

**THE BASICS OF  
COUNTY PURCHASING**

2020 Texas Association of County Auditors

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County of El Paso, Texas

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**OBJECTIVES**

- **IDENTIFY STATUTES PERTAINING TO PURCHASING**
  - Brief overview of applicable portions on TLGC
  - Focus on primary TLGC chapter 262
- **DETERMINE PROCURMENT THRESHOLDS AND PROCESSES**
  - The Purchasing Act
  - Sealed Bidding, RFPs, Discretionary exemptions
  - Additional information and processes
- **UNDERSTAND THE REQUISITION & PROCUREMENT PROCESS**
  - Purchasing / Audit collaboration
  - Basic Process and Controls

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**IDENTIFY STATUTES  
PERTAINING TO  
PURCHASING**

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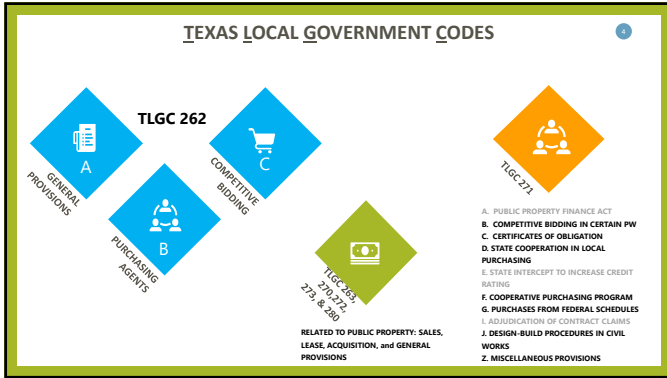
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**Texas Local Government Code 262**  
Purchasing & Contracting Authority of Counties

**SUBCHAPTER A: General Provisions**

- > 262.001 Appointment of Agent to Make Contracts
- > 262.002 Authority to Purchase Road Equip./Tires through the Comptroller
- > 262.003 Small, Sole-Source Purchase Exempt from Bidding
- > 262.004 Contracts and Other Instruments; Vest Rights
- > 262.005 Application of Other Law
- > 262.006 Least Cost Review Program
- > 262.007 Suit Against County Arising Under Certain Contracts

**GENERAL PROVISIONS**

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**Texas Local Government Code 262**  
Purchasing & Contracting Authority of Counties

**SUBCHAPTER B: Purchasing Agents**

- > 262.011 Purchasing Agents
- > 262.0115 Purchasing Agents in Counties with Populations of More than 100,00
- > 262.012 County Auditors as Purchasing Agents in Certain Counties

**PURCHASING AGENTS**

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**Texas Local Government Code 262**  
 Purchasing & Contracting Authority of Counties

• **SUBCHAPTER C: Competitive Bidding in General**

- 262.021 Short Title
- 262.022 Definitions
- 262.0225 Additional Competitive Process
- 262.023 Competitive Requirements for Certain Purchases
- 262.0235 Procedures Adopted / Electronic Bids and Proposals
- 262.024 Discretionary Exemptions



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**Texas Local Government Code 262**  
 Subchapter C: The Purchasing Act (cont'd)

- 262.0241 Mandatory Exemptions: Certain Recreational Services
- 262.0245 Competitive Procurement Procedures Approved
- 262.025 Competitive Bidding Notice
- 262.0255 Additional Notice and Bond Procedures / Certain Equipment
- 262.0256 Pre-Bid Conference for Certain Counties / Districts in Counties
- 262.026 Opening of Bids
- 262.027 Awarding of Contract

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**Texas Local Government Code 262**  
 Subchapter C: The Purchasing Act (cont'd)

- 262.0271 Consideration of Health Insurance Provided by Bidder
- 262.0275 Safety Record of Bidder Considered
- 262.0276 Contract with Person Indebted to County
- 262.028 Lump-Sum or Unit Price Method
- 262.09 Time Warrant Election
- 262.0295 Alternative Multistep Competitive Proposal Procedure
- 262.030 Alternative Competitive Proposal Procedure for Certain Goods and Services

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**Texas Local Government Code 262**  
 Subchapter C: The Purchasing Act cont'd

- 262.0305 Modification After Award
- 262.031 Changes in Plans and Specifications
- **262.032 Bid or Performance Bond; Payment Under Contract**
- **262.033 Injunction**
- **262.034 Criminal Penalties**
- 262.036 Selection and Retention of Insurance Broker
- 262.037 Qualification

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**Texas Local Government Code 271**  
 Purchasing & Contracting Authority [Multi-Agencies]

- Contains 10 subchapters affecting Municipalities, Counties and Other Agencies
- Some Auditor requirements/guidance related to additional funding, certificate, and sale requirements are found in this Chapter.
- **Many subchapters contain the requirements listed in 262 and reference back it with specific callouts to County.**
- **Subchapters D, F, and G** govern Cooperative Purchasing
- **Subchapter J** govern Design-Build
- **Subchapter Z** governs such miscellaneous topics as Certain Professional Services Indemnification and Local Bidder Consideration

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**Other Applicable TLGC Chapters**

- 263 Sale or Lease of Properties by Counties
- 270 Miscellaneous Provisions Affecting the Acquisition, Sale, or Lease of Property by Counties
- 272 Sale or Lease of Property by Municipalities, Counties, and Certain Other Local Governments
- 273 Acquisition of Property for Public Purposes by Municipalities, Counties, and Other Local Governments
- 280 Miscellaneous Provisions Affecting Acquisition, Sale, or Lease of Property by Municipalities and Counties

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# DETERMINE PROCUREMENT THRESHOLDS AND PROCESSES

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**Texas Local Government Code 262**  
 Purchasing & Contracting Authority of Counties

- **SUBCHAPTER C: Competitive Bidding in General**  
**Also known as The County Purchasing Act**

Requires any purchase of an item greater than \$50,000 undergo one of the following:

- ✓ **Competitive bid or proposal process as outlined** in the act
- ✓ Comply with Gov't Code Chapter 2269
- ✓ Use of the reverse auction procedure as described in 2155.085

**ITEM**= any service, equipment, good, or other tangible/intangible personal property, to include insurance and high technology. \*§262.022(5)

*Does not Include:* Professional Services as defined by Gov't Code Section 2254

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**Required Processes to spend >\$50K**

- **BID** = defined/known characteristics; easily definable and price is main factor. **Also known as:** Sealed Bid, SB, ITB, IFB
- **PROPOSAL** = unknown or harder-to-define characteristics; Price is only one consideration and not necessarily the most important. **Also known as:** Request for Proposal, RFP, RCSP

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**Proposal Options for Purchasing Agent**

The competitive proposal may be used without additional permissions for **high technology, insurance, and landscape management**. \*§262.030(a)

An appointed or employed Purchasing Agent may use the proposal process for other purchases in place of the bid process if:

- ✓ The Agent determines the use of the proposal process serves the best interest of the County.
- ✓ The commissioners court agrees with the determination and approves (via resolution, court approval process)

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**Alternative Option to the Proposal** \*§262.0295

If the Purchasing Agent determines that creating a specification is impractical, local code authorizes an **Alternative Multi-Step Solicitation Procedure** ... but only with commissioners court agreement and approval.

To use the AM-SSP, there are required steps and a defined timetable.

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**Notice Procedures** \*§262.025

- Bids and Proposals greater than \$50K must be advertised
- Must be in a newspaper of general circulation
- Advertised no less than 14 days between first advertisement and opening
- If no newspaper of general circulation is available, *must post in courthouse* for the same advertisement time
- **Bids may not be opened earlier than the advertised date.**

Note: Although commonly done, advertising on web pages is not required.

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**BONDING** \*§262.032

➤ Bonds are a potential vendor's method of signifying that they are serious in obtaining public work and completing contracts, as set.

**Bid Bond** = vendor will honor the bid and complete the contracting

**Performance Bond** = vendor will complete the contract law conditions

**Payment Bond** = vendor will pay all subcontractors and suppliers

➤ Counties may require bidders to furnish a **bid bond** for 5% of the total contract price for public works contracts.

➤ Counties may also require a **bid bond** for up to \$5,000 for any contract exceeding \$100,000

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**BONDING** (cont'd) \*§262.032

**ARE PERFORMANCE & PAYMENT BONDS REQUIRED FOR ALL PUBLIC WORKS CONTRACTS?**

Counties are authorized to obtain performance bonds for:

➤ PW (or any) contracts let under the County Purchasing Act exceeding \$100,000

➤ within 30 days of signing a contract or issuance of a purchase order if the contract exceeds \$50,000.

**NOTE:** The County Purchasing Act is silent on payment bonds.

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**Discretionary Exemptions to Required Processes**

- **Emergency** \*262.024(1) – (3)  
 Public Calamity, Public Safety, Unforeseen Damage  
 \*Determination of public safety is at court discretion
- **Professional Service** \*262.024(4)  
 Defined under common law, discretion of commissioners court  
 Does NOT apply to those professional services listed in 2254
- **Individual Work** \*262.024(5)  
 Any individual work paid by day as work progresses  
 Limited to 20 days

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**Discretionary Exemptions to Required Processes** (cont'd)

- Acquisition of Rights-of-Way \*262.024(6)
- Sole Source \*262.024(7)
- Other listed items

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**Texas Local Government Code 262**  
 SUBCHAPTER C: Competitive Bidding in General (cont'd)

**Statutory Exemptions to Required Processes**

- Certain Transportation Construction *Tex. Transp. Code §431.11*
- Housing Finance Corporation *Loc. Gov't Code §394.904*
- Purchases from Certain Non-Profits *Chapter 122, Human Resources Code*
- Airport Purchases *Subchapter D, Chapter 22, Texas Transp. Code*
- Professional Services under 2254 (Mandatory) *Tex. Gov't Code §2254.004*

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**FUNDING MAY CREATE EXEMPTIONS FROM THE PURCHASING ACT**

✓ **Hot Check** THESE ARE COVERED UNDER CRIMINAL CODE 102.007 AND ARE NOT SUBJECT TO THE PURCHASING ACT BECAUSE THEY ARE THE ULTIMATE CONTROL REMAINS WITH THE COLLECTING PROSECUTOR. TXAG Ops: JM-0967 and MW-0439

✓ **Commissary** Not usually required to bid as it falls under TLGC 351.0415 and is under the authority of an official other than commissioners court. TXAG Ops: JC-0122

☒ **Forfeiture** COMMISSIONERS COURT HAS A MINISTERIAL DUTY TO ENSURE THESE ARE COMPETITIVELY BID WHEN THE LAW ENFORCEMENT AGENCY ENTITLED TO THE FUNDS REQUESTS EXPENDITURE. THE COURT CAN REJECT BIDS, BUT NOT TO DELAY EXPENDITURE. TXAG Ops: DM-243

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**Texas Local Government Code 262**  
**SUBCHAPTER C: Competitive Bidding in General (cont'd)**

 VIOLATION	<b>CLASS B</b> <small>(\$2000 FINE and 180 DAYS IN JAIL TO INTENTIONALLY OR KNOWINGLY MAKE or AUTHORIZE SEPARATE, SEQUENTIAL, OR COMPONENT PURCHASES TO AVOID BIDDING UNDER CHAPTER 262</small>
 VIOLATION	<b>CLASS C</b> <small>(\$500 FINE) INTENTIONALLY OR KNOWINGLY VIOLATING ANY PART OF THE PURCHASING ACT NOT DEALING WITH SEQUENTIAL PURCHASES.</small>
 VOIDING CONTRACT	<small>EVEN IF UNINTENTIONAL CONTRACT CAN BE DECLARED INVALIDLY VOID and CONTRACT/WORK STOPPED AS PART OF TAKEOVER SUIT.</small>
 NON-PAYMENT	<small>IF DETERMINED TO HAVE TO HAVE BEEN SUBJECT TO THE PURCHASING ACT, BUT OCCURRED OUTSIDE OF IT, <b>THE AUDITOR IS PROHIBITED FROM PAYMENT.</b></small>

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**CONTRACTS CREATED IN VIOLATION OF THE PURCHASING ACT**

- **Are contracts that should have been bid instantly void or merely voidable?**
  - Contracts entered into in violation of the act are not automatically void
  - Can be made void by court at behest of public or vendor suit.
- **Does Ratification by Court make it a valid contract?**
  - NO. Court lacks the authority to enter a contract in violation of the purchasing act---and so cannot use ratification to make the purchase "legal".
- **Can County Auditor approve payment on a contract awarded in violation of the Purchasing Act?**
  - NO. The county auditor is prohibited from approving payment on anything non-compliant with legal requirements.

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**OTHER CHAPTERS AFFECTING PROCUREMENT**

**CONTRACTING**

- Length of contracts \*§271.009
- Creation of multi-year contract without creating unconstitutional debt \*§271.903
- Contracting lease financing must comply with the Purchasing Act \*§271.006

**COOPERATIVE PURCHASING** \*Chapter 791

- Subchapter F; Meets competitive bidding requirements

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# UNDERSTAND THE REQUISITION AND PROCUREMENT PROCESS

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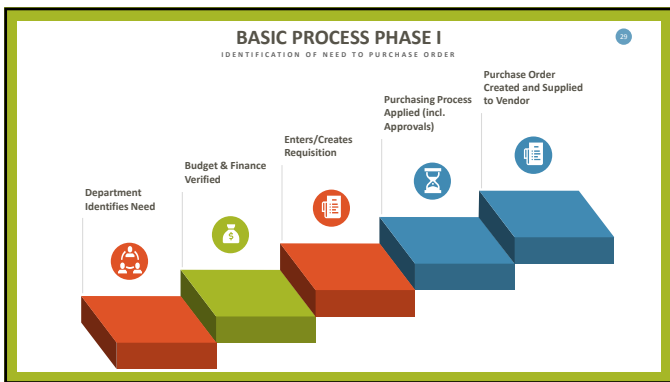
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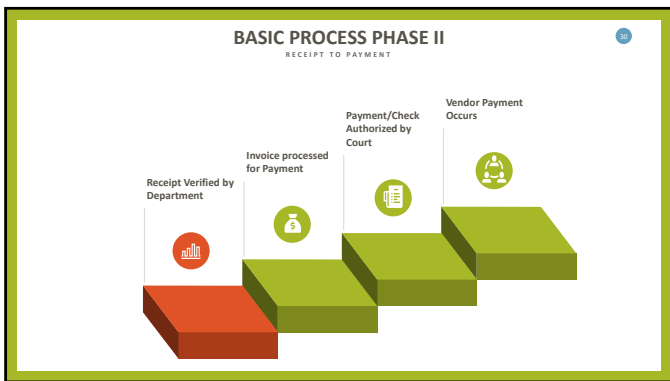
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**DISCUSSION Q&A**

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