



COUNTY PURCHASING: EQUIPMENT AND MATERIALS

Allison, Bass & Magee, LLP, Austin, Texas



Chapter 262-Local Government Code

the County Purchasing Act-Agents

- Commissioners Court may appoint a purchasing agent to make a contract on behalf of county for any purpose authorized by law.- 262.001. 262.011 and 262.0115 Tex.Loc.Govt.Code. (Purchasing Board required under 262.011, composed of district court judge(s) and county judge under 150,000 population, 3 District Judges and 2 members of commissioners court in larger counties. Counties over 100,000 population may opt to appoint a purchasing agent unless they have previously opted for Board)
- Commissioners Court may purchase equipment and tires through Comptroller on a requisition describing the item to be purchased, and certification that funds are available for the purchase.
- Where an auditor is present, the County may require the auditor to perform as purchasing agent (unless it has opted to use Board, or is between 41,680 and 42,000, in which case, the auditor IS the purchasing agent. (Question? Based on census, so it may vary...what then? In 2010, only Wood County fell within the bracket. In 1991, when last amended, there were no counties of that bracket?)

Competitive Bidding - the General Rule-262.021 et seq LGC

- Component, separate or sequential purchases-If normally purchased together, their total cost is taken as the cost of the purchase for purposes of bidding requirement.
- Lowest and best bid: a bid providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties and customer service after the purchase.
- Competitive Bidding Required where: a purchase of one or more similar items will exceed \$50,000.00 in the budget. Example, if you know you are going to buy three patrol cars in one budget, and the cost exceeds \$50,000.00 for all three, you must competitively bid the three cars, no segregate the purchases. Same with tires, fuel, materials.

Discretionary Exemptions from Competitive Bidding-262.024 LGC

- Must be declared *before the purchase*, in cases of:
 - *Public calamity*
 - *To Protect or preserve the public health or safety*
 - *Necessary items of unforeseen damage to public property*
 - *Personal or professional services (lawyers)*
 - *Day work not to exceed 20 days in three months*
 - *Land or right-of-way*
 - *Sole source goods, included copyrights, films, power, gas, water utilities, replacement parts, food items, or*
 - *Personal property sold at auction, going out of business sales, from other governmental units, economic development, or vehicle and equipment repairs*

Mandatory Exemptions

262.0241 Loc. Govt. Code

- Counties under 20,000 population, and not more than one public golf course, for
 - *Management Services for the golf course, or a retail facility owned by the County and located on the golf course, and*
 - *Landscape maintenance services for a county owned golf course.*

- Professional Services-Architects, CPA, Surveyors, Physicians, Optometrist, Engineers, Real Estate Appraisers, RNs,

Bidding Notice: 262.025 Loc. Govt. Code.

- The notice must be published at least once per week for two consecutive weeks in a newspaper of general circulation in the County.
 - *General statement of the item to be purchased*
 - *Name and phone number of purchasing agent or authority and a county web address if any.*
 - *Specifications of the item or where the specifications may be obtained.*
 - *Time and place for receiving and opening bids and name and position of the county official or employee where bids are to be sent.*
 - *Lump sum or unit pricing*
 - *Method of payment by the county*
 - *And the type of bond required*
 - *If to be paid with time warrants, a statement of the maximum time warrant indebtedness, the rate of interest on the time warrant and the maximum maturity date of the time warrants.*
 - *Counties over 3.3 million have other requirements, i.e. 25% performance by bidder, financial criteria, etc.*

General Provisions on Notice

- Generally, once per week for two consecutive weeks in newspaper of general circulation, with the first date of publication at least 14 days before the date of the bid opening.
- If not paper in county, notice can be in any paper of general circulation in area, with prominent posting in courthouse 14 days prior to bid opening.
- Use of County website is certainly o.k. but not required.
- Bids must be opened no sooner than published bid opening date/time.

Additional Notice and Bond for Equipment-262.0255 LGC

- Earth moving, road maintenance, or construction equipment may include information regarding expected costs of repair, maintenance, or repurchase of equipment.
- May require a bond to cover the cost of repurchase.
- May use Cooperative agreements for seller to take county owned used equipment as trade.

Additional Considerations on Bidders: 262.0271-0276 LGC

- Health Insurance for bidder and subcontractors-5% allowance to those who do.
- Safety Record of bidders-IF definitions and criteria for safety data are prepared by County and Notice of that criteria and definitions.
- Use of recycled materials may be given a preference if definition and criteria for such is carefully stated.
- County may refuse to contract with any bidder that owes the county money (taxes or judgments) if this restriction is contained in rules regarding bidding published in newspaper of general circulation.
- Bids may require lump sum or unit price methods of pricing.

Alternatives to Competitive Bidding:

- Reverse Auction as authorized by 2155, Texas Government Code- suppliers bid for contracts of designated goods. Bidders are anonymous to each other, but can see the other suppliers price submissions. The Bid winner is not necessarily the lowest, but the lowest and bests bid, taking into account the factors above.
- Multi-step Competitive Proposal Procedures. 262.0295 LGC.-allow, when detailed specifications are impractical, the bidding official may use multi-step competitive proposal method. This required Notice of Request for Proposals, which will be un-priced. Once the proposals are opened, the qualified parties under the criteria of the RFP can be asked to submit a priced bid. Of the responding parties, a selection of the lowest and best evaluated offer resulting from negotiations.
- Cooperative Purchasing Programs, Buy Board, Interlocal Cooperation Agreements

Alternative Multi-Step Competitive Proposal Procedures §262.0295 LGC

- Impractical to prepare detailed specifications, may request unpriced proposals.
- Proposal Notice must be published, and contain a general description of the item, rather than specifications in detail and criteria for scoring proposals.
- Proposals are opened, and those qualifying under criteria notified of solicit pricing of proposal. (solicitation for pricing within 7 days of opening).
- With 30 days of pricing, the Comm court shall award contract to the lowest and best proposal as priced.

Alternative Proposal Procedure for Certain Goods §262.030

- Insurance, High Technology, landscape maintenance, travel management, or recycling.
- Quotations solicited through a RFP (Request for Proposals) in similar manner as competitive bids, i.e. newspaper publications.
- Public Notice must state the relative importance of price and other evaluation factors.
- Award is based on the lowest and best evaluated proposal after negotiation of price.

Opening and Awarding Bids: 262.026 and .027 Loc. Govt Code

- The County officer or purchasing agent shall open the bids on the date and time specified in notice.
- An extension may be granted by the Commissioners Court.
- All bids received must be opened at the same time. Opened bids are public, and shall be maintained for one year.
- County official or purchasing agent presents the bids to the Commissioners court in regular session.
 - *Bid is awarded to the “lowest and best bid”, or all bids are rejected.*
 - *If a lower bid is made, a contract cannot be made to a higher bidder until notice is given to each lower bidder of the anticipated award, and an opportunity to appear before the commissioners court to present evidence regarding the lower bid as best, which may include proof of bidder responsibility.*
 - For equipment, the factors of service life, etc. may be considered
 - For materials, such factors as pick and delivery locations and cost to transport materials.
 - A lower bidder must give notice of an intent to protest before the contract is awarded to a higher bidder.

Bonds: Bid, Performance and Payment

- Bid Bond guarantees a vendor is submitting an accurate proposal and is able to begin work if awarded. (up to 5% of the total contract, or \$5,000.00 under \$100,000.00.
- Performance guarantees a project is completed according to the provisions of the contract, such as on time and within budget. Required for public works contracts, and authorized but not required for any contract exceeding \$100,000.00.
- A payment bond is security to ensure that all subcontractors and suppliers will be paid for work performed and supplies provided. No express authority under County Purchasing Act, but regularly required.

Other purchases that are not in excess of \$50,000.00

- A county SHALL adopt procedures that provide for competitive procurements to the extent “practicable under the circumstances” for items that are not subject to competitive bidding requirements, or for which the county receives no responsive bid. The procedures are not explained or defined.
- The county or purchasing agent might be required to obtain, for example, three alternative prices from different vendors, and select the best value without formal bidding, etc.
- Some airport purchases

Multi-Year Contracts

- 271.009 LGC allows a lease purchase up to a term of 25 years.
- 271.903 requires a multi-year contract to have a termination provision at the end of each budget period, conditioned upon the best efforts to obtain and appropriate funds, and is a commitment of current revenues only.
- Alternative, a sinking fund, with a provision in the budget for interest payments, can be made for capital improvement, etc.

Penalties for Violation of Bidding Rules

- Class B misdemeanor if intentionally or knowingly made (sequential) or Class C for other violations.
- Suit to vacate or enjoin performance of the contract.
- Auditor can refuse to pay a claim under a contract improperly bid.

Conflict of Interest Questionnaire

- Chapter 176 of the LGC requires all officers and vendors to file a so called 1295 with the Texas Ethics Commission to disclose any business relationship with the other that exceeds \$2,500.00 in non-investment income during the preceding 12 month period.
- Some counties require this as part of the bidding process.

For more information:

- Call Texas Association of Counties
- Or Call Allison, Bass & Magee, LLP
 - *512-482-0701 Hotline*
 - law@allison-bass.com

