPOSALS

Formal "sealed" Request for Proposals (RFP) will be used to procure insurance, high technology goods and services and the special services of landscape maintenance, travel management and recycling which exceed the statutory limit. The RFP will solicit proposals from vendors in response to the County's requirements and contractual terms and conditions. A formal contract must be approved by the Commissioners Court.

"High technology" goods or services means goods or services of a highly technical nature, including:

- * data processing equipment and software and firmware used in conjunction with data processing equipment;
- * telecommunications, radio, and microwave systems;
- * electronic distributed control systems, including building energy management systems; and
- * technical services related to those goods and services.

Sealed proposals must be opened by the purchasing office and must be documented. Proposals are not opened publicly. Only the names of proponents submitting proposals should be announced. The purchasing agent will open the proposals on the date specified in the notice. The date specified in the notice may be extended by purchasing agent if an error is discovered in the original RFP.

Proposals will be opened so as to avoid disclosure of contents to competing proponents and will be kept secret during the process of negotiation. All proposals that have been submitted will be available and open for public inspection after the contract is awarded, except for trade secrets and confidential proprietary information contained in the proposals and identified as such if the solicitation provides for this information to be kept secret.

State Contract and Catalogue Purchases

There are two laws, (TEX. LOC. GOV'T CODE ANN., sec. 262.002, 271.081-3) and (TEX. GOV'T CODE ANN., ch. 2157 in coordination with TEX. LOC. GOV'T CODE ANN., ch. 271.081-3) which describe the authority of local governments to purchase goods and services through the State General Services Commission's (GSC) vendors. The first allows purchasing from vendors with which the state has entered into contracts as a result of competitive bidding procedures. These are referred to as State Contract purchases. The second allows purchasing automated information services from approved vendors based on their catalogue prices and negotiations. These are referred to as State Catalogue purchases.

STATE CONTRACT PURCHASES

Sections 271.081 through 271.083 of the Texas Local Government Code requires the State Purchasing and General Services Commission to establish a local government purchasing program and authorizes counties to participate in the program.

Most counties participate and benefit from being in the purchasing program of GSC. A resolution must be passed by commissioners court to designate the purchasing agent to act for the county in all matters relating to the purchasing program, including the purchase of goods and services from the vendor under any contract. The county is responsible for making payments directly to the vendor.

The purchasing agent is responsible for submitting requisitions to the GSC under any contract or electronically sending purchase orders directly to vendors and reports to the GSC on actual purchases in compliance with the GSC's regulations. The purchasing agent is responsible for vendor's compliance with all the conditions of delivery and quality of the purchased goods and services. The purchasing agent is authorized to sign and deliver all necessary documents for purchases under this program made on behalf of the county.

STATE CATALOGUE PURCHASES

The State Purchasing and General Services Act of 1993 directs the State General Services Commission to make the catalogue purchasing procedure available to local governments if they abide by the same requirements as state agencies. Catalogue purchases are **DIFFERENT** from purchases made off State Contracts which can be for any type of goods or services.

County Purchasing Agents may purchase goods and services from the state catalogue in fulfillment of the competitive bidding requirements and all purchases or leases are based on the best value available and are in the county's best interest.

Catalogue purchasing procedures are **ONLY** for the purchase of automated information systems. These systems include:

- a. the computers on which they are automated, or
- b. a service related to the automation of information systems or the computers on which they are automated, including computer software, covered by the Information Resources Management Act, or

- c. any telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for the purpose of transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on that network. These systems can only be purchased from Qualified Information Systems Vendors (QISV) as determined by the General Services Commission.

“BEST VALUE”

The best value is defined as the lowest overall cost of information systems based on the following factors:

1. purchase price
2. compatibility to facilitate exchange of existing data
3. capacity for expansion and upgrading to more advanced levels of technology
4. quantitative reliability factors
5. the level of training required to bring end-users to a stated level of proficiency
6. the technical support requirement for maintenance of data across a network platform and management of the network's hardware and software, and
7. compliance with the applicable statewide standards adopted by the Department of Information Resources or the county as validated by criteria established by commissioners court

The county shall, as applicable, consider the following factors to determine which products or services are in the county's best interest:

1. installation costs and hardware costs
2. the overall life cycle of the system of equipment
3. estimated cost of employee training and estimated increase in employee productivity
4. estimated software and maintenance costs
5. compliance with applicable statewide standards adopted by the Department of Information Resources or the county as validated by criteria established by commissioners court

To ensure that the county receives the "Best Value" from catalogue purchases the following procedures shall be used:

- A. At least three catalog vendors will be selected to provide a Request for Offer (RFO).
 1. The RFO provides a method of negotiating prices, terms, and conditions with catalog vendors. It assumes that negotiation for "best value" will occur with catalog vendors, instead of making selections for goods and services based on the published prices, terms and conditions in the catalogues.
 2. Factors which may influence the selection of vendors/goods and services include industry reputation, user recommendations, specifications, prior experience with the vendors/goods and services, and quality of service provided after the sale.
- B. Solicitation, negotiation and selection will be conducted by the purchasing office.
 1. Selected vendors will be provided with a written copy of county requirements and standard terms and conditions. Each vendor's response/offer should be in writing, signed by the vendor and delivered to the purchasing office.

2. It will be clearly explained to vendors that the RFO process is an interactive negotiation process. Each vendor will be provided with the same information, including the specifications, deadlines for responses, and other clarifying information.
3. When appropriate, include a statement of work to be performed, minimum performance requirements, evaluation factors, specific features, service requirements, delivery dates, and terms.
4. All offers will be kept confidential until the award is final.

The user department, information systems staff, and purchasing should work together at the beginning of the acquisition process to ensure that the county receives the "Best Value" from the Catalogue Procedures.

Procurement of Professional Services

The two principal laws which the purchasing agent must comply when procuring professional services are the **Professional Services Procurement Act** , (TEX. GOV'T CODE ANN., Title 10, ch. 2254, subch. A) and the **Purchasing Act** (TEX. LOCAL GOV'T CODE ANN., Title 8, 262, subch. C)

There are two kinds of professional services:

1. Those professional services specifically defined under the Professional Services Procurement Act; and,
2. Those "other" professional services that are not specifically defined under either the Professional Services Procurement Act or the County Purchasing Act ~~and which~~ must be obtained in compliance with the County Purchasing Act. The purchasing agent must rely on court cases and attorney general opinions to determine what services are included in these "other" professional services.

PROFESSIONAL SERVICES PROCUREMENT ACT

Professional services are defined in the Professional Services Procurement Act as:

1. those within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, professional engineering, or real estate appraiser as defined by the laws of the State of Texas;
2. those performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, land surveyor, professional engineer, or state licensed real estate appraiser in connection with his professional employment or practice.

The Act states that contracts for the procurement of these professional services may not be awarded on the basis of bids. Instead, services must be awarded on the basis of demonstrated competence and qualifications.

To ensure vendors a fair and equal opportunity to do business with county, and to ensure that the services of the most qualified professional is obtained, commissioners court should direct that professional services be procured using a Request for Qualifications (RFQ) process.

The county shall rank firms based on their qualifications and then enter into negotiations with the most qualified firm based on a fair and reasonable price. If the county is unable to negotiate a satisfactory contract with the most highly qualified vendor, negotiations will formally end with that person or firm. The next most highly qualified vendor will then be asked to negotiate. Negotiations are continued in this sequence until a contract is finalized.

If any contract is entered into with one of the above mentioned professionals on the basis of a competitive bid, it is contrary to state law and is void.

PURCHASING ACT

There are "other" personal or professional services that are NOT specifically defined or covered in the Professional Services Procurement Act. Various court opinions have defined these "other" professional services as services requiring technical skill and expertise; labor and skill which is predominantly mental or intellectual, rather than physical or manual; or, a special skill and experience. "Other" personal services have been defined as services that must be performed by a particular person and by the terms of the contract no substitutions are allowed.

To ensure vendors a fair and equal opportunity to do business with county, and to ensure the services of the most qualified person or professional, "other" personal or professional services should be procured using a Request for Services process unless the contract will be for less than the statutory limit or unless the commissioners court approves another procedure.

Construction Procurement

Section 262.011 (e) of the Texas Local Government Code states that "The county purchasing agent shall supervise all purchases made on competitive bid..."

Section 271.024 of the Texas Local Government Code states that to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than the statutory limit, bidding on the contract must be accomplished in the manner provided by this subchapter.

BIDDING NOTICE

The Purchasing office will publish the advertisement for bid, which must include the following:

1. Description of Work
2. Location at which the bidding documents, plans, specifications, or other data may be examined without charge by all potential bidders. Also the location at which plans and specifications may be obtained and the amount of the deposit required.
3. Time and place for submitting bids and time and place of bid opening.
4. The method of payment, and if payment is by certificate of obligation, the advertisement must state either:
 - a. that the bidder must accept certificates, or
 - b. that the bidder must elect to accept certificates or assign them to a financial institution with which county has made arrangements.

If the contract is to be let on a unit price basis, the notice must also include the approximate quantities of the goods and services needed that are to be bid on and the quantities must be based on the best available information.

The bidding notice must be published for at least once a week for two consecutive weeks in a newspaper of general circulation in the county with the date of the first publication 15 days before the date set for the public opening of the bids

In determining who the responsible bidder is, county may take into account the safety record of bidders if the invitation for bids states that the safety record may be considered in determining the responsibility of the bidder and includes the Safety Record Questionnaire approved by commissioners court.

BONDING REQUIREMENTS

No bonds will be required for construction contracts that are less than \$25,000.

Bid Bonds

Bid bonds may not be required for construction contracts that are less than \$100,000. Bid Bonds *may* not be required from any bidder whose rates are subject to regulation by a state agency.

If the purchasing agent decides that a bid bond is required for a particular contract, the invitation for bids or request for proposals will state a bid bond in the amount of 5% of the contract price is required and that it must be executed by a surety company authorized to do business in Texas.

Performance Bonds

For all contracts in excess of \$100,000 for the construction, repair or alteration of a public work or the prosecution or completion of any public work, the contractor, before commencing work, must execute a performance bond that:

1. is payable to the county,
2. is in the full amount of the contract,
3. is conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents,
4. is solely for the protection of the county,
5. executed by a corporate surety or sureties in accordance with the Insurance Code, and
6. is in a form approved by the commissioners court.

Any performance bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOV'T CODE ANN., ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond and remedies provided.

Payment Bonds

For all contracts in excess of \$25,000 for the construction, repair or alteration of a public work or the prosecution or completion of any public work, the contractor, before commencing work, must execute a payment bond that:

1. is solely for the protection of all claimants supplying labor and material in the performance of work provided in the contract,
2. is payable to the county for the use of these claimants,
3. is in the full amount of the contract,
4. executed by a corporate surety or sureties in accordance with the Insurance Code, and
5. is in a form approved by the commissioners court.

Payment bonds should be effective from commencement of performance until the end of the fourth month after all items of work, for the project are completed unless releases are obtained from all subcontractors and materialmen. Any payment bond that is furnished by a contractor in attempted compliance with the requirements of TEX. GOVT CODE ANN., ch. 2253 will be construed as in conformity with that chapter in relation to rights created, limitations on the bond and remedies provided.

EVALUATION AND AWARD

Evaluation of bids will be based on the following factors: (1) the relative prices of the bids, including the cost of repair and maintenance of heavy equipment if that is subject of the bid, and the cost of delivery and hauling of road construction materials; (2) compliance of goods and services offered with specifications; and (3) the responsibility of the vendor, including the vendor's safety record if commissioners court has adopted a definition of safety that is included in the bid , and the past performance of the vendor.

When the lowest priced bid is not the best bid, clear justification for not selecting the lowest bidder must be documented to the Court. This recommendation will be supported by clear and concise documentation from the user department that defines the rational for awarding to other than the lowest bidder. A joint review of the bid by the user department and the Purchasing office should be required.

The purchasing agent or responsible official will recommend contract award to commissioners court in session. The court shall:

1. Award the contract to the responsive and responsible bidder who submits the lowest and best bid;
or
2. Reject all bids and publish a new notice.

If two responsive and 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.

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.