



Model Purchasing Manual for Texas Cities and Counties 2010

This valuable resource is designed to help you develop smart



procurement practices that go beyond price,
securing the best value in goods and services

for your community. Use this manual to
understand the competitive bidding process



and how to evaluate bidder qualifications. Learn how to



stretch your dollars with cooperative purchasing
opportunities, electronic procurement and reverse

auctions. While reducing costs, these practices will
also increase purchasing transparency, giving
taxpayers a clear picture of where their money goes.



November 22, 2010

Dear Public Official:

I am pleased to present the new *Model Purchasing Manual for Texas Cities and Counties* — your best reference for local government purchasers. This revised edition will serve as a resource for cities, counties and local government entities that make purchasing decisions every day.

The *Model Purchasing Manual for Texas Cities and Counties 2010* contains changes made to purchasing law through the 81st Texas Legislature. This edition also includes a separate section covering construction purchases.

If you have any questions about the manual or need assistance with purchasing issues, please call our Local Government Assistance Division at (800) 531-5441, extension 3-4679.

Sincerely,

Susan Combs
Texas Comptroller



Acknowledgements

The Comptroller's office extends its appreciation to the many individuals who contributed their professional knowledge and time to review the *2010 Model Purchasing Manual for Texas Cities and Counties*. The Comptroller has a statutory obligation under the Local Government Code (§112.003) and the Government Code (§403.01) to provide assistance and guidance to local governments in the purchasing process.

This manual was developed to help Texas local governments establish or improve purchasing operations. Local governments may establish the type of system that best suits their unique needs.

The manual covers purchasing principles and types of purchases, purchasing ethics, the requisition process, specifications, competitive bidding, negotiated purchases, accounting practices, auditing, electronic procurement and purchasing law updated through 2009. The manual includes model procedures that may be adopted or modified to accommodate the needs of each local government.

A single manual may not describe all possible situations and some of the materials included may not apply to every local government. Each entity should check the manual's procedures and interpretations with its local government attorney, and rely on that advice. For any areas not covered, the Comptroller's Local Government Assistance staff may help provide guidance through its toll free telephone assistance number: (800) 531-5441.

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Chapter 1

Introduction

This purchasing manual represents an update to the *2003 Model Purchasing Manual for Cities and Counties* from the Texas Comptroller of Public Accounts. Divided into 11 chapters, the manual describes general purchasing principles, the requisition process and preparation of purchase orders, specifications, competitive bidding and negotiated purchases, cooperative purchasing through the State of Texas, accounting, auditing and purchasing laws. This updated manual includes new chapters on construction and electronic procurement. Examples of purchase orders, requisitions, specifications, invitation for bid and blanket purchase agreement sample formats are included at the back of the manual followed by the Appendices of Attorney General Opinions and Open Records Decisions.

Purchasing is the process of acquiring goods and services necessary for a government entity to provide the public with certain services.

Private sector purchasing's goals are to:

- Purchase the proper good or service to meet the needs of the business;
- Get the best possible price for the good or service;
- Have the good or service available where and when it is needed;
- Ensure a continuing supply of needed goods and services and
- Guard against any misappropriation of the business' assets procured by purchasing.

Public purchasing has the same goals as the private sector and these additional goals:

- Responsible bidders are allowed a fair opportunity to compete for the government's business, through statutory requirements for competitive bids and proposals combined with the government's purchasing procedures.
- Public funds are protected. While the purchasing office does not usually designate the types of purchases to be made, it should attempt to receive the best value for public dollars expended.
- Public spending is not used to enrich elected officials or government employees or to provide favors to preferred constituents.
- Historically underutilized businesses (HUBs) have an equal opportunity in the contract awards process.

A program's effectiveness depends on good and sound management principles.

Recognized purchasing principles can be applied to any purchasing program to make it operate to the best advantage. This manual defines some of these recognized principles and gives examples for incorporating them into each local government's purchasing program.

Purchasing Principles

Texas has thousands of local governmental units. There are 254 counties, more than 1,200 incorporated cities and thousands of other independent school districts, community college districts, municipal utility districts and other governmental entities.

All city and county governmental units in Texas make purchases, ranging from small to large. While no standard purchasing format can be applied to all of them, certain purchasing principles may apply to increase the efficiency and effectiveness of city and county government purchasing.

The following principles are recommended for purchasing offices in local governments in Texas:

- Centralize the purchasing authority.
- Create and recommend for adoption by the governing body written purchasing policies and procedures
- Establish the purchasing function at a high level in the organization to ensure its independence from control by any department or division.
- Form an oversight committee to develop overall goals and strategies, and to ensure that purchasing practices are consistent with those goals and strategies.
- Set up a committee to standardize specifications for commonly used items to increase efficiency and ensure that purchases are made based on actual requirements and not on individual brand preference.
- Consolidate purchases of similar items to take advantage of volume discounts whenever possible.
- Track all emergency purchases and require them to be fully justified to ensure transparency and to help make system abuses detectable. As often as possible, eliminate so-called “emergency” purchases for non-emergency situations.
- Implement procedures to require requisitions and authorizations of all purchases of goods or services.

The remainder of the manual explains methods for establishing these basic purchasing principles.

Purchasing Department

The purchasing office organization will vary according to the size of its government. In a small county or city, a single person may coordinate the government’s purchases. A larger municipality may include a full-scale purchasing office and a materials management operation with a warehouse. The principles included in this manual are adaptable to both.

A centralized purchasing office is essential to efficient purchasing because:

- it allows consolidating smaller purchases by individual departments into larger volume purchases for the entire government.
- vendors and the business community have a single point of government contact.
- the purchasing office and its personnel accumulate a solid foundation of knowledge and experience about purchasing, marketing trends, prices and vendors. That saves the government money and provides a more efficient purchasing process.

The purchasing officer should report to a high-level government official, but not the director of an operating department. The purchasing function should not be subordinated to any particular government division's operations and must maintain independence to serve the entire government fairly and impartially. If central purchasing rests with an individual, that individual requires sufficient authority and responsibility to achieve the purposes of efficient, independent purchasing.

The purchasing department should be included in all stages of acquisition, from planning to order placement to receiving the purchases. This will enable the purchasing department to take full advantage of the department's knowledge and expertise of purchasing techniques and products.

Whether purchasing is a department with a director and staff or a single individual, purchasing must effectively coordinate with other departments and prevent political considerations or special interests from influencing purchasing decisions.

Types of Purchases

There are several different types of purchases that will require different approaches. Non-routine categories of purchases frequently will take longer to process and should be minimized.

Non-Stocked Items

These items are not stocked or warehoused by the government. They may or may not be a standardized item, but they are not in such constant demand to be considered a supply or other stocked item. These items are procured by either bids or negotiated price quotes, according to the statutory or local requirement.

Stocked or Warehoused Items

These items are used constantly by the government and are stocked routinely. They are usually purchased on annual contracts with provisions to replenish stocks as needed. These items should be standardized to the maximum extent possible so that they are similar in quality, form, etc.

Emergency

Emergency purchases are made to meet a critical, unforeseen government need. Because the government's ability to serve the public would be impaired if purchases are not made immediately, emergency purchases are exempt from standard purchasing procedures. The government may be required to grant the exemption by vote of the governing body.

Sole-Source Purchases

Sole-source purchases are goods and services available from only one supplier. There may be just one vendor because of patents or copyrights or simply because the vendor is the only one which supplies the good or service. These purchases are exempt from the standard bidding requirement. The government may be required to certify that only one supplier is available.

Registrations

Registration for conferences, seminars and conventions for government employees may be handled by purchasing and are subject to local procedures.

Publications

In order to maintain control and eliminate duplication, the purchasing office should procure all books, magazines, periodicals and newspapers. Books may be subject to special purchasing rules.

Memberships

Memberships in trade or professional organizations should be processed through the purchasing office. The applications should be justified by the government's needs and should require special authorization.

Services

The purchasing office will procure government service contracts by bid or without bids, depending on the situation. Professional services may need to be procured under special rules described in a later section.

Purchasing Ethics

The statutes governing local government purchasing impose criminal penalties for violating the provisions of the various acts of the Legislature to oversee purchasing. In addition, many local governments impose sanctions for violation of local ordinances on purchasing.

Any misuse of a local government's purchasing power carries consequences, and many such misuses arise from a lack of clear guidelines about what constitutes an abuse of office. This section of the purchasing manual suggests the implementation of a Code of Ethics for local government purchasing offices.

Establishing a Code of Ethics should be implemented in three stages:

- Develop and formally adopt the Code.
- Train all the government employees in the provisions of the Code by posting the Code in a prominent place in the purchasing office and elsewhere in the government offices; instructing purchasing personnel on the provisions of the Code; and, requiring all persons directly engaged in purchasing or contracting in any department to periodically certify by signature that they have read and understand the Code that they will abide by its provision. This requirement should be included in their work contract, and a copy of the signed certification should be included in each person's employment file;
- Establish regular internal and external audit programs to detect non-compliance with the Code.

The following pages outline the basic elements of an ethics code. The governing body should use these elements to formulate a code for its own purchasing function.

Local governments should require ethical conduct from those with whom they conduct business. Contracts should contain a clause stating that any effort to influence an employee to violate the standards of the Code is grounds to void the contract. Also, local governments should require vendors to certify that they will not attempt to influence any employee to violate the Code.

Basic Elements of a Purchasing Code of Ethics

Statement of Purchasing Policy

The code should contain a broad statement of policy on purchasing. The statement recommended by the *Model Procurement Code for State and Local Governments* reads as follows:

Public employment is a public trust. It is the policy of (local government name) to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by (local government name). Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the (local government name) procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the (local government name) also observe the ethical standards prescribed herein.¹

General Ethical Standards

There are certain common standards of ethics that should be included in the Code of Ethics. The following are from the *Model Procurement Code for State and Local Governments*:

1. **Personal Gain.** It shall be a breach of ethics to attempt to realize personal gain through public employment with (local government name) by any conduct inconsistent with the proper discharge of the employee's duties.
2. **Influence.** It shall be a breach of ethics to attempt to influence any public employee of (local government name) to breach the standards of ethical conduct set forth in this code.
3. **Conflicts of Interest.** It shall be a breach of ethics for any employee of (local government name) to participate directly or indirectly in procurement when the employee knows that:
 - a. the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
 - b. a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; and

- c. any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- 4. **Gratuities.** It shall be a breach of ethics to offer, give or agree to give any employee or former employee of (local government name), or for any employee or former employee of (local government name) to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore pending before this local government.
- 5. **Kickbacks.** It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for (local government name), or any person associated therewith, as an inducement for the award of a subcontract or order.
- 6. **Contract Clause.** The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.
- 7. **Confidential Information.** It shall be a breach of ethics for any employee or former employee of (local government name) knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

Chapter 2

Requisition Process

The requisition process refers to the creation of a formal manual or online request called a requisition. The requisition process must include a system of authorization and safeguards so that improper or illegal purchasing is difficult to initiate and to conceal. Requisitions may be created manually or online.²

An online requisition is an electronic document, originated by the requester using a local government's accepted financial controls and workflow rules. The requisition is converted to a purchase order after steps in the review and approval process have been completed.

Statute requires counties to use a requisitioning system.³ A county auditor may not audit or approve an account for the purchase of supplies or materials for the use of the county or of a county officer unless a requisition, signed by the officer ordering the supplies or materials and approved by the county judge, is attached to the account. The requisition requirement is in addition to any other requirements of law. Where a county purchasing agent is appointed, such appointment does not eliminate the requirement that the county judge must approve the payment of all claims, bills and accounts.⁴

Manual requisitions should be drafted, signed and approved in triplicate. Before making the actual purchase, the original requisition should be delivered to the vendor. The duplicate copy must be filed with the county auditor. The triplicate copy must remain with the officer requesting the purchase.

By written order, the commissioners court of a county that has the office of county auditor may waive the requirement of the county judge's approval of requisitions.⁵ The commissioners court must record the order in the minutes. The commissioners court in open court must approve all claims if the county judge's approval is waived. The county auditor has oversight of the finances of the county, but cannot require the auditor to sign requisitions for purchases at the time of purchase.⁶

Part of an organization's internal financial controls, purchase requisitions should be required for all purchases of goods or services, according to the policy of the government. For counties, there is no statutory requirement to use requisitions for services, but may require a requisition by order of the commissioners court. The law requiring requisitions applies only to materials and supplies purchased on account and not to claims for labor, services, intangibles or other claims not involving supplies and materials.⁷

The purchase requisition originates in and receives approval from the department requesting to procure goods or services. The purchase requisition usually contains a description of the goods or services to be purchased, the quantity, an account number, a required delivery date and the amount of money the purchasing department is authorized to expend for the described goods or services.

The purchase requisition is not a purchase order, but may be a separate form or combined with a purchase order. The county auditor cannot refuse to issue a requisition form to any county officer upon request, even if the county officer has already purchased the supplies or materials. Also, an auditor may refuse to approve an account if the vendor did not receive the original copy of the requisition form before the purchase.⁸

If an electronic ordering system is used, personal authorization codes will be issued to affected employees. Software security safeguards must be designed to insure that unauthorized persons will not be able to initiate requisitions. The person who has the responsibility to authorize purchases must protect his personal code to prevent improper requisitioning.

Types of Requisitions

Requisitions should be divided according to the type of action required on the purchase. The following are the generally recognized types of requisitions.

Routine

Routine requisitions are for all normal purchasing transactions requiring a requisition. The purchasing department processes these requisitions using routine procedures. These are designated **Priority Four**.

Expedited

Expedited requisitions are for items needed sooner than if obtained through normal purchasing process and should be expedited to prevent work stoppage or loss of the government's money. Expedited purchases do not qualify as emergency purchases, however, and are subject to all applicable bidding requirements. There are two types of expedited requisitions:

1. *Walk-through* requisitions are for items needed within 10 working days to avoid work interruption, loss of service or significant added cost of operations. The purchasing department processes these requisitions using routine procedures and should hand-carry the requisition and other documents through the purchasing process. These are designated **Priority Three**.
2. *Work-stoppage* requisitions are for items needed immediately to prevent work stoppage due to unanticipated requirements. The purchasing department processes these requisitions using routine procedures, but they start the process right after telephone notification. These are designated **Priority Two**.

Emergency

Emergency requisitions apply to all requests brought on by an emergency condition. The purchasing department processes these requisitions using routine procedure. These are designated **Priority One**.

Preparing the Requisition

The requisition originates in the department requiring the good or service requested. Preparation should be made far enough ahead of the date needed to allow purchasing and the vendor to do their jobs properly, including:

- advertising for bids, if necessary;

- obtaining bids or price quotations;
- processing bids, placing purchase orders or concluding contracts; and
- allowing delivery of goods or service.

Most government entities use commodity codes provided by the National Institute of Governmental Purchasing (NIGP) on their requisitions.⁹

The requisition should contain the following information:

- Date of requisition (month, day, year).
- Name of department/section.
- Departmental contact and telephone number.
- Date required (use definite date, not “Rush,” “Expedite” or “ASAP”).
- Budget and contract codes and vendor identification (for an existing contract).
- Quantity required, including unit of issue.
- Description (Clearly describe the item needed including any technical requirements. If the department helps formulate the specifications, attach detailed technical specifications and other required information as a separate attachment).
- Purpose (Describe the reason for the purchase).
- Authorization block with line for signature of authorizing official (If a computerized or electronic ordering system is in use, this block will require entry of the personal authorization code).
- Budget certification (May be required for any local government to prove appropriation of purchase money).
- Estimated cost (For an existing contract, give the unit price per the contract and the total price).
- Delivery destination (Refers to the item’s delivery or service performance location. If there is a central receiving area, it will receive most deliveries. Delivery may also be directly to the user, to a work site, or to another authorized location).

Routing the Requisition

Routine Requisitions

After preparing the requisition, route the requisition to the following stations:

- **Departmental authorization.** For the signature of the authorizing official.
- **Additional authorization.** For any further authorization required by local ordinance or state law. Forward the requisition to the Judge’s office in counties where the County Judge’s approval is required. The County Judge bases the approval on whether the item has been included in the budget, and whether the line item has a sufficient balance to cover the purchase. Within the limits of the budget, and assuming the legality of the purchase, elected county officials may decide the purchasing needs of their own offices but may lack the authority to perform the actual purchasing transaction if the county has a purchasing agent.¹⁰
- **Accounts payable.** For encumbrance of the proper fund line item. This station should be skipped if an encumbrance system is not in place.
- **Purchasing.** When completed, the requisition is forwarded to purchasing, where it is processed.

Expedited Requisitions

Requisitions for expedited purchases are handled differently than routine purchases.

There are two classes of expedited purchases. They are:

- **Priority Three.** Purchases required within 10 days to prevent unacceptable work slow downs or service deficiencies.
- **Priority Two.** Purchases required immediately to prevent actual work stoppages or service interruption.

Expedited purchases are not emergency purchases. They are for items needed quickly to prevent costly delays, and therefore warrant the additional cost and effort caused by the interruption of the normal work routine. However, they are not to be used unless absolutely required.

For all purchases required under Priority Two and Priority Three, a competitive bidding process must be conducted under normal circumstances; an emergency must be declared in order to bypass the competitive bidding process.

Priority Three Requisition Procedures

1. The requisition is prepared according to established procedures for routine requisitions.
2. The requester should then notify Purchasing by telephone, specifying that a Priority Three requisition will be walked through and Purchasing should be given all available details.
3. The requisition is then walked to all required stations in accordance with established procedures. When the station has completed processing the requisition, it is then carried to the next station.
4. The requisition is hand carried to Purchasing. Purchasing makes the purchase in accordance with either Competitive Bidding or Non-Bid Purchases procedures.

Priority Two Requisition Procedures

1. The requisition is prepared according to established procedures for routine requisitions.
2. The requester should then notify Purchasing by telephone, specifying that a Priority Two requisition will be walked through. Purchasing should be given all available details.
3. The requisition is then processed as with a Priority Three requisition.
4. Purchasing begins the purchase process on receiving the telephone call in Step 2, and makes the purchase in accordance with either established procedures.

Emergency Requisitions

Requisitions for purchases defined as emergency purchases are handled similarly to those for expedited purchases with one major difference: they must meet the qualifications for emergency purchases in the pertinent statutes. Emergency purchase requisitions are coded **Priority One**.

Priority One Requisition Procedures

1. The requisition is prepared according to established procedures for routine requisitions, coded Priority One.
2. The requester should notify Purchasing by telephone, specifying that a Priority One requisition will be walked through. Purchasing is given all available details.
3. The requisition is walked to all required stations. When the station has completed processing the requisition, the requisition is carried to the next station.
4. The requisition is hand carried to Purchasing. Purchasing initiates the purchase immediately upon receiving the telephone call.

Types of Purchase Orders

A purchase order needs preparation when the completed requisition is received in the purchasing office. It will need to contain the following information:

- Requisition number.
- User department.
- Date of order.
- Name and telephone number of contact person.
- Affidavit of necessity (sometimes used to attest that the purchase is proper and required for the activities of the department).
- Certificate of availability of funds and budget authorization (sometimes required to prove that funds to cover the purchase were budgeted and a sufficient balance remains to pay for the purchase).
- Address to which invoice is mailed.
- Vendor codes.
- Destination or Ship To address.
- Description of item or service to be supplied.
- Quantity.
- Standard unit of measure.
- Unit price.
- Total price.
- Standard terms and conditions of sale.
- Other special terms and conditions of this sale (as required).
- Other information required by the government.

The vendor is selected either by bidding or by another method of selection and the purchase order is prepared and delivered. The Standard Terms and Conditions may be an attachment, or printed on the reverse of the purchase order.

In simple procurement, the purchase order serves as the single contract vehicle. In complex procurement, an additional detail document with specifications may be included with the purchase order.¹¹

Chapter 3

Specifications

Definition

A specification is a concise description of a good or service 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 an item for delivery, or preparation or installation for use.

Purpose

The purpose of any specification is to provide purchasing personnel with a clear guide of what to buy and to provide vendors with firm criteria of minimum product or service acceptability. A good specification should:

- **Set the minimum acceptability of the good or service.** The term minimum acceptability is key, since the vendor must know the minimum standard to determine what to provide. Too high a standard could mean wasted tax dollars. Too low a standard, and the good or service may not meet the expectations of the user.
- **Promote competitive bidding.** The maximum number of responsible vendors should be able to bid to the specification. Restrictive specifications decrease competition.
- **Include provisions for reasonable tests and inspections for acceptability of the good or service.** The methods and timing of testing and inspecting must be indicated in the specification. Tests should refer to nationally recognized practices and standards whenever possible.
- **Provide an equitable award to the lowest responsible bidder.** The buyer obtains goods or services that will perform to expectations, and the vendor is able to provide the goods or services at an equitable, agreed-upon price.

Preparing Specifications

The purchasing office, the division that will use the item or service or an outside agency may prepare the specifications. The final acceptance of the specifications rests with the purchasing office. This ensures proper quality control and helps avoid the proliferation of conflicting specifications in different departments.

Where to Obtain Specifications

Each government may have to write its own specifications, but it is a good idea to first try to obtain existing specifications, at least to get a good idea what types of specifications would help. Specifications may be obtained from:

- **Other local governments.** Contact cities, counties or other governmental entities. Purchasing agents from other government agencies should be helpful.
- **The State of Texas.** Access the State of Texas CO-OP Program website: <http://www.window.state.tx.us/coop>.

- **The federal government.** Access the federal procurement data system website: https://www.fpds.gov/fpdsng_cms/.
- **Trade associations and vendors.** If using a vendor's specifications, try to remove any "vendor bias," e.g. specifications that fit only one brand name.
- **Other public or private standards and specifications writing associations.** Examples include Underwriters Laboratories and the American National Standards Institute); and
- **Professional associations for procurement managers.** Examples include the National Purchasing Institute and National Institute for Governmental Purchasing.

A state agency may not accept a bid or award a contract from anyone who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. This may serve as a guide for local policy in this area.

Types of Specifications

The Comptroller's Texas Procurement and Support Services (TPASS) division develops formal standards and specifications for a number of commodities purchased in volume by the State of Texas. These standards and specifications establish minimum quality requirements and are identified by a standard/specification number and an effective or revision date. Access the Texas Comptroller's TPASS Specifications Library online: <http://www.window.state.tx.us/procurement/pub/specifications-library/>.

Design Specifications

Design specifications are detailed descriptions of a good or service, including details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and all other details needed to produce an item of minimum acceptability. Design specifications are usually required for construction projects, custom-produced items and many services.

Performance Specifications

Performance specifications have terms of required performance that describe the goods and/or services. They may include required power, strength of material, test methods, standards of acceptability and recommended practices.

Combination Specifications

Combination specifications contain elements of both design and performance specifications. Some features of each are included to allow a vendor some freedom in meeting the performance needs of the government and to require certain necessary design characteristics. This is probably the most common type of specification.

Brand-Name Specifications

Brand-name specifications list a good or service by brand name, model and other identifying specifications to limit the bidding to a single preferred product. This type of specification discourages competition and should be avoided unless the item is the only one that will satisfy the government's requirement. It is useful for purchasing replacement

parts where only the brand name item will work. It should be noted that a local government might have to explain in a court of law why another brand will not work, so this type of specification should be used judiciously.

Brand-Name or Equal Specifications

Brand-name or equal specifications are similar to brand-name specifications, except that equal products are acceptable in place of the named brand.

Qualified Products List Specifications

Qualified products list specifications, also known as approved products list specifications are based on a list of products, identified by manufacturers' names and model numbers, and are the only acceptable items. These are used when quality is a critical factor and testing other products would be too time consuming or expensive.

The list is prepared by testing products, either in the lab or in daily use. Vendors demonstrating their quality in comparison to those on the list may add items to the list.

Standard Specifications

Standard specifications include a single specification for one or more goods or services ordered on a recurring basis with the same general purpose. The same specification is used each time an order is placed or bids are advertised. Examples include office supplies, paper, janitorial supplies and copier service contracts. Standardized specifications will usually be more detailed than one-time specifications.

Numbering System for Specifications

The purchasing office should maintain a defined numbering system for its specification files. Any system that suits the department is acceptable. One way is to use a standard commodity classification and item numbering system. Most counties use the National Institute of Governmental Purchasing (NIGP) commodity code system.

The following procedures describe one numbering system that allows considerable expansion.

Step 1: The specifications are numbered using three sets of numbers and a designation alphabet letter, as follows:

- **Commodity class.** A three-digit number that designates the general classification of the commodity (e.g., Class 005 - Abrasives).
- **Item number.** A two-digit number further breaking down the main class into subcategories (e.g. Item Number 42 - Abrasives, Solid: grind-wheels, whetstones, etc.).
- **Sequence number.** A two (or more)-digit number indicating the specification sequence number for that class and item number. The first specification written for that class and item number would be 01.
- **Revision designation.** A revised specification should be designated by a letter (e.g., the specification for abrasives, solid, first revision of the first specification written would be numbered 005-42-01A; the second revision would be 005-42-01B).

Step 2. A specification from an outside source should be renumbered to the government's system and filed in the proper sequence.

Step 3. Specifications for standardized items should be designated as such (e.g., Standard Specification Number 005-42-01B).

Other numbering systems might include:

- **Hierarchical system.** Example: Class 000 Foods, Sub-Class 00 Dairy Products, Fresh.
- **Numbering system.** Example: Number 001 - Item Name Butter; specification for butter would be numbered 000-00-001.
- **Calendar system.** Using the date for the first eight digits and numbering specifications issued that day in sequence. Example: the first specification issued on Jan. 1, 2002 would be 01012002-1.

Writing Specifications

The first step in writing specifications should be to try to obtain an existing specification before starting to write a new one. Existing specifications will usually require rewriting. This section will help accomplish that task as simply and efficiently as possible.

Step 1. Receive a requisition and determine that an acceptable written specification is available.

Step 2. Gather data for the specification. Sources are:

- **User department.** Determine their needs and requirements).
- **Vendors and manufacturers.**
- **Trade associations for that commodity, service or product.**
- **Other local, state, and federal government specifications and standards.**
- **Private or public standards-writing organizations.** Such as American Society for Testing and Materials (ASTM), Society of Automotive Engineers (SAE), and American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE).

Step 3. Analyze and evaluate the data based on the government's requirements.

Step 4. Decide on parameters for the item of service and set minimum levels of acceptance so that the items purchased will meet the needs of the government.

Step 5. Write the proposed specification. Use a standard format for all specifications to ensure uniform preparation and easier understanding. Always write specifications to encourage competition by including as little restrictive language as possible. Use U.S. Industry and National standards and measures where appropriate to describe the items.

Step 6. Where applicable, and especially for standardized specifications, circulate the specification to:

- All potential users.

- Vendors on the vendors list that supply the item of service.
- Buyers in the purchasing office.
- Request their comments. Strongly suggest that vendors submit comments promptly, since the final specification will be binding on all vendors. Users should comment on unsatisfactory aspects of the specification to avoid protests later.

Step 7. The purchasing office should:

- analyze and evaluate comments on the proposed specification;
- tabulate recommended changes;
- evaluate the effects on the proposed specification; and
- discuss them with users and buyers.

Step 8. Change proposed specification and if necessary, circulate the proposed specification again. Go back to Step 6, or if only minor changes were made, prepare final version.

Step 9. Assign a specification number.

Standards

Definition

Standards provide a universally recognized reference to measures of quality, quantity, size, weight, length, composition, purity, diameter or other measures.

Authority

A recognized body of authority in any field must determine the standards for that field. Organizations such as the Air Conditioning and Refrigeration Institute and the Underwriters Laboratory, Inc. are examples of authorities that set industry standards. Standard-setting organizations may also be governmental organizations, such as the National Bureau of Standards.

Most governments buy large quantities of goods and services, such as office supplies, maintenance supplies and automobile supplies. In many governments, the individual departments buy these items, purchasing whatever kind and brand they want, as they need it. However, it is usually much more efficient and cost effective to consolidate these individual purchases and buy standardized items using standard specifications.

Benefits

Standardization enables local governments to get the best value for their money. It allows officials to establish a government-wide standard for needed items, while taking advantage of the ability to make larger purchases for lower costs, having fewer items to service, and having fewer orders to place. Many routinely needed items can be purchased on annual contracts at significant savings to the government.

Easy targets for standardization include office and maintenance supplies. However, consideration should be given to larger and more expensive items as well. For example, if the

government can efficiently use three automobiles of the same make and model instead of three different brands, then it will simplify parts stocking and engine maintenance if three vehicles are purchased at once. The government will probably also be able to negotiate a better price if it buys three cars at once.

Developing Standards

Standardization requires proper planning. A purchasing department, together with the user departments and suppliers, must decide on the requirements for items included in the standardization program. Then all purchases of standardized items must be made from that specification.

Here are the steps for establishing a standardization program.

- Step 1.** Determine the good or service to be standardized. A products standardization committee selects items based on established criteria. The standard specification may need to include a qualified product list, depending on the criteria adopted.
- Step 2.** Develop selection criteria. Few governments will select a product based solely on quality. Criteria should include minimum acceptable quality, availability, cost, service requirements plus the cost and availability of service. Remember that the item selected should be as compatible as possible with those already in use.
- Step 3.** If required, develop a standard specification for the good or service. See previous section on Writing Specifications. A standard specification will allow the purchasing office to proceed in a routine way to procure the items.
- Step 4.** Evaluate the products if the committee determines that products are from a qualified products list. Use consumer reports, experience and actual testing. The capabilities of the government may limit the evaluation. For example, a large school district with many schools can efficiently test a variety of floor-care products while a small county with four or five buildings might not be able to.
- Step 5.** Purchase all items on the list of standardized products from the specifications developed. Exceptions should only be on an emergency basis with full justification provided for any exceptions.

Chapter 4

Competitive Bidding

In competitive bidding, the available vendors compete with each other to provide goods or services. Solicited purchases come in one of two forms—competitive bidding or competitive proposals. Competitive bidding and competitive proposals are required by statute for purchases of more than certain dollar limits.

In 1991, the Texas Supreme Court defined competitive bidding: “Competitive bidding requires due advertisement, giving opportunity to bid, and contemplates a bidding on the same undertaking upon each of the same material items 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 items and services and parts of the contract, and that the proposal specify as to all bids the same, or substantially similar specifications.” *Sterrett v. Bell*, 240 S.W. 2d 516 (Tex. Civ. App. - Dallas 1951, no writ).

The Court also defined the purpose of competitive bidding: “The purpose of competitive bidding 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.” *Sterrett v. Bell*, 240 S.W. 2d 516 (Tex. Civ. App.-Dallas 1951, no writ).

Competitive Bidding and Municipalities

The Office of the Attorney General of Texas’ *2010 Texas Municipal Procurement Laws Made Easy* is the latest reference guide to Texas Local Government Code statutes and other municipal procurement laws specific to competitive bidding.

Before a city may enter into a contract that requires an expenditure of more than \$50,000¹² from one or more municipal funds, the city must:

- comply with certain statutory procedures for competitive and sealed bidding or competitive sealed proposals when purchasing goods or services, including high technology items or insurance; and
- use the reverse auction purchasing procedure or comply with required prescribed methods of construction procurement.

For a general description of legal statutes specific to competitive bidding by municipalities, refer to Appendix 4: Texas County and Municipal Procurement Laws. Also, consult the Office of the Attorney General’s *2010 Texas Municipal Procurement Laws Made Easy* reference manual available at: http://www.oag.state.tx.us/AG_Publications/pdfs/procurement_easy.pdf for the latest available statutes.

For the purchase of real property such as land and buildings by municipalities, state law does not require cities to follow specific procedures.¹³ For contracts for certain professional services, Texas laws prohibit cities from awarding a contract by competitive

bidding.¹⁴ The Professional Services Procurement Act describes procedures to be followed for contracting these services. Also, cities may use reverse auction procedures for purchasing.¹⁵ For the purchase of personal property and leasing of cars, office equipment and other items, competitive bidding requirements apply for expenditures of more than \$50,000 in municipal funds.¹⁶

Bonding Requirements

Bids may be subject to bonding requirements. Typically, a bid bond may be required for public works projects or on bids exceeding a specified dollar level. This ensures that if the bidder attempts to withdraw after the bid is accepted, the government will not suffer loss.

In Texas, the successful bidder on a public works contract exceeding a dollar level set by law must post a performance bond. The successful bidder on any other contract exceeding certain dollar levels may have to post a performance bond if required by the governmental entity.

Surety companies authorized to do business in this state should execute the bonds.

The government should always consider the ramifications in deciding whether to require a bond when there is a choice. If there is substantial risk of loss, a bond should be required. The cost of bonding will undoubtedly be passed along in the contract price. Some smaller contractors may find it difficult to obtain or afford large bonds and may exclude themselves from bidding. The purchasing law section includes information on bid bond requirements.

Competitive Bidding Process

Within local governments, the competitive bidding process has two additional purposes. Competitive solicitations for bids help ensure the best available value for funds spent and help ensure that public funds are used appropriately, according to law and only for public projects. The bidding process also gives an equal opportunity to those qualified and responsible vendors who want to do business with the government. A standard bidding procedure assures that public money is properly safeguarded.

Formal Competitive Bidding

Formal competitive bidding is required for city and county purchases of products or services with a value of \$50,000 and above. Generally, the term formal competitive bidding is applied when a solicitation process complies with the Local Government Code, §262.023. This requires approval by the commissioners court. Generally, competitive bids are not negotiated and price is the main factor used in determining whether a vendor's products or services meet the county's bid specifications.

Competitive bidding is non-negotiable. Local governments make awards to the lowest and best bid. The formal sealed bid process includes advertisements in newspapers and local media followed by the opening of sealed bids in public. Informal bids do not require newspaper advertisement. Competitive bidding steps include contacting vendors, either

by telephone or in writing, to give them the opportunity to offer a price quotation on a desired good or service.¹⁷

Formal sealed bids includes the process known generally as “competitive bidding.” Sealed bids are received through an Invitation for Bid (IFB) for contracts that may exceed \$50,000.

Price quotations should be sought on all purchases less than the dollar level that requires sealed competitive bids, unless the purchase is relatively minor or an emergency purchase. Even emergency purchases should use all practical means to obtain the best price available. This is discussed in the section on negotiated or non-bid purchases.

Reverse Auctions

The Texas Government Code, chapter 2155, defines the term *reverse auction*, which is one of the allowed processes local governments may use to purchase goods and services:

“Reverse auction procedure means a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or a bidding process usually lasting less than two weeks and taking place during a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.”

In the reverse auction, bids are submitted electronically in real time and prices start high and go lower as suppliers, instead of buyers as in a traditional auction, bid for contracts to provide goods and services. Suppliers bid against each other online. The vendors remain anonymous to each other. Only the local government and the buyer can see the vendors’ identities.

General Procedures for Competitive Bidding

A city must prepare specifications with details of requirements that must be met by goods or services to be purchased. A copy of the notice must be published by the city, include the specifications and state any factors other than price that are part of the selection decision. If the city plans to use a method other than competitive sealed bidding such as competitive sealed proposals, the city’s governing body must make that decision before any notice is publicly announced.¹⁸

The city must publicly announce a date, time and location upon which bids or proposals will be publicly opened and read for others to hear. This announcement must be publicly recorded or published once per week for two consecutive weeks with the first notice published before the 14th day before the date that bids or proposals are publicly opened and read aloud. Any notice must be published in the newspaper in the city where the bidding occurs. Where the city does not have a newspaper, the notice should be placed at city hall for 14 days before the date that bids or proposals are opened in public and read aloud.¹⁹

Formal Sealed Bids

Use formal sealed bids for purchases exceeding a set dollar level specified by statute. Formal sealed bids are solicited using an Invitation for Bid (IFB) for contracts over \$50,000. The bid consists of the items offered by the vendor in response to the specifications, along with details governing the offer. An appropriate purchasing statute controls bidding for the various local governments. All statutes contain the following general requirements:

1. The bids are advertised based on the specifications and conditions of purchase provided by the government.
2. The bid solicitation sets out the period, including date and hour, bids are received. After that date and time, no further bids are accepted.
3. The bids are opened and read aloud at the specified date and hour, and submitted to the governing body. Generally, the bid that represents the best value is accepted, but only one bid may be accepted unless the bid specifications note multiple awards will be made. (An exception is for county road material.)²⁰
4. If no bid is acceptable, the entire bidding process must be repeated.

Formal Competitive Proposals

Another term used in the bidding process is the formal competitive proposal defined by the Local Government Code, §262.030, which also requires approval by the commissioners court.

Procurement of High Technology Goods and Services

Generally, the procurement of high technology goods and services, insurance, landscape maintenance, recycling services and travel use the formal sealed proposals process. Goods or services procured as high technology purchases include:

- Data processing equipment and software;
- Electronic control systems such as building energy management systems;
- Microwave, radio and telecommunications systems; and
- Related technical services to the above good and services.

For the best prices and values on high technology goods and services purchases, the Texas Department of Information Resources (DIR) operates a streamlined cooperative purchasing program for state and local government, public education and other public entities in Texas called the Information and Communications Technology (ICT) Cooperative (Co-op) Contracts program (formerly known as Go DIRect). DIR offers more than 750 cooperative purchasing contracts for technology products and services including hardware, software, staffing services, maintenance and other ICT services such as managed services and technology training.

DIR's ICT Co-Op Contracts program meets the competitive requirements for all governmental entities under Texas Government Code 2054.0565. For more information, visit the DIR website: <http://www2.dir.state.tx.us/ict/overview/Pages/overview.aspx>. Any Texas state, county or local government office and public education entity is eligible to participate in the ICT Co-op Contracts program.²¹

Competitive Proposals and Requests for Proposal (RFP)

Similar to the competitive procurement process, the competitive proposal process, often called a request for proposal (RFP), produces a negotiated procurement. In the RFP, cost is not the only determining factor. Proposals are received, not opened publicly, and contents of the proposal are not revealed until the contract is awarded. It should be the government's policy to use competitive principles in awarding all public contracts of any amount with very limited exceptions.

These competitive principles should apply to all departments and divisions of the government. Cost may not be the only evaluation factor in the RFP process. The formal competitive bid proposal process of \$50,000 or more must keep pricing confidential until after the contract award.²²

Once the need for a good or service with a cost of \$50,000 has been identified, the requesting city or county government department should contact its purchasing office or authorized purchasing official for assistance in writing the specifications. For the greatest competition possible, specifications should be comprehensive and broadly defined.

Other Considerations in the Competitive Bidding Process

Under Chapter 252 of the Local Government Code, the city must advertise again or make the decision not to award any contract when no response is received to notices of requests for competitive bids. When only one bid is received, the city may accept or reject it, or advertise again to try and collect additional bids for comparison. Competitive bids may be rejected by a city's governing body.

Purchase Requisition (Counties)

In many instances, the original purchase requisition for goods or services appears in the form of a written memo sent by the requesting city or county government department to the purchasing department or authorized purchasing official with appropriate signatures of management. The memo should include budget line items that will fund the purchase requested. Or, a description of the source of funds should be noted before the purchasing office or authorized purchasing official starts the competitive solicitation preparation.

Specifications for the requested goods or services should accompany the memo. The specifications and the memo should be sent electronically, if possible, to the purchasing office or authorized purchasing official. In some cases, the purchasing office will work with the department personnel requesting the purchase to write accurate purchase specifications.

Notice of Proposed Purchases

The purchasing office will finalize the purchase specifications, prepare to issue the competitive solicitation or RFP document and publish notice of the proposed purchase to comply with requirements in the Local Government Code, §262.025. Any 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 prior to the 14th day before the

date of the solicitation opening. Purchasing officials usually advertise for 21 days to allow vendors enough time to respond and send in the completed solicitation. Advertising time must be at least 15 days, but may be lengthened or reduced.

Advertising notices for proposed purchases must include:

- requirements or specifications;
- statement of where the requirements or specifications may be obtained;
- location and time for receiving and opening solicitations;
- name and position of the employee who receives sent solicitations;
- indication of whether the vendor should use lump-sum or unit pricing;
- bond type required for the vendor; and
- method of payment to the county.

When unit pricing is required, the county must include an estimate of quantities using available information. The county's IFB should describe how it calculated the lowest price.

RFP Process

- The county's purchasing office or official publishes a proposed purchase notice if the commissioners court approval is required.
- The commissioners court is required to approve advertising for an RFP that does not have adequate funding the approved county budget or when goods and services requested have not yet been approved by the commissioners court in the county's budget process.
- Generally, requests for high technology goods or services purchases must be approved by an internal information systems technology officer or department.
- Requests for records management goods or services purchases may need to review high technology purchases related to record management.
- The commissioners court delegates authority to the county's purchasing agent to approve the description of purchase requirements.

Amending the Solicitation

The county's purchasing agent may be authorized by the county commissioners court to extend a proposal opening or extend the notice of a solicitation:

- upon discovery of a clerical error in the solicitation or if the goods or services themselves require an extension;
- for the purpose of clarifying the meaning of the solicitation; and
- when the amendment does not change the scope of the original solicitation.

Competitive Proposals

According to the Local Government Code § 262.030(d), formal competitive proposals are similar to competitive bids but are limited in scope by Texas statutes. Counties may use the competitive proposal procedures for the purchase of insurance, high technology items, landscape maintenance, travel management or recycling.²³ Municipalities can only use this method for procurements of high-technology products. If they have a population of more than 75,000, they can use competitive proposals for procuring

insurance.²⁴ “High technology item” is a service, equipment or good of a highly technical nature, including data processing equipment and software 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 items. “Item” refers to any service, equipment, good or other tangible or intangible personal property, including insurance and high technology items.²⁵

This definition of “high-technology” is broad enough that some governments have used competitive proposals in areas that might not ordinarily be considered high technology due to a high technology component in the item or service. Purchasers should keep abreast of developments in this area.

The chief differences between bids and proposals are:

- The specification is written using performance standards rather than the description of the good or service in a proposal. The specification also lists the factors by which the proposal will be judged, and the weight to be given to each factor.
- Vendors submit proposals of their own design for a system to satisfy the requirement set forth in the proposal. Proposals may incorporate entirely different hardware or services to accomplish the same performance.
- After proposals are received, the government may enter into negotiations with as many vendors as have submitted feasible proposals to find the best possible proposal for each vendor.

Although there is no legal requirement to do so, proposals are often used to procure professional or personal services. While the Professional Services Procurement Act prohibits using competitive bids to procure those covered professional services, there is no problem with using a concept based on the competitive proposal to obtain qualifications and rates charged for professional services from interested professionals. The only requirement is that “a governmental entity may not select a provider of professional services or award a contract for the services on the basis of competitive bids.”²⁶

Invitations for Bid (IFB)/Requests for Proposals (RFP)

Invitations for Bid (IFB) and Requests for Proposals (RFP) are documents notifying vendors that the government has specific requirements for materials and supplies and is offering vendors an opportunity to fulfill those requirements.

These documents are designed to solicit bids or proposals from well-qualified vendors. They are usually sent to those vendors known to provide the particular commodity or those on a list of vendors that provide the particular commodity. The IFB/RFP is also advertised in the local newspaper according to statutory requirements.²⁷

As of 2010, most city, county, federal and state governments issue solicitations electronically to improve efficiency, reduce paper and document processing costs while linking documents online to increase governmental accounting transparency

Solicitations should be simple and practical. Bids must be advertised as widely as possible to ensure fair competition. Poorly written bid invitations or requests for proposals discourage competition and drive up prices.

At any time before the date is set for opening bids, the government may cancel IFBs and RFPs. Notices should be made to all vendors receiving bid/proposal invitations.

IFBs and RFPs may also be amended after being issued. When amendments are made, the same requirements for notification and advertising must be made. The amendments notice should state whether the bid opening date has been extended. The bid opening date must be extended if the period from the date the modification or amendment is issued is less than the required notification period.

A bid invitation or a proposal solicitation is a package of documents needed by the vendor in order to respond to the government's requirements. Generally, the package includes:

Standard Terms and Conditions

Standard terms and conditions are all conditions of doing business with the government that remain constant for all contracts and purchases, unless specifically deleted. They are usually presented in an attachment that goes out with all bid invitations and proposal requests. Standard terms and conditions are also frequently incorporated into a government's purchase order forms.

Special Provisions

Special Provisions refers to any terms and conditions not always required but required for a particular contract or purchase.

Pricing

The vendor quotes prices in accordance with the specification requirements in the offer and acceptance page. Prices are usually provided for each unit and the total cost for the estimated amount required.

Specification

In place of enclosing the actual specification, information about where the specification may be obtained may be substituted.

Invitation for Bid (IFB) or Request for Proposals (RFP) Solicitation

An IFB or RFP requires certain information from the bidder or vendor making the proposal. Requirements on the bid invitation or RFP solicitation should cover the solicitation details including:

- An IFB/RFP identification number. Vendors must be able to refer to the number when making inquiries, and purchasing staff must be able to trace all transactions to determine their status.
- A brief description of the materials or supplies to be provided.
- The requisition number(s).

- The closing date and hour for receiving bids or proposals. This should state that the time is determined by a designated time source, for example, the purchasing office's clock.
- The place where bids or proposals are to be sent, including the address and office.
- Information on where specifications may be obtained, if not included in the package.
- Person to contact for information and instructions to bidders.
- The factors to be used to evaluate the proposals and the weights attached to each factor (for RFP's only). Evaluation factors may include price, experience of requester's staff, ability to respond in a timely way, past recommendations, safety record and financial soundness, as well as any others necessary factors. Other evaluation factors will depend on the individual requirements attached with the procurement.²⁸

Acceptance of Bids by Fax or Electronic Media

For the latest rules and legal opinions regarding the acceptance by municipalities of competitive bids by either fax or electronic media, please refer to the Office of the Attorney General's *2010 Texas Municipal Procurement Laws Made Easy*. Or, click on the Texas Attorney General's Office's website link: http://www.oag.state.tx.us/AG_Publications/pdfs/procurement_easy.pdf.

Additional Criteria for Qualifications of Potential Bidders (Laws for Municipalities)

Municipalities may, under current law, specify criteria that will be considered for awarding contracts in the competitive bid process. State law only allows cities to award a contract to the lowest responsible bidder using competitive bidding if the bid specifications do not include specific additional criteria. Additional criteria may include the purchase price; the bidder's reputation and bidder's goods or services; quality of the bidder's goods or services; the bidder's previous relationship with the city; the impact on the municipality's ability to comply with laws and rules for contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities; the total long-term cost to the municipality of acquiring the bidder's goods or services; and relevant criteria itemized or described in the request for bids or proposals.²⁹

Pre-Bid Proposal Conference

Local Government Code, § 262.0256 allows the commissioners court to require potential vendors to attend a mandatory pre-bid (pre-proposal) conference for the purpose of answering vendor questions and discussion of contract requirements. The authorized purchasing agent determines, with the user department, whether a pre-bid or pre-proposal conference is needed and if attendance is optional or required.

Receiving the Bid/Proposal

Receiving competitive bids and proposals must be done properly in order to ensure that no possibility of favoritism or even the appearance of favoritism exists.

Each bid or proposal must be returned to the government office designated in the invitation in a separate sealed envelope, with the bid/proposal identification number marked on the outside. Only one bid/proposal should be submitted per envelope. If more than one bid is to be submitted, require that the vendor use separate envelopes for each one.

The bid/proposal envelope should be time and date stamped in the designated office as soon as it is received. The bid/proposal envelope should then be filed unopened together with the other bids/proposals for the same invitation/request number.

If an unmarked envelope containing a bid is received, it will be opened only to establish that it contains a bid. This will not automatically eliminate the bid but will violate the integrity of the process.

Bids/proposals are opened at the hour specified in the invitation/request at the place named in the IFB/RFP. Vendors and the public are invited and encouraged to attend the bid opening. In case no observers attend the bid opening, always have a member of another office act as witness so that charges or irregularities can be disproved.

Disqualification of Bids/Proposals

Unsigned bids/proposals, or bids/proposals with unauthorized signatures are grounds for disqualification as are bids/proposals received after the date and time for opening. Late bids/proposals cannot be considered for award of the purchase.

Also subject to disqualification are bids/proposals where prices are conditional on award of another bid, or when prices are subject to unlimited escalation. If allowed by the specification, prices may be subject to escalation based on an independent wholesale index. (e.g., for oil and gas products, the net terminal price or current Oil Price Information Service prices.)

Disqualified bids/proposals are returned to the bidder. Late bids/proposals may be returned unopened, or opened and evaluated but not considered for the award, according to the policy established by the government.

It may sometimes limit controversy about bid openings if an independent office is allowed to receive and open bids/proposals. The bids may be addressed to the county or city clerk or secretary, who will record the date and time each was received. On the designated date, the clerk will publicly open and read the bids aloud and forward them to the purchasing office for action.

Tabulating and Evaluating the Bid/Proposal Results

The governing body holds statutory authority for awarding contracts. It must have reliable evaluations of the bids or proposals in order to make wise decisions about which to accept. The purchasing office staff can simplify this task by providing tabulations, calculation checks, price extensions and information about compliance with specifications. The staff should also evaluate the merits of each bid or proposal and make recommendations.

When the bids/proposals are opened, the purchase office or purchasing officer tabulates the results for easy reference. The purchasing officer performs the following tasks for inclusion in the summary:

- Double-checks all calculations and sums.
- Extends unit prices to a total price for the requested quantity.
- Verifies that an authorized signer for the vendor signs the bid/proposal.
- Verifies that the bid/proposal meets all requirements listed in the specifications and lists all areas where it fails to meet any conditions included in the specifications and whether any failures disqualify the bid or proposal.
- Confirms that all required samples are included and if testing is required, includes the results.³⁰
- The evaluation and recommendation should include whether the vendor has submitted a responsive bid or proposal (one meeting all the criteria of the IFB/RFP). It should also give information about whether the vendor has a record of being a responsible bidder (one who has proven capable of performing a contract and/or appears financially and technically capable of adequately performing this contract). If the bidder's safety record is to be considered, the evaluation should state whether or not the bidder has an acceptable record, and if not, what identifiable factors were not satisfactory.

A bid should also be evaluated using alternate methods of evaluation, if applicable, such as:

- life cycle or total cost;
- modified life cycle costing;
- energy efficiency/economy performance;
- warranties;
- price versus performance factors;
- discounts; and
- other factors.

The IFB should state that the bid would be subject to these evaluations. Although competitive proposals must be evaluated according to weighted factors set out in the request for proposals, the above evaluation methods may sometimes apply as well.

Evaluation of Bids Using Alternate Methods

Life Cycle or Total Cost Purchasing

This method of purchasing attempts to arrive at a more realistic cost over the actual useful life of a product. The rationale is that a quality product may initially cost more than a lower quality one, but may last longer and/or incur less repair and maintenance costs. On the other hand, any purchasing manager can verify that there are reasonably priced products available which may out-perform the similar but higher-priced item.

This type of evaluation includes:

- Initial cost.
- Operating cost over the item's life at present value.
- Maintenance cost over the item's life at present value.
- Trade-in or salvage value, also at present value.

When necessary, total cost purchasing can and should be combined with other evaluation criteria, such as conservation goals or safety factors.

Example: The Sample City Road Department needs a new tractor. Invitations to bid are sent out for the tractor with a seven-year maintenance contract. The invitations to bid specify that total costing will be used. Operating costs will be relatively equal. Three bids are received, as follows:

	Purchase Price	Seven-Year Guaranteed Maintenance	Estimated Resale Value
Bid #1	\$51,000	\$10,000	\$15,000
Bid #2	46,000	15,000	7,000
Bid #3	40,000	20,000	3,500

The bids are evaluated as follows:

- All the bids are considered responsive and responsible.
- Safety and economy are relatively equal.
- The total cost of each bid is calculated using present value techniques. Current interest rates the government earns on its invested monies are used, since we are calculating what the government is giving up by each purchase, and for how long. For example, let us say this annual rate is 10.

Consulting a present value table, we find:

Year	@10%
1	0.909
2	0.826
3	0.751
4	0.683
5	0.621
6	0.564
7	0.513

The annual maintenance cost must be evaluated each year, because the maintenance costs are divided into seven equal payments.

For Bid #1, the annual cost is $\$10,000/7 = \$1,428.57$.

For Bid #2, the annual cost is $\$15,000/7 = \$2,142.86$.

For Bid #3, the annual cost is $\$20,000/7 = \$2,857.14$.

Each must be reduced to the present value using the factor for each year in succession.

Bid #1	Bid #2	Bid #3
$0.909 \times \$1428.57 = \$1,298.57$	$0.909 \times \$2142.86 = \$1,947.86$	$0.909 \times \$2857.14 = \$2,597.14$
$0.826 \times \$1428.57 = \$1,180.00$	$0.826 \times \$2142.86 = \$1,770.00$	$0.826 \times \$2857.14 = \$2,360.00$
$0.751 \times \$1428.57 = \$1,072.86$	$0.751 \times \$2142.86 = \$1,609.29$	$0.751 \times \$2857.14 = \$2,145.71$
$0.683 \times \$1428.57 = \975.71	$0.683 \times \$2142.86 = \$1,463.57$	$0.683 \times \$2857.14 = \$1,951.43$
$0.621 \times \$1428.57 = \887.14	$0.621 \times \$2142.86 = \$1,330.72$	$0.621 \times \$2857.14 = \$1,774.28$
$0.564 \times \$1428.57 = \805.71	$0.564 \times \$2142.86 = \$1,208.57$	$0.564 \times \$2857.14 = \$1,611.43$
$0.513 \times \$1428.57 = \732.86	$0.513 \times \$2142.86 = \$1,099.29$	$0.513 \times \$2857.14 = \$1,465.71$
Totals	\$6,952.85	\$10,429.30
		\$13,905.70

Resale at present value is calculated for each bid using the present value factor for year seven (since this payment would be received in the seventh year) as follows:

Bid #1	$\$15,000 \times 0.513 = \$7,695.00$
Bid #2	$\$7,000 \times 0.513 = \$3,591.00$
Bid #3	$\$3,500 \times 0.513 = \$1,795.50$

The total cost to consider is the total of the purchase price plus the total maintenance cost at present value minus the resale amount at present value. Therefore we evaluate the bids as follows:

	Bid #1	Bid #2	Bid #3
Purchase price	\$ 51,000	\$ 46,000	\$ 40,000
ADD (+) maintenance cost at present value	6,953	10,429	13,906
SUBTRACT (-) resale value at present value	7,695	3,591	1,796
Totals	\$50,258	\$52,838	\$52,110

In this case, the best value over the expected life of the tractor would be bid #1, and the purchasing office should recommend that it be accepted.

Modified Life Cycle Costing

This method of evaluation is similar to life cycle or total cost purchasing but may use some modifications to simplify the calculations. For example, in the evaluation of bids for a tractor on the previous page, rather than doing present value calculations for each year of the maintenance; it would be simpler and accurate to use the midpoint year as the average and multiply it by seven. Therefore the calculation would be:

Bid #1	Annual maintenance cost is $\$10,000/7 = \1428.57 . Midpoint year is the fourth year, so use the present value factor (0.68301) for that year, then multiply by seven. For example: $\$1,428.57 \times 0.68301 \times 7 = \$6,830.09$. (This compares to \$6,954.86 for the long calculation.)
Bid #2	$\$15,000/7 = \$2,142.86 \times 0.68301 \times 7 = \$10,245.16$ (compared to \$10,432.31)
Bid #3	$\$20,000/7 = \$2,857.14 \times 0.68301 \times 7 = \$13,660.19$ (compared to \$13,909.74)

In using any modification or variation of the life cycle costing method, it is important to be sure that the modification does not tend to favor any bidder in any way.

Energy Efficiency/Economical Performance

This evaluation method uses energy efficiency factors, if available, to evaluate the operating cost of items being considered for purchase and includes this in the bid evaluation. For example, if an air conditioning unit is rated to save 15 percent more power than another unit being considered, then the expected average operating cost of both units should be calculated and compared. The savings should be considered in the award of the bid. Another method is to calculate the estimated total energy cost of operating each unit being considered and add this to the purchase cost. The present value method should be used in these calculations.

Warranties

There is a perception that “a warranty is a warranty” and they are equal among similar products. This is not necessarily so. Many warranties are not the same, and coverage may be substantially different. Each product’s warranty should be carefully evaluated for its potential to save money in repairs or down time.

Discounts

The government can save money by taking discounts when they are offered. When not calculated into the bid, discounts usually consist of three types:

1. Percentage reduction from a list price.
2. Percentage reduction from the price when prompt payment is received.
3. Price reduction when certain volumes are purchased. For example, the unit price is ‘x’ until 1000 units are purchased, then the unit price becomes ‘x minus 5 percent,’ until 2000 units are purchased and it becomes ‘x minus 10 percent.’

The bids should be awarded based on the net price after discounts, rather than simply on the price or the size of the discount. In addition, the invitation for bid should state that discounts would be considered. A general statement may be included such as: “Bidders are encouraged to compute discounts for prompt payment into the bid price(s). Terms should be net, 30 days. Such bids may receive preference. If a cash discount is offered and accepted, it will be considered earned if paid within 30 days after receipt of correct invoice or acceptance of goods, whichever is later.”

Evaluation for Other Factors

Many agencies consider non-traditional factors when evaluating purchases. This may be due to other government programs concerning environmental issues or minority participation in government contracts. For example, consideration may be given to:

- Quietness of operation.
- Cleanliness of operation — freedom from emissions of different pollutants, either exhausted or manufactured as a by-product, etc.
- Historically underutilized business ownership, or majority ownership, of the bidding company.
- Minority proportion of employees by the vending company.

If a local government uses such factors as set-asides, it may be a violation of the bidding statutes, which tend to promote open competition for bids among all qualified bidders.

Many local governments still wish to promote historically underutilized businesses to the maximum extent possible and will institute such measures.

Caution should be used when setting up such programs and the local government's attorney should be consulted. If set-asides are used rather than providing information and assistance in bidding, then make sure that the percentages are based on valid studies of percentages of minority involvement in the business community. This may make the set-asides more defensible.

Awarding the Contract

The governing body must award all contracts exceeding the competitive procurement limits (\$50,000 in 2010). The purchasing agent is the contracting agent for awards of contracts under \$50,000 (as of 2010).³¹

Once the bids are received and tabulated and purchasing makes a recommendation, the bids should be considered at a public meeting of the governing body. In the case of proposals, there may need to be several private negotiation sessions with qualifying bidders in order to arrive at their final recommendations. The proposals should then be considered in public session.

In almost all cases, bids should be awarded to the lowest responsible bidder. In the case of food items, counties may award a bid based on the lowest and best value bid.³² Another exception is in multiple awards of contracts for road materials for counties.

Although the terms "lowest and best value" and "responsible bidder" are not defined, common sense and experience should lead to an understanding of the meaning. "Lowest" is obvious, and does not need further interpretation. "Best value" may need to come into play when, in the judgment of the governing body, a higher bid has such outstanding qualities as to overcome its higher price. Ideally, specifications were written in such a way that the only difference between the bids would be price. However, practically, this rarely happens. The governing body needs to keep in mind the difference between judgment and personal preference.

Webster's New Collegiate Dictionary defines "responsible" as, "marked by responsibility or accountability" or "able to answer for one's conduct and obligations." Therefore, we would normally not disqualify a bidder unless there was a reasonable expectation that the bidder might not be able to satisfactorily fulfill the contract, or that past performances had left grounds for suspecting that the bidder might engage in unacceptable conduct. Under some circumstances, safety records may be considered.

Since disqualifying a bidder has such adverse effects, it should not be done lightly. If a bidder has had past unsatisfactory contracts with the government, the experiences should be thoroughly documented in order to support any later disqualifications.

If a bid other than the low bid is accepted, the lower bidders may be given the opportunity to appear and give evidence of their responsibility. For counties and for public works

contracts the lower bidders must be given the opportunity to appear and give evidence of their responsibility.³³

While there are more similarities than differences, competitive proposals have some features that must be considered separately from competitive bids. Proposals are treated differently than competitive bids in that there are additional steps that must be completed before the proposals are ready for the governing body's final consideration. The purpose of this subsection is to give guidelines for handling proposals.

A bid must generally be tabulated with evaluations and recommendations attached before it is given final consideration. A proposal must also be tabulated and evaluated but then is compared to the ideal system or service to evaluate its shortcomings and strengths. The strengths are noted, and the government and the bidder negotiate the shortcomings. Proposals are evaluated against each other; ranked; possibly negotiated; ranked again and narrowed to a list of finalists. After further negotiations, a final selection is made.

Receiving and Opening the Proposal

The receipt of competitive proposals requires the same steps as competitive bids, plus two additional procedures. The two additional steps are listed below.

- After opening the proposals, the bidders' names are announced, and the proposals are set aside for further evaluation and negotiation with the bidders. Contents are not disclosed at this time.
- Throughout the proposal process, information identified by the vendor as trade secrets or proprietary information contained in the proposals must be kept confidential by law.

Tabulating and Evaluating the Proposal

In awarding a contract based on a proposal, the governing body needs even more guidance than with bids. A proposal's evaluation can mean the difference between a good and an unsatisfactory high-technology system. The purchasing staff must provide guidelines for negotiation and point out areas where a particular proposal has unacceptable features and why. The evaluation should also identify especially good features and show how other features can be modified for best results.

The staff of the purchasing office can simplify the governing body's task by providing tabulations, calculation checks, price extensions and information about compliance with specifications. They should also evaluate the merits of each proposal and make recommendations about which one should be selected.

When the proposals are opened, the purchasing office staff tabulates the results for easy reference by the governing body. The following items are included in the summary:

- All the same tabulations as required for a bid.
- Evaluation of the proposal against the desired, ideal system — this will require working with system users or technical advisors.
- Evaluation of the proposal against the weights assigned in the RFP.
- Details of areas to be negotiated, including desired changes in the proposal.³⁴

The evaluation and recommendation should include whether the vendor has submitted a responsive proposal (one meeting all the criteria of the RFP). Another acceptance factor should be the amount of vendor experience.

If the government's purchasing office has records about the vendor's responsibility (whether they have proven capable of performing a contract and/or appear financially and technically capable of adequately performing this contract), this should be included in the evaluation package.

If the bidder's safety record is to be considered, the evaluation should state whether or not the bidder has an acceptable record, and if not, what identifiable factors were not satisfactory.

Weighted Factors for Evaluating the Proposal

When using competitive sealed proposals, the contract must be awarded to the responsible bidder whose proposal has the best price and the other evaluation factors included in the request for proposals.³⁵

Factors Used to Evaluate Proposals

This section provides guidance on the kinds of factors that might be used to evaluate proposals. Since each RFP is different with specific judging criteria, please use this section only as a guide.

Price

Price is a factor for ALL purchases. In some cases, little difference may exist between available items (systems or insurance policies) making the price the most critical factor. In this instance, price would be weighed heavily in the evaluation. In other cases, the system cost will be less important than its efficiency, and a better, more effective system might save far more dollars than the product's higher cost. In this case, the price should be given less weight than other factors leading to greater efficiency.

Experience of Staff

This factor can affect various areas, such as financial or technical areas. A vendor with more experienced personnel should be given preference over one with less experienced staff. This factor will be important if the government can afford little risk in the project development but may be less vital if a project calls for a new approach where none of the vendors has much experience.

Financial Resources

Governmental bodies usually prefer financially stable vendors. However, demanding excessive proof of financial stability restricts the entry of small and historically underutilized businesses into projects where they might be competitive and offer significant savings to the government. For some items, such as insurance, this is an important factor.

Service Capability

If the system under consideration is subject to frequent or expensive servicing, then the service capability of the vendor is important. If the government is planning to self-maintain the system, this will not be as important.

Service Response Time

If the system purchased is vital to the government's daily operation, then breakdowns could result in costly work stoppages. In this case, response time for repairs and service could be among the most important considerations.

Insurance Clauses

The RFP for insurance should focus on the coverage and the various clauses available in the policy.

Other

Other factors that might be considered are:

- Availability of backup unit during extended maintenance.
- Cost of maintenance.
- Reputation.
- Payment options.
- Experience with this and other governments.
- Upgrade capability.

Negotiating the Proposals

Once the proposals are evaluated, the phase begins that truly sets proposals apart from competitive bids: the negotiations for the final form of the proposal.

With competitive bids, the local government is limited to what was requested in the specification. If needs are not satisfied, all bids must be rejected, the specifications must be re-drafted and the process must start all over again. Moreover, if not satisfied with the prices, the local government must either accept the lowest bid or reject all bids and start over.

With a proposal, when the first proposal is received and evaluated, then the local government purchaser may meet in private session with each bidder, and negotiate for exactly what the local government needs, or as close as possible to the desired system or service as can be agreed upon. The best-evaluated proposal is accepted, using the weighted factors. Negotiations are not limited to one meeting. Below are some suggestions on conducting negotiations.

- **Have goals firmly in mind.** Conceptually develop the ideal system, and use it as a guide in negotiations. Try to negotiate toward the ideal.
- **Maintain flexibility.** Although the local government purchaser may have conceptualized an ideal system, improvements are possible or even likely. Keep an open mind to improved concepts offered by bidders. As improvements are noted and accepted as desirable, incorporate them into the desired system.

- **Have a lead negotiator.** While it is essential to have a free exchange of ideas, and to be able to disagree within the negotiating team, the place to do so is not at the negotiating table. Present a united front. Negotiators might develop internal signals, for example, to say, “Do not make any agreement here until we discuss it,” or develop ways to pass other non-spoken messages.
- **Do not confuse rhetoric with ability to deliver.** There are many vendors willing to “promise the moon,” even while planning not to. The rule is “Check it out.” Make sure that a vendor can deliver what is promised. Do not put too much faith in a contract, either. Even with a contract, it may cost the local government so much in time and money getting satisfaction that a win can be considered a loss.
- **Find common ground.** The first meeting is to establish common ground, and to explore the bidder’s willingness to compromise. In turn the bidder will feel out the local government’s position. Do not plan to make firm decisions here. Other proposals will be available to explore. Be prepared to move as far as possible without making a commitment.
- **After the first round, meet to evaluate the local government’s position.** Determine the relative positions of each proposal. Rank by the weighted factors to see how close the proposals are to one another. Ask, “What improvements are needed?” with each proposal. Ask, “If we receive all the modifications requested, how will this proposal rank against the rest?”
- **Make judicious cuts.** If a proposal is never going to be in the running, cut it. This way, time is not wasted negotiating with a vendor who has no chance to win the contract. However, document the reasons for the cut. This way there will be no accusations of favoritism or unfair treatment.
- **Repeat the steps above as needed to reach a final decision.** Meet as many times as needed. If two or more proposals are very near in the rankings, put them to a vote, and make the decision that way. The governing body must make any final decision, even on preliminary cuts.
- **Make the decision.** Award the contract based on the weighted factors contained in the RFP.

Chapter 5

Negotiated or Non-bid Purchases

This section recommends procedures to expedite and effectively control the purchase of goods and services that are under bid limits, or are exempt from bidding requirements.

Bidding limits are established to ensure that sizable purchases are subjected to fair competition among available, responsible vendors. Even though certain purchases may be exempt from the statutory or local ordinance requirements for bids, there still should be adequate controls and competition. Several categories of purchases are exempted from the bidding process.

Purchases under the Bid Limit

Texas law requires cities and counties to use competitive sealed bids for any contract of more than \$50,000, with the exception of cities with populations of less than 75,000, which must bid insurance contracts that are for \$5,000 or more.³⁶ Local ordinances in cities may require sealed bids at a lower level than state law requires. In such cases, the local governments must comply with the stricter requirement.

If the expenditure for a purchase is for less than \$50,000, the government can proceed in one of three ways:

- **Sealed bid.** If the amount of the purchase is nearly \$50,000, the government may still ask for a sealed bid. This approach offers a number of advantages. For example, if later purchases cause the total purchase price to exceed the bidding level, the competitive bidding requirement is satisfied. Provisions allowing later purchases on the same terms might be written into the original contract. In addition, bids may be more competitive with a sealed bid. Another advantage is that conflicts of interest between the vendors and the purchasing office, governing body or departments of the government are minimized.
- **Price quotations.** If competitive sealed bids are not used, price quotations should be solicited from an adequate number of vendors to ensure competition. The quotations may be in writing or by telephone for less expensive items. Another advantage is that vendors are more willing to respond and more responses are received when quotations are requested. The buyer may negotiate price and conditions, at least to a limited extent.
- **Non-competitive purchase.** If the price is low enough that it is not worth obtaining several price quotations, the purchase may be made on a non-competitive basis from the vendor that is most convenient, without contacting other vendors.

Normal Non-bid Purchases

Price quotations obtained by telephone or in writing may be used to negotiate non-bid purchases. After the vendor is selected, the procedures are identical to those used for purchasing competitively bid items. Procedures should be in place to ensure that the user

is not splitting orders to avoid the limit for competitive bids. For any purchase that costs less than \$50,000, the following procedures should be used:

Obtaining Price Quotations

Price quotations should be obtained from a sufficient number of vendors to ensure competition. The required number may be established by an office procedure, or based on the buyer's professional judgment. Usually three to 10 quotes are requested.

The following procedures for obtaining quotes are suggested, although the government should set the dollar levels based on its own requirements.

Purchases Between \$3,000 and the Bid Limit

On receiving a requisition for a purchase below bid limits, but for more than \$3,000, the purchasing department consults a vendor file for reliable vendors. Cities must contact at least two historically underutilized businesses on a rotating basis, based on information provided by the Comptroller's Purchasing Program. If the list cannot identify a historically underutilized business (HUBs) in the county in which the municipality is situated, the municipality is exempt from this section.³⁷

Written requests for quotes are sent to at least five vendors, of which at least two are HUBs, if available. The request for quotes should be on a standard form. It should contain at least the following information:

- Name and address of vendor.
- Description of item.
- Quantity required.
- Last date quotations accepted.
- Approximate date delivery is required.
- Terms and conditions of purchase.

The standard form should request certain specific information, such as total or unit price and the dates the quoted price will be effective.

The request for price quotations should require the quoted price be honored during the stated period.

Purchases of Less Than \$3,000

After receiving a requisition for a purchase of less than \$3,000 (or a level set by governing body), the purchasing department consults a vendor file for reliable vendors providing the desired materials and supplies.

Written or telephone requests for price quotations should be made to at least three vendors. The list of vendors should be rotated so that all listed vendors are contacted an approximately equal number of times.

For telephoned price quotations, certain information should be provided to the vendor, including:

- Description of the item.
- Number of items required.
- Date delivery is required.
- The terms and conditions of purchase.

Whether a written or telephoned request, certain specific information should be obtained from each vendor and recorded in writing, such as:

- Name and address of the vendor.
- Total or unit price.
- Date through which quoted price will be effective.
- Name of the representative giving the quote.
- Product offered if different from the product requested.

Selecting the Vendor

After price quotations are taken, a vendor is selected. The selection is based on several factors, including:

- **Price.** If other factors are equal, the lowest price should be taken;
- **Quality of good or service.** If more than one vendor can deliver at an acceptable price, the relative quality of each should be considered.
- **Reliability of the vendor.** Based on past performance as documented in the vendor file;
- **Ability to provide service for the item** (if applicable).
- **Mandatory contacting of HUBs** (by cities) for purchases between \$3,000 and the statutory bid limit, but they are treated equally for award purposes.

To search the Texas Comptroller's most recent master list of certified historically under-utilized businesses, go to: <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. For related instructions, refer to the Office of the Attorney General's purchasing laws made easy guide.³⁸

Making the Purchase

After price quotations are obtained, the purchasing office selects a vendor and makes the purchase. All purchases below the bid limit are processed similarly.

Price quotations are tabulated on a summary sheet. The sheet should include:

- Vendor name.
- Quoted price.
- Information relating to the vendor's reliability and past performance.
- The purchasing department's evaluation of the quality of the product, if known.

The lowest and best offer should be selected, based on price, reliability of the vendor and quality of the product. HUBs must be contacted when required by state law, but are treated equally when awards are made.

Confirmation Purchase Orders

In order to eliminate unnecessary procedures, some governments allow department heads to authorize small purchases without a formal requisitioning procedure. A blanket purchase order may be used to accomplish the same purpose. With approval of the governing body, user departments may bypass the normal purchasing procedure and order directly from the vendor with a confirmation purchase order.

The governing body sets confirmation purchase order limits, usually from \$500 to \$1,000 per purchase. This procedure must not be used to avoid competitive bidding requirements.

Since confirmation purchase orders bypass many safeguards imposed on other purchases, they must be closely monitored to avoid abuse. The following procedures are recommended:

1. The department head or a designated representative must sign each confirmation purchase order.
2. The department must ensure there is a budget authorization and a sufficient budget balance to cover the purchase.
 - a. If there is no budget authorization or sufficient balance remaining in the line item, the department must request a budget amendment before issuing the confirmation purchase order.
 - b. If an item is purchased without proper budget authorization or balance, the department must ask the governing body for a budget amendment.
 - c. If the budget amendment is not approved and the purchase has been made, the cost of the purchase is the responsibility of the person who approved the order.
3. The department should call several vendors, and purchase the item from the vendor quoting the lowest price.
4. The department should maintain a monthly log that lists all purchase orders used during the month and their purpose. The log should be transmitted to the purchasing office by the 10th day of the following month. Copies of all purchase orders issued during the month should be attached.
5. The purchasing department should review the purchase order log. All purchase orders are attached to the log for review of proper authorizations and budget balance. The log is also reviewed to determine whether repetitive purchases to the same vendor for the same item are occurring. If so, the purchaser should see whether competitive bidding limits have been bypassed.

Blanket Purchase Orders

Small purchases may be made through a blanket purchase order. This is like a charge account with controls to prevent abuse.

Procedures for Making Blanket Purchasing Agreements

Blanket purchasing agreements (BPAs) are agreements with vendors that allow small purchases by individual departments without going through the normal purchasing

procedures. For example, establishing a BPA with an automobile parts supplier for the government's automotive service department allows for the quick and efficient purchase when a needed part or supply is not in stock. BPAs also reduce administrative costs for small purchases by eliminating the need for requisitions and purchase orders.

BPAs should have dollar limits established by the governing body, usually less than \$500 per month. Individual purchases should also be limited to an amount set by the governing body, usually less than \$100 per purchase. Large purchases may not be split to circumvent the limit.

When a department requests a BPA, it is handled like any other purchase. The requisition requires the proper approvals. When the BPA is issued, the applicable account should be encumbered for the full amount of the BPA limit. After a BPA has been established, no requisitions or purchase orders are required to make a purchase. On approval of the department head, the needed part is purchased from the vendor. Invoices are retained and purchases are logged in a manner prescribed by the purchasing office. To establish a BPA, follow the steps outlined below:

- Step 1.** The department requiring a purchase submits a routine requisition. Full justification is required, including suggested vendors.
- Step 2.** The requisition is routed for authorization and encumbrance of funds (if applicable).
- Step 3.** When the approved requisition is received in purchasing, several vendors are contacted, usually including the suggested vendors. The vendor giving the best discount on purchases is normally selected, but convenience may be considered.
- Step 4.** The blanket purchase agreement is entered into with the selected vendor for a period not to exceed one year, but ending with the government's fiscal year. A sample agreement is shown as Exhibit – 10 and should contain:
 - Monthly and single purchase dollar limits.
 - Persons authorized to order under the BPA.
 - Category of items (not a complete listing).
 - Terms of the sale, including discounts.
 - Required information needed on each sales ticket, such as:
 - Vendor name and address.
 - BPA number;
 - Department/location;
 - Description of items purchased;
 - Unit price/total price;
 - Call number;
 - Person calling order/making purchase;
 - Name, title and signature of person receiving delivery;
 - Date of sale.
- Step 5.** The person accepting the delivery is responsible for obtaining a sales ticket that will be entered on the monthly log form.
- Step 6.** All purchases are entered on a monthly purchase log. See Exhibit – 11.
- Step 7.** A consolidated monthly invoice is issued for all purchases during the month and sent to the same office as all purchase invoices, usually the Purchasing Office.

Step 8. Payment is made within the monthly and single purchase limits that were ordered, by authorized persons only.

Emergency and Exempt Purchases

Texas statutes allow the local government to make emergency or exempted purchases without competitive bidding under specific circumstances. Purchases that are required immediately for purposes that could not reasonably have been foreseen are generally exempt from bids. They may be subject to other requirements, however, such as certification that an emergency exists.

Emergency Purchases

Generally, three broad areas can be classified as emergency purchases. The local government should define — within the parameters established by state law — what constitutes an emergency and develop procedures for handling any that arise.

For example, in a case of a public calamity such as a hurricane or other tragedy, if it is necessary to make a purchase promptly to relieve the necessity of the citizens or to preserve the property of the county, the purchase is exempt from the competitive bidding requirements. The same is true in the case of an item necessary to preserve or protect the public health or safety of the residents of the local government's jurisdiction or an item necessary because of unforeseen damage to public property.³⁹

When it is necessary to preserve or protect the public health, competitive bidding requirements are waived regardless of how the conditions were brought about. State courts have said that the words “preserve” and “protect,” as applied to public health, carry the idea of timely, efficient and effective action that keeps intact and unimpaired the good health of the citizens in advance of impairment. It is not necessary for the public health to be under immediate peril because of a public calamity before the bid exemption is put aside.⁴⁰ In this case, the court approved repairs and improvements to a city's sewer system that were made without advertising for competitive bids.

Texas Attorney General opinions and court cases have also applied the same public health definition to a government's purchase of ambulance services and solid waste disposal services.⁴¹ A government entity is not required to advertise for competitive bids in these situations provided the governing body approves the exemption.

If there is time to give proper notice and for an advertisement to be made, then it is not an emergency situation. There have been instances of officials who delay and attempt a purchase without bids claiming there is an emergency.

Procedure for Making Emergency Purchases

Following are suggested guidelines for dealing with emergency purchases:

- **Qualification.** The purchase must qualify as an emergency purchase as defined in state law local government code chapters 252, 262 and 271.

- **Designation.** The emergency purchase designation indicates a situation of such urgency that the normal purchasing procedure must be modified in the interest of speed, and therefore no competitive bids are required.
- **Normal working hours.** All emergency purchases occurring during normal working hours are processed through the purchasing department as follows:
 - The using department will notify the purchasing office by telephone immediately, with as much information as possible about the emergency purchase required, so that the purchasing action can be initiated immediately.
 - Simultaneously, a purchasing requisition is prepared and hand-carried through the approval process.
 - The purchasing department or using department head contacts as many vendors as necessary to arrange the emergency purchase. If there is not enough time to get authorization, the purchase can be completed by telephone, and the purchase order completed after the fact and delivered to the vendor.
 - The buyer requests expedited delivery. The person making the requisition may be required to pick up the emergency purchase from the vendor if timely delivery is not available.
- **Evenings, weekends and holidays.** When purchasing support is unavailable, process emergency purchases as follows:
 - The responsible official of the using department takes whatever steps are necessary to procure needed supplies, services or equipment to relieve the emergency. If possible, only those goods or services needed during the evening, weekend or holiday are procured.
 - On the first working day following the emergency, the responsible official prepares a requisition and hand carries it to the purchasing office. The person making the purchase must attach the invoices, bills of materials, receipts or other documents related to the purchase to the requisition.
- **Certification.** The official in charge of the using department must certify in writing on the next business day, or as soon as possible, that the purchase was necessary.

For counties, if a competitive bid would normally have been required to accomplish the purchase, the commissioners court must accept the certification of the official and enter it in the minutes of the next commissioners court meeting.

Exempt Purchases

State law provides a number of exceptions to the competitive bidding process. Some of these exceptions apply to all local governments, while others are reserved for cities or counties.

Personal and Professional Services

Under the Professional Services Procurement Act, a contract for the purchase of a personal or professional service is exempt from competitive bidding requirements if the local government by order of commissioners court grants the exemption. The city purchasing statute also provides an exemption for the purchasing of planning services.

A government entity may not select providers of professional services based on competitive bids.⁴² In these situations, the local government must make the selection and award based on demonstrated competence and qualifications for performing the services for a fair and reasonable price.

The professional fees under the contract must be consistent with the recommended practices and fees published by the applicable professional associations and may not exceed any maximum provided by law.

Professional services include:

- Accounting.
- Architecture.
- Landscape architecture.
- Land surveying.
- Medicine.
- Optometry.
- Engineering.
- Real estate appraisal.
- Nursing.

Although attorneys general usually refrain from determining whether a particular service is a professional service, they have issued opinions responding to a number of questions regarding the question of when a purchase qualifies under the personal and professional exemption. These opinions have held that the term professional services may encompass more than the services of physicians, attorneys or others traditionally regarded as professionals. Professional services may include “members of disciplines requiring special knowledge or attainment and a high order of learning, skill and intelligence,” according to the Texas Attorney General’s Office.⁴³

Some of the areas not mentioned in the Professional Services Procurement Act that state courts and Texas attorneys general have ruled as excused under the professional and personal exemption include:

- Contracts for preparing tax rolls, tax reports, tax statements, inventory and proof rolls.
- Contracts involving the coordination of investigation of crimes.
- Contracts for services of a construction manager.
- Contracts for services of a third-party administrator of insurance benefits.
- Employment of an auditor.
- Contracts for plat books and abstracts.

Except for those professions specifically covered under the Professional Services Procurement Act and listed above, a local government can still ask for competitive bids for professional services if it believes it is in its best interests.

Many times a government entity’s officials must decide whether a contract is for professional or personal services. For example, auctioneering services were considered by a city

not to be a professional service and the Texas Attorney General concurred.⁴⁴ Whether janitorial services are personal services is also a question of fact. When the service will be performed by a “specific individual” it is a personal service. When the service will be provided by “someone” it is not.²⁶⁴⁵

Microfilming and food services are examples of services that are not professional or personal under state law.

Day Work

Any work performed and paid for by the day is exempt from the competitive bidding process. Counties have the added stipulation that no individual be compensated under this subsection for more than 20 working days in any three-month period.

Other Exemptions

State law authorizes other categories of exempt purchases. Purchases from other governments, some auctions and going-out-of-business sales, and other purchases are exempt under provisions of the Local Government Code and Vernon’s Statutes.

The following is a list of other areas that are exempt from competitive bidding requirements:

1. Land or right-of-way.
2. Items 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;
3. Food.
4. Personal property sold:
 - a. at an auction by a state licensed auctioneer;
 - b. at a going-out-of-business sale; or
 - c. by a political subdivision of the state, a state agency, or an entity of the federal government.
5. Work performed under a contract for community and economic development made by a county designed to reasonably increase participation by historically underutilized businesses in public contract awards by establishing a contract percentage goal for those businesses.

The renewal or extension of a lease or of an equipment maintenance agreement is exempt from competitive bidding requirements if the commissioners court grants the exemption and if the lease or agreement has gone through the competitive bidding procedure within the preceding year; the renewal or extension does not exceed one year; and the renewal or extension is the first renewal or extension of the lease or agreement.

A commissioners court must approve the exemption of food items from sealed competitive bidding requirements. Counties that approve this exemption, however, must still

obtain at least three telephone or written offers for the purchase of food items at times specified by the commissioners court. On a form approved by the commissioners court, the individual taking telephone or written quotations must keep a record of all prices received and the vendors contacted. This information should be kept by the county for at least a year or until the county auditor has the opportunity to review it.

Sole-Source Purchases

Purchases available from only one supplier are also exempt from bidding requirements. State law or local ordinances may require certification that other reasonable sources of supply do not exist.

There are many reasons a purchase might be practical from only one vendor:

1. There is no competitive product. The good/service is a one-of-a-kind or patented product, a copyrighted publication available from only one source or a unique item such as an artwork.
2. The product is only available from a regulated or natural monopoly. For example, utilities, gravel from the only gravel pit in the area or some similar situation.
3. The product is a component of an existing system that is only available from one supplier. The replacement of a component or a repair part may only be available from the original supplier.

Sole-source purchases may also be the result of state law or ordinances that require or allow certain types of purchases to be made from a particular source.

- Non-profit corporations using workers with disabilities to produce the item. State or local governments often use products made by blind or workers with disabilities.
- Prison workers produce the item. The state benefits from the sale of these items.

There are a number of reasons a government may occasionally use sole-source purchases. Sole-source purchases must be strictly controlled, since they do not follow a competitive process.

Under most conditions, a sole-source purchase should be the subject of a certain amount of negotiation. The lack of competition may otherwise result in a severe case of seller's market, where the seller can charge unreasonably high prices. The purchaser should prepare a detailed list of requirements relating to delivery, quality, performance and other conditions, and be prepared to withhold the purchase to ensure compliance. The buyer should do everything possible to strengthen his bargaining position. Procurement costs should always be considered before an order is issued. Post-purchase costs may include multi-year maintenance contracts, replacement parts or trade-in value.

Procedure for Sole-Source Purchases

Sole-source purchases are handled the same as other purchases, with these exceptions:

1. If the requisitioning party determines that the item is a sole-source purchase, a statement must be attached to the requisition that says a sufficient number of

vendors have been contacted to determine that only one practical source of supply exists or states the reasons only one source exists.

2. The requisition is then completed in accordance with the procedures described above for preparing the requisition.
3. If the purchasing department determines that the item is a sole-source purchase, a statement to that effect must be included in the purchase file.
4. An official authorized to approve such purchases should approve all sole-source purchases. The approval should be done before a purchase order is issued.
5. For counties, the commissioners court must receive a signed statement from the purchasing official that the purchase can be obtained from only one source, and a statement must be entered into the minutes of the commissioners court meeting.
6. After the requisition is approved, the purchase order is prepared.

If an item exempted under the sole-source provisions is purchased, the commissioners court must place in its meeting minutes notice that only one source exists for the item, this notice can be a signed statement to that effect from the county official that makes purchases.

Chapter 6

Cooperative Purchasing

Introduction to Cooperative Purchasing

Through cooperative purchasing, local governments can save time and money in their purchasing programs. Cooperative purchasing occurs when two or more entities (state, federal or local governments) coordinate some or all of their purchasing efforts to the mutual benefit of all participants in the purchasing process.

There are a number of levels of cooperative purchasing, from very occasional minor co-operation in a purchase, to a level where all purchases are done through the cooperation of two or more governments. There are also several types of cooperative purchases, ranging from one government “riding” on the contract of another government to splitting the purchasing duties equally.

State of Texas CO-OP Program

Created by the Legislature in 1979, the Texas Comptroller of Public Accounts (CPA) State of Texas CO-OP Program offers members a valuable opportunity to make the most of their purchasing dollars and efforts by using the State of Texas’ volume buying power.

State of Texas Cooperative Purchasing

The Local Government Code (§271.081 - 271.083) provides for purchasing by local governments through state contracts. The Texas Comptroller of Public Accounts Procurement and Support Services division (TPASS) manages the Texas Multiple Award Schedule (TXMAS) and State Term Contracts. Local governments may also make technology purchases directly through the Department of Information Resources (DIR). Please visit the DIR website: <http://www2.dir.state.tx.us/faqs/ict/pages/customerfaqs.aspx> for more information.

Texas Multiple Award Schedule (TXMAS)

Texas Government Code §2155.502 allows local governments to purchase goods and services from a schedule of multiple award contracts. This schedule is modeled after the General Services Administration (GSA) Federal Supply Service Contracts. TXMAS contracts offer the advantage of most favored customer (MFC) pricing. In most cases, a scheduled contract may allow a local government to negotiate a lower price for the goods or services offered.

State Term Contracts

Texas Government Code (section marks) 271.081 - 271.083 allows local governments to purchase from vendors on equal terms and conditions as the State of Texas. The State has entered into term contracts using competitive bidding procedures. TPASS manages this program for the State of Texas.

Authorized Local Government Purchasers

Authorized local government purchasers must be designated in writing. In Travis County, for example, the commissioners court authorizes the purchasing agent to execute all contracts for state contract purchases that are procured in compliance with this chapter. This includes purchases in excess of \$50,000 if funding for the purchase was previously approved by the commissioners court.

Cooperative Purchasing Agreements

Two statutes address cooperative purchasing for local governments in Texas:

1. Texas Local Government Code, Section 271.083(4) (b): “a local government that purchases an item under a state contract satisfies any state law requiring local governments to seek competitive bids for the purchase of the item.”
2. Local Government Code, 2155.062 Purchase Methods. In purchasing goods and services the commission may use, but is not limited to, the:
 - a. contract purchase procedure;
 - b. multiple award contract procedure, including any scheduled developed under Subchapter I;
 - c. open market purchase procedure; or d) reverse auction procedure; and
 - d. reverse auction procedure.
3. Chapter 2156 provides additional information on purchase methods.
4. Chapter 2157 provides additional information on the purchase of automated information systems.

In this section, “reverse auction procedure” means a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Texas CO-OP Program Membership

Sections 271.081-271.083 Texas Local Government Code, V. T. C. A., Section 2155.202 and 2175.001(1) of the Texas Government Code, Title 10, Subtitle D, provide the legal authority for the following entities to participate in the State of Texas CO-OP:

- Assistance organizations.
- Councils of government.
- Hospital districts.
- Independent school districts and junior colleges.
- Local governments, e.g., counties and municipalities.
- MHMR community centers.
- Transportation districts.
- Assistance organizations.
- Other legally constituted political subdivisions of the State of Texas.

State of Texas CO-OP Benefits

- **Get Best Value for Your Purchases.** Texas CO-OP Program purchasers competitively bid and award hundreds of contracts per state purchasing statutes and competitive bidding requirements. This results in savings for your organization and for the citizens of Texas.
- **Save Valuable Time and Effort.** No bidding, just order from more than 300 goods and services contracts and state open-market contracts.
- **Take Advantage of the TXSmartBuy System.** The TxSmartBuy online shopping tool connects agencies and CO-OP members with vendors via an online store. State and local government employees can search TxSmartBuy for items they need. Anyone can look at items offered in the system. State agency purchasers and local government purchasers who belong to the State of Texas CO-OP can place orders in the system.
- **Search Thousands of Vendors.** Looking for something not on one of our negotiated contracts? Use our Centralized Master Bidder's List to identify vendors from our database of over 12,000 companies (including HUB). <http://www.cpa.state.tx.us/procurement/cmb1/cmb1hub.html> (This is not a list of awarded vendors.)
- **Post Bid and Award Notices on the Electronic State Business Daily (ESBD).** Post bid notices and awards online for free on the ESBD (<http://esbd.cpa.state.tx.us/>) to increase vendor participation or provide notice of awards.
- **Save Money on Travel.** Qualified CO-OP members may use the State Travel Management Program for discounted rates on rental cars, travel agency services and more than 1000 hotels.

If you have any questions or need more information about the Texas CO-OP Program, e-mail coop@cpa.state.tx.us and visit the Comptroller's website: www.window.state.tx.us/procurement/prog/coop/.

Advantages of Cooperative Purchasing for Local Governments

- **Lower costs through increased volume.** Quantity and volume discounts by combining orders and quantities purchased.
- **Lower (shared) administrative costs.** Savings of time and costs by eliminating duplicated effort.
- **Improved response from vendors.** Lower bids through increased competition among vendors resulting from a greater number and variety of vendors bidding on larger orders with larger quantities.
- **Shared experience leading to better product specifications.** Improved product specifications for goods and services evolve from combined knowledge of all members of the cooperative purchasing effort.
- **Better compliance with state statutes on purchasing.** Heightened awareness of legal requirements through compliance with statutes on competitive bidding. Larger quantity purchases will subject most cooperative purchases to competitive bidding requirements.

Considerations for Interlocal Agreements Between Two or More Local Government Entities

Local governments should consider the benefits and costs of cooperative purchasing before making a decision to participate in a cooperative purchasing agreement. In most cases the benefits far outweigh the drawbacks. Generally, considerations fall into two categories: legal considerations and practical considerations.

Cooperative purchasing may be accomplished through several methods. The first method involves one government performing all the tasks necessary to make a purchase with other governments purchasing off of the first government's contracts. A second method involves governments sharing the purchasing responsibilities. Following is a discussion of the most frequently used types of cooperative purchasing.

Piggy-Backing

In piggy-backing, one government creates a contract and allows other governments to use it. Both governments should protect themselves by establishing an agreement in writing, even when the arrangement is informal. The agreement should specify the duties and responsibilities of each party. There must be a clause in the contract about this arrangement and vendors must agree to it.

Joint Purchases

Two or more governments join to purchase one or more goods or services jointly. This may involve each government handling part of the administrative chores or agreeing to have one of the governments handling the transactions under the guidance of the others. If the arrangement is long-term, rotate the roles periodically to share equally the purchasing duties. All parties to a purchase must agree to the specifications, so that a mutually satisfactory good or service is ordered.

Buying from State Contracts

Under the provisions of Local Government Code Sections 271.081 - 271.083, the Comptroller of Public Accounts offers the Cooperative Purchasing Program and manages state contracts. For questions about the process, please call (512) 463-3368 or e-mail the Comptroller's office at: coop@cpa.state.tx.us.

Buying from state contracts is a form of piggybacking. Under this program, and after complying with certain requirements, a local government may participate in all automated state contracts.

Legal Constraints

Under the Interlocal Cooperation Act, local governments are encouraged to coordinate their purchasing activities within certain legal constraints exclusive of the State of Texas Cooperative Purchasing program.

Different Statutes for Different Types of Government

Different statutes govern counties and municipalities, and school districts have different statutes than both. Cooperative purchases must consider some of the common statutes listed below.

- Local Government Code (LGC) Chapter 252 – Purchasing and Contracting Authority of Municipalities
- LGC Chapter 262 – Purchasing and Contracting Authority of Counties
- LGC Chapter 271 – Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments.
- VTCA Government Code Chapter 791 – Interlocal Cooperation Act.

Most Strict Statute Applies

A city and a county may cooperate in a purchase costing \$7,500. The purchase does not need to be competitively bid, but the city or county — whichever entity is taking the lead — must contact historically underutilized businesses (HUBs) in the county. Although the county does not have to contact HUBs under the law, because a city is involved in the purchase and a city must contact at least two HUBs for a purchase more than \$3,000, but under \$15,000, then the county will have to contact the HUBs in this instance. The strictest statute applies to all the parties to the agreement, even if it does not apply when the party makes purchases on its own.

If two cities cooperate in a purchase, and one has an ordinance requiring bidding at lower than statutory levels, then this ordinance must be followed, unless the city council waives the ordinance for the purchase, or the contract states that the ordinance of another political subdivision applies.

The Interlocal Cooperation Act authorizes political subdivisions contracting with each other to apply the rules, regulations and ordinances of either the political subdivision providing the service or the political subdivision receiving the service. This does not include using a more lenient state statute.

Other Legal Considerations

The Interlocal Cooperation Act encourages the maximum cooperation between local governments to improve their efficiency and effectiveness. This act allows local governments the greatest freedom in contracting to provide governmental functions and services, including police protection, fire protection and administrative functions. Administrative functions include all functions normally associated with the routine operation of government such as purchasing, data processing, warehousing, equipment repair and printing.

All local governments must comply with a number of state statutes. Some of the legal references are described in Chapter 11 and this manual's appendices.

General Cooperative Purchasing Procedures

The most demanding part of cooperative purchasing is getting started. However, cooperative purchasing is very worthwhile, and in the end will repay for itself many times over. Here are some tips on getting started.

Establish Interest in Local Cooperative Purchasing

One thing is certain: a cooperative purchasing program is not possible without cooperating parties. The interested parties must be identified. Purchasing officials should be contacted, but the elected officials must be convinced as well. The ultimate decision-making authority lies with elected officials who will determine whether the effort succeeds or fails. It is imperative to keep all the decision-makers informed of program status to ensure there are no impasses identified late in the process. It is also important to keep the necessary legal advisors involved to avoid any challenges at future dates.

Questionnaires should be sent to neighboring governments. Those that have called for help should be targeted as prospects. Neighboring cities or counties should be asked what entities might be interested.

A built-in network may be tapped by working through the council of governments. Government purchasers should be encouraged to arrange a meeting and involve professional organizations in the cooperative purchasing process. This may include making a presentation to interested parties about the benefits of cooperative purchasing.

Establish a Purchasing Committee

Local officials with purchasing responsibility may represent participating local governments on the committee. Formulate an interlocal agreement with a timetable, elect officers, define duties, outline the chain of command and identify the types of purchases to be considered for cooperative purchasing.

Define Types of Cooperative Purchasing to be Undertaken

The first undertaking may well set the tone for the future, so be very cautious with the first purchase. Select something that will result in good savings for everyone.

Some cooperative purchasing possibilities are:

- Office supplies.
- Automobiles.
- Janitorial supplies, such as floor wax, buffers, etc.
- Services covering wide areas, such as recycling and waste disposal services.

For further information about the Texas Cooperative Purchasing Program, please access the Comptroller's Window on State Government: www.window.state.tx.us/procurement/prog/coop or send an e-mail with a description of your request to: coop@cpa.state.tx.us.

Chapter 7

Construction Procurement

Purchasing statutes and procedures applicable to construction procurement differ between municipal and county governments.

Please consult the *2010 Texas Municipal Procurement Laws Made Easy* on the Texas Attorney General's website at http://www.oag.state.tx.us/AG_Publications/pdfs/procurement_easy.pdf for the most recent municipal government purchasing background, authority and legal statutes related to the construction or repair of public structures or roads.

Counties should consult the November 2009 version of the *Travis County Purchasing and Procedures Manual* at http://www.co.travis.tx.us/purchasing/pdfs/tcpo_ppm.pdf for updated construction-related procurement statutes for counties and related procedures and requirements.

Chapter 8

Accounting

Accounting for purchases is the single most critical element of a government's accounting system. The books and procedures described in this chapter illustrate widely used methods of accounting for purchases, and cover budgets, encumbrances, acquisitions and disposals. Most of these transactions and ledgers are automated in today's accounting software packages. Even when using accounting software, it is still helpful to know what the accounting entries are. If the local government does not have accounting software or adequate manual journals and ledgers to accommodate the following entries, it should consult a qualified accountant to help establish a workable set of books before proceeding.

Budgets are important because they direct and control governmental purchases and are the beginning point of any governmental accounting system. The annual budget should be recorded in the books, with a special ledger for appropriations/expenditures.

Encumbrances as well as actual expenditures should be charged to the appropriations/expenditure ledger as incurred, so that the actual amount of available and uncommitted funds is always known. An encumbrance is a formal commitment to purchase, such as a purchase order issued to a vendor — funds should be committed, but no goods or services have yet been received, so no liability has been incurred and no payment has yet been made.

A solid chart of accounts is the basis for a structurally sound accounting system. A good chart of accounts allows the records to show purchased goods and services accurately with appropriate detail. The procedures in this section include a basic chart of accounts for purchasing accounting.

Nationally, more states have adopted uniform accounting systems for their local governments. The list includes California, Georgia, Indiana, Michigan, New York, Ohio, Oregon, Utah and Washington.⁴⁶

The accounting records needed to properly account for purchases include the familiar general journal and cash disbursements journal, as well as a special purchase order/encumbrance journal and appropriations/expenditures ledger. For recording the acquisition of fixed assets, there is a self-balancing account group called the General Fixed Assets Account Group.

Finally, a local government will need the basic purchasing documents, requisitions and purchase orders.

Using the books and procedures illustrated in this chapter, a local government should be able to devise a sound, workable accounting system that will enable them to control purchases and obtain the basic information about their purchases.

Chart of Accounts

As of 2010, the State of Texas does not have a uniform chart of accounts for local government entities. In lieu of a standard chart of accounts, local governments may want to use the outline below to set up accounting codes. The account and fund structure presented here is for reference only.²⁹

The first two (2) digits are fund codes. These remain the same for assets, liabilities, revenues and expenditures. Categorized, these numbers are as follows:

10 -11	General Fund
12-35	Special Revenue Funds
36-45	Debt Service Funds
46-55	Capital Projects Funds
56-65	Enterprise Funds
66-75	Internal Service Funds
76-85	Fiduciary Funds
86	State Agency Fund
87	Payroll Clearing
98	General Fixed Assets Account Group
99	General Long-Term Debt Account Group

The third, fourth and fifth digits are basic account codes for assets, liabilities, revenues and expenditures. They are numbered as follows:

100-199	Assets and Other Debits
200-299	Liabilities and Other Credits
300-399	Revenues
400-999	Expenditures/Departmental Expenses

The last three (3) digits are sub-account codes in the asset, liability and revenue sections of the Chart of Accounts. In the expenditures section, these digits indicate the object of the expenditure.

Consequently, account numbers for assets, liabilities and revenues are structured as shown below:

XX	XXX	XXX
Fund Account	Basic	Sub-Account

Expenditure accounts have the same basic structure:

XX	XXX	XXX
Fund	Department or Function	Object of Expenditure

Accounts Used to Record Purchasing Transactions

Following is a list of accounts that are most often used in recording purchasing transactions. These account numbers can be expanded if needed, to any size desired. There are other account coding concepts, and these may be used instead if they are better suited to the government's accounting system.

Asset Accounts

Asset accounts commonly used in accounting for purchases are:

101-000	Cash. Currency, coin, checks, postal and express money orders, and bankers' drafts on hand or no deposit with an official or agent designated as custodian of cash and bank deposits.
103-000	Cash on Deposit in Drawing Accounts. Deposits with fiscal agents, such as banks, used for issuing checks as part of daily operations.
141-000	Inventory of Supplies. The value of supplies on hand. Supplies purchased would increase this account. This account category could be broken down by type of supplies.
142-000	Inventory of Stores for Resale. The value of goods held by a governmental enterprise for resale rather than for use in its own operations.
161-000	Land. Land owned by the governmental unit. If land is purchased, this account includes the purchase price and costs such as legal fees, filling and excavation costs, and the like, which are incurred to put the land in condition for its intended use. If the land is acquired by gift, the account reflects its estimated fair value at the time of acquisition.
162-000	Buildings. Permanent structures owned by the governmental unit. If buildings are purchased or constructed, this account includes the purchase or contract price of all permanent buildings and fixtures attached to and forming a permanent part of such buildings. If buildings are acquired by gift, the account reflects their estimated fair value at time of acquisition.
164-000	Improvements Other Than Buildings. Permanent improvements other than buildings that add value to land. Examples of such improvements are fences, retaining walls, sidewalks, pavements, tunnels and bridges. If the improvements are purchased or constructed, the account reflects the fair market value at the time of acquisition.
166-000	Equipment. Tangible property of a more or less permanent nature, other than land, buildings, or improvements thereto, which is useful in carrying on operations. Examples are machinery, tools, furniture and furnishings.
167-000	Allowance for Depreciation. Equipment (credit) - The accumulation of periodic credits to record the expiration/ depreciation in the service life of equipment.
169-000	Construction Work in Progress. The cost of construction work undertaken but not yet completed.

Liability Accounts

Liability accounts that are commonly associated with accounting for purchases are:

201-000	Vouchers Payable. Liabilities for goods and services evidenced by vouchers which have been pre-audited and approved for payment but which have not been paid.
202-000	Accounts Payable. Liabilities on open account owing to private persons, firms, or corporations for goods and services received by the governmental unit (but not including amounts due to other funds of the same governmental unit or to other governmental units).
205-000	Short-Term Loans Payable. A liability account that records the amount due for a loan covering one year or less.
206-000	Contracts Payable. Amounts due on contracts for assets, goods and services received by a governmental unit.
207-000	Contracts Payable. (Retained percentage) Liabilities on construction contracts that have been completed but on which part of the liability has not been paid pending final inspection or the lapse of a specified time, or both. The unpaid amount is usually a stated percentage of the contract price.
208-000	Construction Contracts Payable. Amounts due by a governmental unit on contracts for construction of buildings, structures and other improvements.
209-000	Due to (insert name) Fund. A liability account used to indicate amounts owed by a particular fund to another fund in the same governmental unit for goods and services rendered. These amounts include only short-term obligations on open account and not long-term loans.

Other Credits

241-000	Appropriations. This account records authorizations granted by the legislative body to make expenditures and to incur obligations for specific purposes. This account appears in a balance sheet prepared during the fiscal period. At the end of the fiscal period, the appropriations account is closed out and does not appear in the balance sheet as of the close of such fiscal period.
242-000	Expenditures (debit). This account appears in balance sheets prepared during the fiscal period and designates the total of expenditures charged against appropriations during such period. The account is shown in each balance sheet as a deduction from account 241, appropriations, to arrive at the unexpended balance of total appropriations. At the end of the fiscal period, the account is closed out and does not appear in a balance sheet prepared as of the close of the fiscal period.
243-000	Encumbrances (debit). This account designates obligations in the form of purchase orders, contracts or salary commitments that are chargeable to an appropriation and for which a part of the appropriation is reserved. They are neither expenditures nor liabilities, but are commitments of resources. In an interim balance sheet, encumbrances are deducted along with the expenditures from account 241, Appropriations, to arrive at the unencumbered balance of appropriations. At the end of the fiscal period, the account is closed out and does not appear in a balance sheet prepared as of the close of such period.
244-000	Fund Balance. (Reserved for encumbrances) A reserve representing the segregation of a portion of a fund balance to provide for unliquidated encumbrances. During the year, it is a budgetary account offsetting encumbrances. At year's end, when encumbrances are closed, not closing the reserve for encumbrances account has the effect of making it an actual reserve of fund balance account.
245-000	Reserve for Inventory of Supplies. A reserve which represents the segregation of a portion of a fund balance to indicate that assets equal to the amount of the reserve are tied up in inventories and are, therefore, not available for appropriations.
271-000	Fund Balance. The excess of net fund assets over net fund liabilities. Within the fund balance there are elements called reserves, such as the reserve for encumbrances or the reserve for inventory of supplies. The remainder is simply fund balance – unappropriated-unreserved.
280-000	Investment in General Fixed Assets. An account in the General Fixed Assets Account Group that represents the governmental unit's equity in general fixed assets. Fixed assets related to specific proprietary or trust funds should be accounted for through those funds.

Department Codes

Department Codes identify the user departments charged for expenditure transactions.

General Administration (400-429)

400	Mayor/County Judge
401	Council/Commissioners Court
402	City Manager
403	County Clerk/City Clerk
405	City Secretary
406	Veteran's Service Office
407	Civil Defense
410	Personnel
412	Data Processing
414	Purchasing (may be under financial administration)
415	Central Stores
420	Garage
429	Non-Departmental

Judicial (430-444)

430	Municipal Court/Justice Court
432	County Court
433	County Court at Law
436	District Court
440	Other

Legal (445-459)

445	City Attorney/County Attorney
450	District Attorney
455	Law Library

Elections (460-469)

Financial Administration (470-494)

470	City Treasurer
471	City Auditor/Internal Audit/County Auditor
472	Tax Collector
473	Finance
480	Accounting
484	Payroll

Public Facilities (495-524)

495	City Hall/County Courthouse and Associated Buildings
500	County Jail
515	Custodial Services
520	Cemetery

Public Safety (525-559)

525	Police/County Sheriff
530	Fire
540	Emergency Medical Services
542	Communicable Disease Control
545	Animal Control/Shelter
550	Juvenile Probation/Correction
551	Adult Probation/Correction
557	Inspections

Environmental Protection (560-574)

560	Water and Sewer
564	Solid Waste Disposal
568	Flood Control

Streets (575-604)

575	Administration
576	Engineering
580	Construction
585	Maintenance
590	Lighting
595	Drainage

Public Transportation (605-619)

605	General Administration
607	Municipal Bus/Transportation
610	City/County Airport
612	Road and Bridge – General
613	Road and Bridge – Precinct 1
614	Road and Bridge – Precinct 2
615	Road and Bridge – Precinct 3
616	Road and Bridge – Precinct 4

Health and Welfare (620-649)

620	Health Department
622	Clinic
625	Welfare Department
628	Nutrition Program
630	Drug Abuse Program
640	Weed Control
641	Pest Control
645	Public Housing

Culture and Recreation (650-679)

650	Library
655	Parks
656	Golf Course
658	Swimming Pool
660	Tennis Courts
662	Hike and Bike Trails
665	Community Center
675	Museum

Miscellaneous (680-699)

680	City Planning
682	Zoning
684	Agricultural Extension Service
686	Exhibit Building
688	Intergovernmental Expenditures
690	Debt Service
699	Other/Miscellaneous

Transfers to (700-900)

Fund - The last three digits are used to denote the number of the 700-000 Transfer to Fund - The last three digits are used to denote the number of the fund to which the transfer was made.

Object of Expenditure Codes

Object of Expenditure Codes are used to identify the type of expenditure. They are broken down by services, or major categories. Since we are not concerned with personnel expenditures, we will only include expenditure codes for supplies, materials, equipment or services.

Supplies (300)

This object of expenditure includes articles and commodities that are consumed or materially altered when used. The following are sample supply accounts:

- 310-329 Office Supplies
- 330-354 Operating Supplies

- 355-389 Repair and Maintenance Supplies
- 390-399 Miscellaneous Supplies

Other Services and Charges (400)

This object of expenditure includes expenses for services other than personal services that the governmental unit requires. Such services may be provided by some agency of the governmental unit or by private business organizations. The following provides a breakdown of other services and charges:

- 400-414 Professional Services
- 415-421 Communication
- 422-429 Transportation
- 430-434 Advertising
- 435-439 Printing and Binding
- 440-444 Public Utility Services
- 445-459 Repairs and Maintenance
- 470-474 Rentals
- 475-479 Aid to Other Governments
- 480-499 Miscellaneous

Capital Outlay (500 - 600)

This object of expenditure includes outlays that result in the acquisition of or additions to fixed assets. The following provide a breakdown of capital outlays.

- 500-529 Land
- 530-549 Buildings
- 550-599 Improvements Other Than Buildings
- 600-689 Machinery and Equipment
- 690-699 Other

Debt Service (700)

This object of expenditure includes interest and principal payments on general obligation debt.

These object of expenditure codes can be tailored to the needs of the county to identify the commodity or equipment or service procured. For example, if a local government's law enforcement agency (police or county sheriff) purchased patrol vehicles, the account to designate the transaction would be determined as follows:

- **Fund (10).** The law enforcement department should be included in the general fund.
- **Department (525).** The departmental code for police/county sheriff.
- **Object of Expenditure (675).** The object of expenditure code for patrol vehicles.

Therefore the entire account number would be: 10-525-675.

General Journal – Recording the Budget

The initial step in accounting for purchases is to record the budget. This is done in the general journal. Actually, all of the entries could be made in the general journal and

general ledger. In actual practice, it is much easier to use subsidiary journals and ledgers. To record the budget in the general journal, follow the procedure below:

Opening Entries

Open the books and set up the beginning balance sheet as per the city or county's accounting system. Record estimated revenue for the fund in question. The entry might be:

DR Estimated Revenues	XXX.XX
CR Fund Balance	XXX.XX

To record estimated revenues per the budget:

Record the appropriations for the fund for the fiscal year based on the approved budget. This entry should provide a detailed breakdown of budget expenditure categories.

For example, the entry might be:

DR Fund Balance	XXX.XX
CR Appropriations	XXX.XX

A/C	Detail	Amt.
401-000	Governing Body	
-101	Salaries	XXX.XX
-210	Office Supplies	XXX.XX
-420	Telephone	XXX.XX

(Etc. for remaining departments and objects of expenditure)

To record appropriations per the budget:

1. Make other opening entries according to the requirements of the particular fund.
2. Repeat the steps for each fund.

An example of the opening entries in the General Journal (**Exhibit 16**).

Purchase Order/Encumbrance Register

The normal purchase sequence starts in the using department with a properly prepared requisition. The requisition is routed to each authorizing officer and to the purchasing department.

After the purchasing department receives a properly executed requisition, it prepares a purchase order. A purchase order is a written order placed with vendors or contractors by the government. Acceptance of a properly authorized and approved purchase order gives the vendor authority to ship the goods and binds the government to pay for them if they meet the purchase order specifications. Thus, although no cash disbursement is involved in issuing a purchase order, the government has a commitment for the use of some of its funds.

As described in this procedure, the purchase order/encumbrance journal has two functions. First, it is a register in which purchase orders issued by the government are recorded and monitored. Second, it serves as an encumbrance journal that allows the government to set aside (encumber) certain resources to cover the future obligation to the vendor created by the purchase order. The usefulness and importance of the first function are evident. The second function can be of even greater importance in controlling government expenditures and preventing overspending.

A separate purchase order/encumbrance journal should be maintained for each fund. Purchase orders for various funds should be filed separately.

The purchase order/encumbrance journal described below requires only a single money entry –the estimated amount of the purchase taken from the purchase order. Nonetheless, this is not a departure from the dual-entry accounting system. The accounting entry used to record all encumbrances is shown below in journal form:

DR Encumbrances	XXX.XX
CR Fund Balance - Reserved for Encumbrances	XXX.XX

When a transaction of this nature has a single debit and a single credit, the amounts obviously are equal, and a single money column will suffice.

After the purchase order is prepared, it is entered in the purchase order/encumbrance journal, using the procedure below.

Posting the Purchase Order/Encumbrance Journal

Encumbrance accounting may be used for any number of purposes. However, in most governments, it is largely limited to purchase orders, since they are short-term, closed-ended liabilities which occur frequently. Contracts should also be encumbered, but not salaries or other recurring expenses such as rent.

Illustrated below is an example of a purchase order/encumbrance journal, and sample entries made to the journal.

1. A separate line of the journal should be completed for each purchase order issued.
2. Purchase orders should be posted to the journal in numerical order and on a daily or weekly basis.
3. To record each purchase order, complete the following steps:
 - a. In the Date column, enter the current date.
 - b. In the Purchase Order Number column, enter the number on the pre-numbered purchase order number form.
 - c. In the Vendor-Contractor column, enter the name of the vendor or contractor to whom the purchase order is issued.
 - d. In the Coding column, enter the appropriate expenditure code for the transaction.
 - e. In the Ref. column, place a check (✓) when the journal is posted to the appropriations-expenditures ledger.

- f. In the Amount column, enter the amount of the purchase estimated in the purchase order.
 - g. Place a check (✓) in the Order Rec'd column once the goods included in the purchase order have been received and a cash disbursement has been made in payment of the obligation.
4. Initial the purchase order form to indicate that it has been entered in the purchase order/encumbrance journal.

Most repetitive transactions that are accumulated in single-column journals, like the purchase order/encumbrance journal, contain data, which must be recorded in subsidiary ledger accounts as well as in the general ledger. In this case, the encumbrance amounts should be posted daily or weekly to appropriation-expenditure ledger accounts as indicated in the procedure below.

- Post the amount as an encumbrance to an individual account in the appropriations-expenditures ledger on a daily or weekly basis.
- File the purchase orders in an open file until shipment of goods or completion of services occurs.

Closing the Purchase Order/Encumbrance Journal

These steps take place at the end of the accounting cycle when the purchase order/encumbrance journal is closed and a summary total is computed for posting to the general ledger.

1. Underline the last line of the Amount column in each fund.
2. In the Date column, enter the current date.
3. In the Vendor/Contractor column, enter the word "Total."
4. In the Ref. column, place a check (✓) when the total is posted to the general ledger.
5. Compute the total amount of obligations created by purchase orders issued during the cycle and enter the total in the Amount column.
6. Verify the addition of the total.
7. Post the total for each fund to the general ledger as a debit to Encumbrances account and a credit to the Fund Balance – Reserved for Encumbrances account.

Appropriations/Expenditures Ledger

Once the purchase order is completed and entered in the purchase order/encumbrance journal, it must be posted to the appropriations/expenditures ledger, a subsidiary ledger in the general accounting system.

The appropriations-expenditures ledger is a subsidiary ledger in which governmental appropriations and actual encumbrances and expenditures are recorded and monitored.

The ledger is used to make the following entries:

- Appropriations.
- Encumbrances on the appropriations.
- Actual expenditures.
- The unencumbered balance of the appropriation available for expenditure.

A separate ledger sheet should be maintained for each expenditure account for which an appropriation is made. Expenditure accounts should be segregated by fund (e.g., general fund, road and bridge fund, enterprise fund, etc.).

Cash Disbursements Journal

The cash disbursements journal is used to record all cash disbursed by the government. Each disbursement is made for one of several purposes, including the following:

- Acquiring an asset.
- Liquidating a liability.
- Refunding revenue previously collected.
- Retiring long-term bonds and notes.
- Paying obligations represented by outstanding encumbrances at the end of the previous year.
- Paying for current year expenditures.

Since almost all purchases require a disbursement of cash, the cash disbursement journal is one of the most significant and often used journals in accounting for purchases.

Without exception, all disbursements must be made by the issuance of a warrant or check drawn on a specific government fund. In effect, the journal serves as a warrant/check register, as well as a means of accounting for cash disbursements. No disbursement transaction should be recorded in the cash disbursement journal in the absence of a properly approved claim form.

The cash disbursements journal pages should be numbered sequentially. A separate cash disbursements journal (or journal section) should be maintained for each cash-disbursing fund. Accounts of different funds should never be comingled in the cash disbursements journal.

A sample cash disbursements journal is illustrated below.

General Fixed-Asset Account Group

Fixed assets are an area of accounting for governmental purchases that requires special treatment. Fixed assets are physical assets, such as buildings, land and equipment, which have a relatively long life and a much higher value than the normal tools, supplies or materials purchased by the government. The method of accounting for fixed assets in a governmental fund is considerably different from the method used by either a government enterprise fund or private industry.

In private industry, or in governmental enterprise funds, acquisition costs of fixed assets are seldom charged off as an expense in the year of purchase. Instead, the costs are distributed over the asset's useful life by a process called depreciation. If a fixed asset were estimated to last 10 years, its cost would be spread over a 10-year period. For example, if straight-line depreciation were used, one-tenth of the acquisition price would be charged as an expense each year.

Governmental organizations, except for most enterprise funds, do not depreciate fixed assets for several reasons. The basic concept behind the recording of depreciation is to try to match the cost of generating revenue with the revenue received. So, if a particular asset is used in some manner to produce income, that portion of the asset which is used up to produce income should be matched against the revenues or income it helped produce.

However, governmental organizations provide public services and regulatory activities without a profit motive. Revenue received by governments through taxation, licenses, fines and similar methods is not directly related to the income-producing capabilities of the fixed assets. In addition, governments do not pay taxes on income and thus have no need for the tax deduction from depreciation. For enterprise funds, depreciation is tied to revenue-producing activities so that the net revenue may be determined.

For the governmental funds, accounting for the acquisition of fixed assets begins essentially the same as for any other type of expenditure. For example, to the extent that fixed assets are acquired through appropriations of the general fund, the acquisition is recorded by a debit to an expenditure account and a credit to cash (or accounts payable) in the general fund. However, since the acquisition is recorded the same way as an expense item, year-to-year accountability of the asset is lost because expenditures are related to current-year operations only and are closed at the end of the fiscal year. As a result, governmental funds have no “property, plant and equipment” account.

To maintain accountability for fixed assets, governments have developed a separate group of accounts for fixed assets. When the general fund records expenditure for the purchase of fixed assets, for example, it is simultaneously recorded in the **General Fixed Assets Account Group** as an asset.

The General Fixed Asset Account Group records the continuing existence of all the fixed assets that belong to governmental funds, and year-to-year accountability is maintained. The fixed asset simply remains on the accounts at the same original cost, plus any modifications or improvements that add value, until disposed of. Then at that time, the entire cost is removed. Any revenue from the disposal is accounted for as miscellaneous revenue.

The procedure below illustrates some of the more common transactions with respect to general fixed assets.

- Reflect the acquisition of a fixed asset by the following steps:
 1. Record the expenditure in the general fund accounts as illustrated below.

Account	Debit	Credit
Expenditures - Capital Outlay	300	
Cash (or Accounts Payable)		300
To record the purchase of furniture.		

2. Record the fixed asset in the General Fixed Assets Account Group.

Account	Debit	Credit
Furniture & Fixtures - General Fund	300	
Investments in General Fixed Asset- General Fund		300
To record the acquisition of fixed assets for \$300.		

3. Create the appropriate subsidiary ledger form to add the fixed asset acquisition and post the acquisition to the record.
 4. Affix a fixed asset property number.
- Reflect the disposal of fixed asset items which have been sold or lost and for which revenue is realized, as shown in the illustration below:

1. Remove the asset from the General Fixed Assets Account Group.

Account	Debit	Credit
Investment in General Fixed Assets - General Fund	100	
Furniture & Fixtures - General Fund		100
To write off furniture originally purchased by the General Fund sold for scrap for \$20.		

2. Complete the **Disposal** section of the subsidiary asset form for each asset sold or otherwise disposed. Remove card from ledger group and file.
3. Remove the fixed asset property number and retain with sale records.
4. Record as revenue in the original purchasing fund the sales price of the fixed asset.

Account	Debit	Credit
Cash	20	
Sale of Fixed Asset		20

To record revenue from sale of fixed asset.

- Record the disposal of fixed assets where no cash is involved in the following manner.
 - a. Write the asset off the General Fixed Assets Account Group:

Account	Debit	Credit
Investment in General Fixed Assets - General Fund	150	
General Fund - Equipment		150

- To write off typewriter retired from use. No scrap value.
 - b. Complete the **Disposal** section of the subsidiary asset record for each asset disposed. Remove card from ledger group and file.
 - c. Remove the fixed asset property number and retain in files with asset record.

- Record the disposal of a fixed asset that results in a cost to the government in the following manner.
 - Assume the road and bridge fund originally purchased the fixed asset. Remove the asset from the General Fixed Assets Account Group:

Account	Debit	Credit
Investment in General Fixed Assets - R & B Fund	300	
Equipment - R & B Fund		300

- To write off machine no longer serviceable. No scrap value.
 - Complete the **Disposal** section of the subsidiary asset record for the asset being disposed. Remove card from ledger group and file.
 - Remove the fixed asset property number and retain in files with asset record. Record the expenditure for removing the fixed asset to the fund that purchased the equipment.

Account	Debit	Credit
Expenditures - Miscellaneous	20	
Cash (or Accounts Payable)		20

To record expense for having machine hauled off.

- Record trade-in of fixed assets on new fixed assets by the following steps.

Assume a vehicle used in roadwork (road and bridge fund) costing \$10,000 is to be traded in on a vehicle costing \$13,000. The trade-in value is \$2,000.

- Remove the trade-in vehicle from the General Fixed Assets Account Group.

Account	Debit	Credit
Investment in General Fixed Assets - R & B Fund	10,000	
Cash (or Accounts Payable)		10,000

To write off a road vehicle trade-in.

- Complete the Disposal section of the equipment record card for the traded-in asset. Remove card from ledger group and file.
- Remove the fixed asset property number and retain in files with asset record.
- Record the expenditure for the new asset (price minus trade-in) in the accounts of the fund making the purchase.

Account	Debit	Credit
Expenditures - Capital Outlay	11,000	
Cash (or Accounts Payable)		11,000

To record the purchase of \$13,000 vehicle with \$2,000 trade-in allowance.

- e. Record the new fixed asset in the General Fixed Asset Account Group:

Account	Debit	Credit
Vehicles - R & B Fund	13,000	
Investment in General Fixed Assets - R & B Fund		13,000

To record the purchase of a vehicle by the road and bridge fund for \$13,000.

- f. Create the appropriate subsidiary asset record to add the fixed asset acquisition and post the acquisition to the record.
g. Affix a fixed asset property number.

General Ledger — Closing the Subsidiaries

A major component of the General Financial Accounting System is the general ledger. The general ledger contains primarily balance sheet accounts and control accounts in summary form. Additional subsidiary records necessary for accounting for purchasing are shown in earlier sections. Regardless of the number of journals and subsidiary ledgers that may be kept, the final record of assets, liabilities, revenues, expenditures and the fund balance will be found in the general ledger.

The general ledger is maintained by fund. The format included for the general ledger provides a debit column, a credit column and a balance column. Each time a posting is made to a general ledger account the balance is recomputed to be up-to-date at all times.

The general ledger is opened from entries made to the general journal and posted to the general ledger. Thereafter, postings are made to the general ledger from the various journals periodically, usually monthly, posting only columnar totals.

The general ledger accounts we use for purchasing are control accounts for which subsidiary ledgers provide detail. For this reason, the general ledger accounts must also be balanced with the totals of the various subsidiary account balances at the end of each month.

General ledger accounts used to account for purchasing transactions include Cash, Accounts Payable, Appropriations Control, Expenditures Control, Encumbrances, Reserve for Encumbrances and Fund Balance.

At the end of the fiscal year, Appropriations Control, Expenditures Control and Encumbrances are closed to the Fund Balance and not carried over into the next year. The Reserve for Encumbrances for the year is carried over, but closed to the Fund Balance as soon as all purchase orders from the prior year are received and recorded as expenditures or canceled.

Just as a separate general ledger should be maintained for each government fund, a separate trial balance should be completed at the end of an accounting period for each general ledger.

At the end of the fiscal year, the general ledger is closed to prepare the annual financial statements.

Posting Entries from the General and Special Journals to the General Ledger

1. Post individual entries to the general ledger accounts as follows:
 - a. In the **Date** column, enter the current date.
 - b. In the **Description** column, enter a phrase describing the entry — e.g. Opening Balances, etc.
 - c. In the Ref. column, enter the designating letters GJ, PR, CD (for general journal, purchase order/encumbrance register and cash disbursements journal) and the page number from which the entry is taken — e.g. GJ-1, PR-2, CD-3, etc.
 - d. If the account has a debit balance, enter the amount in the **Debit** column.
 - e. If the account has a credit balance, enter the amount in the **Credit** column.
 - f. Compute the balance for each account as outlined in Step 6 in the section below.

Post other entries to the account as necessary.

Posting Journal Totals to the General Ledger

1. Obtain the general journal and the various special journals maintained by the government.
2. Post the amounts for the various accounts in the cash receipts journal, the cash disbursements journal and general journal for the current accounting period to the Cash account of the general ledger as follows:
 - a. In the **Date** column, enter the current date.
 - b. In the **Description** column, enter one of the following depending on which is being posted: Cash Receipts Journal, Cash Disbursements Journal or General Journal.
 - c. In the **Ref.** column, enter the journal page number on which the Closing Totals line appears. For the three journals, page numbers should be indicated as follows:
 - For the cash receipts journal, use the designating letters CR plus the page number — e.g. CR-1, CR-2, etc.
 - For the cash disbursements journal, use the designating letters “CD” plus the page number — e.g. CD-1, CD-2, etc.
 - For the general journal, use the designating letters “GJ” plus the page number, e.g. GJ-1, GJ-2, etc.
 - d. For each account, record the closing total from the journals:
 - If the amount is a debit total, record it in the **Debit** column.
 - If the amount is a credit total, record it in the **Credit** column.
3. Compute the balance for each account as outlined in Step 7 below.
4. Post the amount for the purchase order/encumbrance register for each fund for the current accounting period to the general ledger. In this case, a debit entry will always be made to the Encumbrances general ledger account, and a credit entry will always

be made to the Reserve for Encumbrances accounts. These entries should be made as follows:

- a. In the **Date** column, enter the current date.
 - b. In the **Description** column, enter the words “Purchase Order/ Encumbrance Register.”
 - c. In the **Ref.** column, enter the register number from which the accounting period total is taken. Use the designating letters “PR” plus the page number—e.g. PR-1, PR-2, etc.
 - d. For the **Encumbrance** account, record the register total as an entry in the **Debit** column of the general ledger account.
 - e. For the **Reserve for Encumbrance** account, record the register total as an entry in the **Credit** column of the general ledger account.
 - f. Compute the balance for each account as outlined in Step 6 below.
7. Compute and enter the new general ledger account balance for each general ledger account, for all funds as follows. Obtain the subsidiary ledgers for the various funds (primarily the appropriations/expenditures ledger for purchasing transactions).
 8. Verify that the general ledger control account balances are equal to the sum of the corresponding subsidiary ledger account balances. Resolve any discrepancies before proceeding.

General Journal — Closing the Budgetary Accounts

The final step at the end of a fiscal year is to close the accounts. After the subsidiary ledgers are closed and balanced, closing entries are made in the General Journal.

The budget will estimate the amount of revenues to be available for the year. Together with the fund balance carried over from the prior year, this provides the resources against which the governing body appropriates amounts to operate the government. At year’s end, the budgetary accounts, estimated revenues and appropriations must be closed out and actual revenues and expenditures determined.

Revenues and estimated revenues are closed to the fund balance. Appropriations and expenditures are closed to the fund balance. Encumbrances are either closed to the fund balance or canceled, depending on whether or not appropriations lapse.

Two methods of closing encumbrances have been shown in the available literature. In the first method, where appropriations lapse, the outstanding encumbrances and reserve for encumbrances are simply reversed at year end in order to close them. This cancels the government’s commitment, and the purchase orders must be re-encumbered in the new fiscal year if they are to be honored. A new appropriation must allocate funds for the purpose of satisfying these purchase orders.

The other method closes encumbrances to the fund balance, and leaves the reserve for encumbrances as a reserve of fund balance in the year-end balance sheet. If appropriations do not lapse, no new appropriation is made for the obligation. Instead, the invoice, when received, is accounted for as follows:

DR Reserve for Encumbrances	XXX.XX
CR Accounts Payable	XXX.XX

If the invoice were more than the reserve for encumbrances, the excess would be charged to expenditures, as follows:

DR Reserve for Encumbrances	XXX.XX
DR Expenditures	XXX.XX
CR Accounts Payable	XXX.XX

If the invoice were less than the reserve for encumbrances, the remainder would be credited to fund balance, as follows:

DR Reserve for Encumbrances	XXX.XX
CR Accounts Payable	XXX.XX
CR Fund Balance	XXX.XX

Either system is acceptable. However, we would prefer that the commitment for the purchase orders be disclosed in the year-end balance sheets. This does not happen when appropriations lapse. In addition, we would prefer that expenditures be recorded for prior year purchase orders, and this does not happen if they are charged off against the reserve for encumbrances from the prior year.

Our solution would be to not lapse appropriations, and show the reserve for encumbrances on the balance sheet at year end. However, in the new fiscal year, reclassification entries would re-establish the encumbrances in the appropriation accounts. Thus the expenditure would be shown when the transaction was concluded.

Entries are shown below for year-end closing and reclassification for the new fiscal year.

To close the budgetary accounts in the General Journal, follow the procedure below:

Closing Entries

1. Close the subsidiary ledgers and record actual revenues against the estimated revenues. The entry is:

DR Revenues	XXX.XX
CR Estimated Revenues	XXX.XX
CR Fund Balance	XXX.XX

To close actual revenues and estimated revenues to fund balance.

2. Close the appropriations with expenditures and encumbrances to the fund balance for the fund for the fiscal year. The entry is:

DR Appropriation	XXX.XX
CR Expenditures	XXX.XX

CR Encumbrances	XXX.XX
CR Fund Balance	XXX.XX

3. The above entry (in the form Appropriations - (Expenditures + Encumbrances) = Fund Balance will close the appropriations account. The reserve for encumbrances will remain as a balance sheet account, and show the commitment of the government for potential contractual obligations not settled at year end.
4. After the books are opened for the new fiscal year, the reclassification entries will be:

DR Encumbrances	XXX.XX
CR Fund Balance	XXX.XX

To reestablish prior year encumbrances in the proper expenditure account.

Repeat the steps for each fund.

Closing Budgetary Accounts — Example Entries

In this General Journal example, which is for the county sheriff's department, the appropriations for account number 525-000 were \$798,000, expenditures during the year were \$754,102 and outstanding encumbrances at year end were \$36,000. See Exhibit 20: Closing Budgetary Accounts (Sample Entries) on p. 195.

Chapter 9

Auditing

The purchasing office must be aware of auditing techniques, welcome the help of auditors and use auditing procedures to provide transparency in local government purchasing processes.

The auditing process helps identify improperly recorded transactions in accounts that need to be reported to management and the governing body. Auditing the purchasing office — whether done by the local government auditor, an outside CPA firm or the purchasing office itself — can help ensure that five necessary goals are met. These five goals are:

1. **The purchasing office must comply with applicable state and federal laws.** Texas purchasing laws are complex and can be made more so by provisions added by local governments in the form of ordinances or orders. A comprehensive review is the only way to ensure that the office is complying with them all. If it is not, then the audit can propose corrective remedies.
2. **The reported operations of the office should reflect its actual operations.** Are procedures in place that ensure all transactions are properly recorded? Is the accounting system engineered to produce reports to management that properly reflect what actually happened during those transactions? Are there safeguards to ensure that the recording of transactions cannot be bypassed without triggering an error notice of some sort? An audit will give answers to these questions, and if the answer is no, then corrections can be made.
3. **The purchasing office should comply with the government's policies and procedures.** A thorough review and study should be made of the government's stated policies and all procedures, whether written or oral. Then a comparison with actual operations will reveal whether the purchasing office is in compliance with those policies and procedures. Any discrepancies can then be rectified.
4. **The office is operating in the most effective and efficient manner.** While an office might pass an audit of compliance with laws and with policies and procedures, it still may have problems. A performance audit can reveal if its operations are efficient and effective, meaning that they do not waste effort and accomplish what is intended. If the operations are not either efficient or effective, then corrective steps can be taken.
5. **Purchasing is done without favoritism or other unethical behavior.** Are there procedures in place to ensure that purchasing is done in an ethical manner, and do those procedures actually work? Audit steps can reveal whether an office has adequate protections in place, and if not, suggest methods to give that protection.

The local government may assume its purchasing office is operating accurately and efficiently according to purchasing statutes when the audit process achieves these five goals.

Types of Audits

Local governments can use three types of audits — a financial audit by a CPA firm, a self-audit and an audit by internal auditors. Each audit has its own objectives. The financial audit tests legal compliance and focuses on internal controls to verify whether they materially affect the numbers on the government's financial statements. The self-audit concentrates on compliance and ways to operate more effectively and efficiently. The internal audit may test for efficiency and effectiveness. It also looks at whether statutes and policies are being carried out, and whether operations are properly reported to management.

Financial Audits

External auditors conduct financial audits. A certified public accounting firm will audit the financial statements of the local government as a whole, and report on whether the government's financial statements fairly reflect the financial condition of the government in accordance with generally accepted accounting principles. The objectives include examining accounts and operations to the extent necessary to make that determination. The examination would identify the extent to which the purchasing offices records reflect any issues or problems that may materially affect the local government's financial statements as a whole.

Materiality of any possible error is a determining factor in the examination. For example, if total revenues for a government are \$10 million, and it is determined that any error less than 1 percent of the total is immaterial, the auditors will not generally examine further any errors that project to be less than \$100,000. In addition, if the auditors determine that internal controls are adequate to prevent material errors, they will not examine them further, even when some discrepancies are noted.

Financial audits use statistical sampling to determine whether sampled records have errors. The level of errors found in the sample is projected to the total of all amounts in those records.

Sampling is a technique used to audit less than 100 percent of a population for a particular characteristic. While not checking every item in the population involves some risk that errors will not be detected, it should provide a good example of problems that exist.

Statistical sampling should be used to determine the likely amount of errors in a given population. Judgment sampling is an alternative to statistical sampling, where random samples are chosen. In a judgment sample, items are sampled at a set interval. For example, every tenth item is examined. Sometimes this type of sample can be generated more rapidly. However, with a judgment sample, the results do not mathematically represent the actual error rate for the entire population. Statistical sampling is a better choice when examining large numbers of transactions.

With statistical sampling, conclusions are stated in terms of degrees of probability. For example, the auditor may select a random sample of the entire year's purchase orders and determine if they were properly authorized.

If the number of items was calculated properly and the error rate of the sample was computed, the auditor could project the probability that a particular error rate exists in the entire batch of purchase orders for the year. The auditor may conclude that he is 95 percent certain that there are errors in no more than 6 percent of the entire population. Computerized sampling software can perform this type of sample.

Two elements help determine the level of sampling: the adequacy of internal controls and the level of errors found in the first sample taken. If internal controls seem adequate, the auditors will decide on a level of sampling. If the level of errors is not excessive, no further sampling needs to be done. If the level of errors is excessive, then a larger sample may need to be examined.

External auditors concern themselves with the local government's purchasing office compliance with legal requirements through examination of whether grant requirements are met. These auditors are less worried about compliance with local requirements such as policies and procedures, as long as they have no material effect on the financial statements.

The financial auditors use two other auditing techniques, flowcharts and interviews. Flowcharts are used to determine flow of work and to detect bottlenecks. Interviews are used to obtain a feel for the office and to determine if policies and procedures are actually in place and in use.

The extent of the examination is determined by the auditors' judgments of the adequacy of internal controls, the materiality of transactions and errors discovered in the preliminary phases of the audit.

Self Audits

The purchasing office staff, primarily for internal improvement of the office, performs a self-audit. It may cover the entire operation or any part. Also, the self-audit may be conducted in response to external pressures to determine whether policies and procedures are used, or simply from a desire to achieve the highest level of efficiency and effectiveness in the operations of the purchasing office. The audit focuses on the purchasing office and external factors are reviewed only if they affect the office.

The purchasing staff doing the self-audit must become familiar with the statutes or ordinances (orders) that affect the purchasing office. Based on this knowledge, they can examine the procedures and practices to determine whether they are in compliance with all laws, and if not, what remedial measures need to be taken.

The examining staff must also become familiar with all policies and procedures that apply to the office. By use of interviews, observation and audit trails, staff examiners determine whether the purchasing office follows current policies and procedures.

The self-audit may include examining purchasing operations to detect problem areas. Using interviews, observations and flowcharts, they should determine ways to improve the operations. Typical areas of concern include form design and processing, physical layout of the office, management and supervision practices, administrative requirements and internal and external reports.

The extent of any self-audit is determined by several factors, including:

- Known or suspected problem areas.
- Available time and personnel.
- Time since last audit.
- Extent of last examination.
- Support of management.

Internal Audits

Internal or management audits are performed by the government's own internal auditor, who is responsible for auditing most or all departments of the government. Internal audits are similar to self-audits since both are typically concerned with increased efficiency and effectiveness in the purchasing office. Generally, an internal audit is usually focused on the relationship of the purchasing office to the rest of the government, especially higher management and the governing body.

Typically, the internal auditor focuses on review of purchasing office reports to higher management and the governing body and compliance with accepted government policies. Aside from these concerns, the internal audit will follow the design of the self-audit.

The extent of the internal audit is determined by several factors, including:

- Known or suspected problem areas.
- Time since last audit.
- Extent of last audit.
- Relative need for internal audit of the purchasing office compared to need for auditing other departments.
- Evaluation of internal control sufficiency in the purchasing office.
- Support of management for an internal audit.

The other main difference between a self-audit and an internal audit is that the internal audit report is directed to the governing body or higher management.

General Auditing Guidelines

The difference between the types of audit will be in the objectives of the audit. This will determine the focus of effort and degree of examination and testing that will take place.

For example, the financial auditors will only be concerned if purchasing has errors or losses that will have a material effect on the accuracy on the financial statements as a whole. Therefore, those auditors will test the internal controls of the office to the extent necessary to assure that such errors and losses are not likely. Only if those tests reveal material weaknesses will they perform further tests.

A self-audit, on the other hand will delve deeply into operations and procedures to determine if they are effective and efficient and whether laws and policies are followed.

Internal audits are conducted chiefly to determine for management whether any particular office is operating according to law, policy and adopted procedures.

However, in all cases, the methods will be the same; just the focus will differ. Listed below are the techniques used in auditing an office.

Get to Know the Office and Its Internal Control

Study the laws pertaining to the purchasing office. Study the section on purchasing law and know which statutes are important to the operation. If the office has other responsibilities, such as construction contracts, review any statutes that pertain to those responsibilities as well.

Study procedures manuals to see what procedures are supposed to be followed. If no procedures manuals are in use, write down the procedures that are used.

Study the policies instituted by management and the governing body. Familiarize yourself with current memos and directives.

Study the system of internal controls that are in place. These are all those policies, plans of organization and procedures that are used in governmental operations to effectively control and efficiently manage programs in accordance with applicable laws and regulations. They help to ensure:

- resources are properly used in accordance with policies of the government and with applicable laws and regulations;
- resources are safeguarded against waste, loss or misappropriation; and
- reliable data are obtained, recorded and reported as required.

Basic elements of internal control are:

- **Authorization of transactions.** These procedures ensure that the appropriate manager properly authorizes transactions.
- **Segregation of duties.** These procedures ensure, if possible, the same person doesn't have responsibility for the authorization of purchases and either the recording of the purchase or the custody of the asset purchased.
- **Control of Assets.** These procedures ensure only properly authorized persons have access to assets, and provide accountability for assets.
- **Capable, well-trained personnel.** Having job standards and personnel qualification standards, as well as policies and procedures for hiring and training the people make the purchasing office work properly.
- **Clear, easy-to-follow procedures.** Develop and document procedures ensuring purchasing personnel respond properly and consistently under all circumstances.
- **Internal Auditing.** Verify on a periodic basis the proper operation of the purchasing office by internal auditors, including all the above elements.

Document Everything

Documentation is critical to any audit. Documentation:

- shows what was done and when;
- makes sure that no procedure is overlooked;
- assigns responsibility for doing audit steps;
- ensures continuity of audit work over time;
- facilitates the review of audit work;
- provides the basis of the audit report;
- provides information for the next audit;
- provides documentation for answering questions about the audit and the audit process; and
- provides an audit trail for the internal auditor to use (during the self-audit) while evaluating the operations of the office; for the internal and financial auditor, provides proof of internal control, or lack thereof, to consider in determining the extent and nature of testing.

Decide on Audit Objectives

For the purchasing office, the audit objectives ensure that the office is properly carrying out its assigned duties in an effective and efficient manner. Audit objectives ensure that:

- all transactions are properly authorized;
- all ordering procedures are followed correctly;
- competitive bidding and proposal statutes are complied with;
- all other purchasing statutes are followed;
- materials, supplies, services and capital assets purchased are received and recorded;
- materials, supplies and capital assets received are properly safeguarded and accounted for;
- operations conform to prescribed procedures and policies; and
- operations are being conducted in the most efficient and effective manner.

Audit Procedures to Achieve the Objectives

Steps to achieve the audit objectives are up to the discretion of the auditor. However, they will include some of the ideas below, plus others that may be necessary because of the individual circumstances of the office.

To ensure that all transactions are properly authorized:

- Examine laws, written policies and procedures to determine requirements. Determine whether procedures match the law requirements and the government's policies.
- Use questionnaires and interviews to determine whether written procedures are actually in place and are used. Determine if unwritten procedures are in use.
- Examine request forms and requisitions to determine whether proper authorizations have been given. Are requisitions examined to determine whether the purchase is budgeted? Is there a sufficient balance to pay for the items?

To ensure that all ordering procedures are followed correctly:

- Examine laws, written policies and procedures to determine requirements. Determine whether procedures match the requirements of law and the government's policies.
- Use questionnaires and interviews to determine if written or unwritten procedures are in use. Are purchase order forms used? Is there a priority system in place for dealing with purchases? Are purchase order numbers recorded in a reportable format?
- Examine purchase orders for:
 - completeness;
 - mathematical correctness;
 - good (and complete) specifications; and
 - bidding requirements.

To ensure purchasing complies with all competitive bidding and proposal statutes:

- Examine laws, written policies and procedures to determine requirements. Determine whether procedures match the requirements of law and the government's policies.
- Use questionnaires and interviews to determine whether written policies and procedures are followed. Are unwritten procedures in use? Are all contracts requiring bids submitted? Are all high-tech items and insurance for counties examined to determine whether a request for proposals is appropriate? Are complete specifications used?
- Examine 30 percent⁴⁷ of purchase orders to determine:
 - a. if all purchase orders exceeding the bid limits are submitted for bids or proposals;
 - b. if there is evidence of splitting or separating purchases to avoid bidding requirements;
 - c. if there is evidence of purchases made of component parts rather than the actual item desired to avoid bidding requirements; and
 - d. if there is evidence of sequential purchases made to avoid bidding requirements.

To ensure that the department complies with other applicable purchasing statutes:

- Examine laws, written policies and procedures to determine requirements. Determine whether procedures match the requirements of law and the government's policies.
- Use questionnaires and interviews to determine whether the staff believes that:
 - a. the department complies with prohibitions against conflicts of interest;
 - b. bid openings are handled properly;
 - c. contracts are awarded to the lowest (lowest and best, for counties) responsible bidder or the contract is re-bid;
 - d. requests for proposals contain the weighted factors by which the proposal will be evaluated; and
 - e. other laws are obeyed.

- Examine bids, documents and reports for evidence that indicate whether the department follows statutes.

To determine whether materials, supplies, services and capital assets ordered are actually received and recorded in the accounts:

- Examine written policies and procedures to determine requirements.
- Trace some purchase orders to receiving reports and invoices for payment. Trace some invoices for payment to receiving reports and purchase orders.
- Examine the accounts to determine whether all transactions are recorded. Trace purchase orders to the ledger account.

To determine whether materials, supplies and capital assets are properly safeguarded:

- Examine written policies and procedures to determine requirements.
- Use questionnaires and interviews to determine whether the written procedures are followed.
- Determine whether regular physical inventories have been conducted on supplies, materials and capital assets. If so, see if any shortages discovered have been reconciled on the accounts, and if an attempt was made to discover how the shortage occurred.
- Conduct a physical inventory of capital assets, supplies and materials. Reconcile shortages to accounts and trace them to determine the reason for shortages.

To determine whether operations are conducted in the most efficient and effective way:

- Use flowcharts and diagrams of the physical layout of the offices to determine the most efficient physical flow for the various operations. See whether the actual flow matches the ideal.
- See if it is feasible to combine or eliminate any operational steps.
- Look at the design of forms to see if they provide the information necessary for their purpose. Examine similar forms used by other government or private entities to see if improvements can be made. See if any forms could be eliminated or combined.

Determine the Acceptable Level of Errors

The error rate should not be set at zero. Some errors will occur, so set a reasonable, achievable rate. Do not set the error rate before testing.

Determine the Extent of Testing Required

For each type of audit, a different level of testing will be required.

For a self-audit, compliance with statutes, procedures and policies should be tested, as well as the efficiency and effectiveness of operations.

An internal audit should concentrate on the above items, along with testing the adequacy of reporting and responsiveness to management.

A financial audit should test internal operation controls to assure confidence that any errors will not cause material misstatements in financial statements.

If there have been previous audits, the level of testing may be reduced. It will always be important to double check previously discovered deficiencies.

Only consider checking every document if the audit is small, or if there is no confidence in the internal controls in the office. An example would be if there is a known irregularity, but the extent of the irregularity is unknown. Otherwise, sample according to the level of confidence in the internal control system and the time available to do the audit. A random selection system can be used to choose samples.

When sampling, unusual items should be noted, such as:

- Unusually large or small values.
- One-of-a-kind transactions.
- Transactions involving officials or government employees.
- Controversial areas.
- Items that have received public attention.
- Anything else unusual or out of place.

Less testing should be necessary when internal controls are strong.

Judgment sampling can be useful when there are few transactions and the auditor can test a large percentage of the items or costs. However, assertions cannot be made about the entire population.

The evaluation of acceptable risk is a matter of professional judgment.

Perform the Audit Program

Using the Purchasing Audit Checklist in Exhibit 26, examine those items that are indicated for the type of audit being performed. For a self-audit, items marked S should be examined. For an internal audit, those items marked I should be examined and for a financial audit items marked F should be examined.

All work should be documented in well-organized work papers. Exceptions, problems and errors should be noted. (Example: Of 50 purchase orders examined, three purchases made without proper requisitions were found. One of the purchases was in excess of the bid limit without justification for an emergency or exempt purchase.)

Every step of each audit should be completed, without exception.

Evaluate Results

Compare the results of sampling to the acceptable error rate. If judgment sampling was used, the percentage of errors in the entire population can be extrapolated from the number of errors found in the sample. (Example: Out of 50 purchase orders examined, three had not been properly authorized. The population was 762 purchase orders issued during the period. The percentage of errors was $3 \div 50 = 0.06$ or 6 percent. Six percent

of 762 is about 46. Therefore, you would assume that 46 of the 762 would not have been properly authorized.)

The previously determined acceptable error rate is used to determine if performance is acceptable. (Example: If the pre-determined acceptable level of errors was 3 percent, an error rate of 6 percent is unacceptable.)

Consider the types of errors found. Causes of common errors include:

- Carelessness.
- Lack of training.
- Poor procedures.

Evaluate the errors in light of the number and type of errors. Some may turn out to be more or less significant after evaluation. (For example: “Three errors found were all on purchase orders processed by one clerk, and all prior to the clerk having received needed training. Since then, the clerk has become extremely proficient.”)

Make Reports and Recommendations

The reports should be made to management at the appropriate level. If the audit is a self-audit, then reports should be to the next level of authority, and should be informational. If it is a financial audit, the information on the purchasing office may be incorporated into the final audit report of the entire government, and may or may not be mentioned as a separate item. If it is an internal audit, the report will be to management at the necessary level, and perhaps to the governing body if findings warrant. The report will also go to the purchasing office for corrective action, possibly with recommendations or directives from management or the governing body.

Recommendations or directives may consist of suggestions for simple corrective actions directed to the purchasing manager or orders for more drastic action.

Reports and recommendations should be documented. An audit letter should be sent to the officials affected, and to the governing body detailing the findings and recommendations.

Follow-Up

Over time, compliance should be tested in areas where problems were discovered and corrective action was taken. Written procedures for emergency purchases must be in place, e.g., 100 percent of all emergency purchases must be accompanied by a written form or request.

System functional access controls must be set to ensure segregation of duties. (Set up separate section on system controls).

Chapter 10

Electronic Procurement

Advances in electronic technology and the Internet provide local governments with several new opportunities to improve their purchasing activities. Generally, paper-based systems used by many local government entities in past years were cost-inefficient, time-consuming and susceptible to hand-written errors.

Cost Reduction and Increased Transparency

Increased efficiencies from the e-procurement process can also reduce paperwork and related filing and paper recycling costs. Electronic procurement systems often reduce or eliminate the need for paper requisitions and authorizations, paper purchase orders and acknowledgments and paper invoices and paper checks. An e-procurement system also maximizes cash management efficiencies (paying on due date) and eliminates many of the repetitive, error-prone tasks of data entry. Purchasing processes that previously took weeks to complete can now be performed more efficiently and transparently.

State of Texas' Online Electronic Purchasing Services

Electronic State Business Daily (ESBD)

The State of Texas facilitates electronic commerce, including local government procurement, through the Electronic State Business Daily (ESBD). The Texas Legislature created the ESBD to require state agencies to post large procurement opportunities a single online location. Texas municipalities, counties, school districts and special authorized districts can post procurement notices for potential business vendors to review.⁴⁸

The ESBD features the National Institute of Governmental Purchasing (NIGP) database to allow Texas businesses to identify their appropriate commodity code during the online procurement process.

The ESBD's online marketplace allows local governments to register online through the Comptroller's CO-OP Purchasing Program. Upon registration, ESBD allows the posting of local procurement opportunities to a large audience of potential vendors statewide.⁴⁹

Click the Comptroller's website link at <http://esbd.cpa.state.tx.us/> for fast access to the ESBD.

Centralized Master Bidder's List (CMBL)

The Comptroller of Public Accounts' Centralized Master Bidder's List (CMBL), available online, allows local governments to search vendors. For fast access and to search the CMBL, go to: <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>.

Legislative Changes

In 2007, procurement services provided by the Texas Building and Procurement Commission moved to the Texas Procurement and Support Services (TPASS) at the Comptroller of Public Accounts in Austin.

Texas Smart Buy (TSB)

Texas Smart Buy, also provided through the Texas Comptroller of Public Accounts, is an online ordering system for state agencies and local governments in Texas. Cooperative purchasing members who have been trained by TPASS professionals have access to a TSB online ordering system that contains more than one million items and about 850 catalogs. Eligible organizations can search products, compare prices and place orders on the website. The shopping cart collects and stores purchasing data, which the purchasing team will use to continually improve enterprise contracts.

Go to <http://www.txsmartbuy.com> for fast access to the Comptroller's TSB site.

Reverse Auctions

Under Government Code, chapter 2155, local governments may use the reverse auction procedure to purchase goods and services. One of the benefits of electronic reverse auctions is the real-time bidding process that generally lasts less than one hour or up to two weeks. The bidding process may take place at a previously scheduled time or period and at a specific Internet location allowing multiple suppliers, anonymous to each other, to submit bids for requested goods or services.

Government Code, Sec. 2155.085 (a) (1) requires the CPA to use reverse auction procedures whenever (A) the procedure provides the best value to the state; or (B) all purchasing methods provide equal value to the state.

Not all commodity types are a good fit for reverse auctions. The Texas Procurement and Support Services (TPASS) division of the CPA reviews solicitation requests from its client agencies to determine whether the requested commodity is a good candidate for a reverse auction. The TPASS review analyzes the number of bidders in previous similar solicitations; the competitive volume; the effectiveness of prior reverse auctions for the same or a similar commodity; the number of potential suppliers registered on the Centralized Master Bidders List (CMBL); the number of delivery locations; and other factors that may be specific to a particular commodity.

In the reverse auction, bids are submitted electronically in real time and prices start high and drop as suppliers, instead of buyers as in a traditional auction, bid for contracts to provide goods and services. Suppliers bid against each other online. Vendors remain anonymous to each other; only the local government and the buyer can see the vendors' identities.

Reverse auctions benefit local governments through faster bid evaluation procedures; increased savings through competition; redirection of vendor inquiries to online management; automated online delivery of solicitations, RFQs and amendments; complete

bid histories which increase transparency; line-item by line-item descriptions; and, cost savings from spreadsheet formats that allow efficient vendor cost comparisons.

The benefits of electronic reverse auctions include enhanced competition, lower prices and best value to the state and to local governments. The State of Texas authorizes municipalities to use the electronic reverse auction procurement process under Texas Local Government Code §252.021 (as amended by Texas House Bill 3517 and SB 1765) 80th Legislature, Regular Session (2007).⁵⁰ School districts may also use this process under Texas Education Code (Ann §4403i (a) (8) Vernon (2006) when it provides the best comparative value.⁵¹

For more information on how to use the CPA's reverse auctions, contact the Texas Comptroller's office at (512) 463-3158 and visit the Comptroller's website: http://www.window.state.tx.us/procurement/reverse_auction_info.html#1.

Chapter 11

Purchasing Law

This section provides an overview of applicable Texas purchasing statutes. It is a broad summary, not a legal brief or a legal text. A local government's attorney should be consulted in any situation that is not clear. Also, please visit the websites listed in the sections below for the latest purchasing laws for municipalities and counties in Texas.

Municipal Purchasing Laws

Local municipal governments should consult the Texas Attorney General's website at http://www.oag.state.tx.us/AG_Publications/pdfs/procurement_easy.pdf before making purchases. You will find the *2010 Texas Municipal Procurement Laws Made Easy* searchable online.

County Purchasing Laws

Legal resource links applicable for local county governments making a purchase include: the Texas Comptroller of Public Accounts' Procurement Manual on the Comptroller's website (<http://www.window.state.tx.us/procurement/pub/manual>).

Other resources with purchasing laws for counties and legislative updates include the Texas Association of Counties' website and the Texas Public Purchasing Association website.

Other sources of procurement law applicable to Texas counties include the Texas Public Purchasing Association website and their legislative update which is modified periodically. Go to: <http://www.txppa.org/assoc/cms> for general information and to search the legislative update pages.

Purchasing Laws Summary

Texas purchasing law is located in a number of places in the statutes. Chapter 252 of the Texas Local Government Code describes the majority of procurement laws for cities. Chapter 262 of the Texas Local Government Code includes most county procurement statute descriptions. Statutes pertaining to cities and counties, plus other types of local governments, are included in Chapter 271 of the Texas Local Government Code. Conflicts of interest by local government officials are covered in Chapter 171 of the Local Government Code. Statutes pertaining to local and state governments are contained in the Government Code. Other statutes pertaining to purchasing or contracting are in Vernon's Civil Statutes or in other parts of Vernon's Texas Codes. Since the law is substantially fragmented, it is helpful to have a listing of where to find different statutes and each act's general contents.

Attorney general opinions offer valuable guidance in interpreting and applying the laws. Consult them whenever questions arise. Appendixes 1 and 2 are listings of attorney

general opinions that have been issued over the years. Use them as a guide to starting a library on purchasing issues. The attorney general's opinions are available from:

Attorney General of Texas
Opinion Committee
209 West 14th Street
Austin, TX 78701-2548
Telephone (512) 463-2110
<http://www.oag.state.tx.us>

See **Appendix 3** of this manual for relevant open records decisions.

Construction of Public Works – Wage Rates

Government Code, Chapter 2258 – Prevailing Wage Rates

This statute requires paying the prevailing wage rates to laborers and mechanics employed by or on behalf of the State of Texas or any political subdivision of the state engaged in the construction of any public works. This applies both to contractors and subcontractors, but it does not apply to maintenance work.

The wage rate for these jobs shall be not less than the general prevailing rate of per diem wages for similar work in the area the work is performed and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The public body awarding the contract must ascertain the prevailing wage rates for each type of workman or craftsman in the contract and must specify the wage rates in the bid specifications and in the contract itself.

To determine the prevailing wage rate, the public body shall either conduct a survey of prevailing wages, in a manner complying with the Information Resources Management Act, or shall adopt the prevailing wage rate as determined by the U.S. Department of Labor in accordance with the Davis Bacon Act, if the survey by the U.S. Department of Labor was conducted within the last three years.

There is a penalty of \$60 per worker per day or portion of a day that the prevailing wage rate is not paid by the contractor or any subcontractor. This provision must be included in the contract. A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract. The penalty is paid to the state, county, city with a population more than 10,000, district or other political subdivision that awarded the contract. The awarding body collecting money under this provision shall keep it to offset the costs of administering this Act.

The public body awarding the contract must investigate any complaints that the Act is not being complied with and must determine within 30 days whether good cause exists that a violation of this Act has taken place. The public body must then notify the contractor or subcontractor and the affected worker of the determination.

When paying the contractor, the public body must withhold any amounts due under the contract, pending final determination of the violation. The public body may not withhold money from anything other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated this act. The contractor has authority to withhold any penalty amounts under this section because the subcontractors did not comply with the Act.

If the contractor or subcontractor and the worker fail to resolve the alleged violation within 14 days of the determination, the matter shall be submitted to binding arbitration under the provisions of the Texas General Arbitration Act. If the parties fail to agree on an arbitrator within 10 days, an arbitrator shall be appointed by the district court on petition by either party. The arbitrator's decision shall be final.

A public body shall use any amounts retained to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing wage rate as provided in the arbitrator's award. If the amounts retained by a public body are not sufficient for the public body to pay the worker the full amount owed, the worker has a right of action against the contractor or subcontractor and the surety of the contractor or subcontractor to recover the amount owed, reasonable attorney's fees and court costs.

An officer, agent or representative of the state or of a political subdivision of the state commits an offense if the person willfully violates or does not comply with a provision of Government Code §2258. An offense under this section is punishable by a fine not to exceed \$500, confinement in jail for a term not to exceed six months or both a fine and confinement.

An officer, agent or employee of a public body is not liable in a civil action for any act or omission implementing or enforcing these provisions unless the action was made in bad faith.

State Highways – Awarding Certain Contracts

Transportation Code, §223.047 – Preference for Rubberized Asphalt Paving Made From Scrap Tires

This section of the Transportation Code relates to provisions giving purchasing preferences to the use of rubberized asphalt for paving use on state facilities. It also places requirements on counties and municipalities using rubberized asphalt and gives a purchasing preference.

If the state highway department, a county or a municipality uses rubberized asphalt paving, the department, county or municipality shall use scrap tires converted to rubberized asphalt paving by a facility in this state if available.

In comparing bids submitted for road construction that require paving, the department, a county or a municipality may give preference to a bid that provides for using, as a part

of the paving material, rubberized asphalt paving if the cost of that paving material does not exceed by more than 15 percent the bid cost of alternative paving materials for the same job. The materials' cost must be determined by a life cycle cost benefit analysis.

County Road Department System – Competitive Procurement

Transportation Code, §252.312

The commissioners court shall purchase the equipment, materials and supplies for the county road department through competitive procurement conforming to estimates and specifications prepared by the county road engineer. Except that, if the county road engineer recommends and the commissioners court considers it to be in the county's best interest, a purchase in an amount of \$50,000 or less may be made through negotiation by the commissioners court or the court's authorized representative on a requisition to be approved by the commissioners court or the county auditor without advertising for competitive bids.

A purchase may not be divided or reduced to avoid the competitive procurement requirement on a purchase that would otherwise cost more than \$50,000.

Local Government Code

Chapter 140 – Miscellaneous Financial Provisions Affecting Municipalities, Counties and Other Local Governments

The 76th Legislature enacted controls on purchasing and financial reporting by "specialized local entities," which are defined as district attorneys, juvenile boards and probation departments. LGC §140.003 requires these entities to:

- abide by county purchasing statutes under Subchapter C, Chapter 262. (Such entities are given specific authority to contract with the county to perform their purchasing function.);
- prepare and file a financial statement for the previous year with the commissioners court, within 30 days after the beginning of the entity's fiscal year. This financial statement must contain "any information considered appropriate by the specialized local entity, and any information required by the commissioners court of any county in which the entity has jurisdiction;"
- prepare and file a budget for the current year with the commissioners court, within 30 days after the beginning of the entity's fiscal year. If the entity regularly prepares its budget at a time other than its fiscal year end, then it must file the budget with the commissioners court within 10 days of the date it is adopted; and
- deposit their funds with the county treasury of the county in which the entity has jurisdiction. If the entity has jurisdiction in more than one county, the district judges having jurisdiction in those counties shall, by majority vote, designate the county responsible for managing the entity's funds.

The auditor of the county that manages the entity's funds has the same responsibility to audit the entity's funds as the auditor has with respect to other county offices.

Least Cost Review Program

To assist counties, the state auditor may develop forms, promulgate and widely distribute easily used forms, with instructions, for cost accounting for public works. The state auditor will consult with the Texas Comptroller of Public Accounts in developing the forms and instructions.

Prior to the public distribution of the forms, the state auditor and the comptroller will seek input from large and small governmental entities and the construction industry.

The forms shall provide a simple comparison of the costs of public improvements constructed by the county's personnel, equipment or facilities, compared with a competitive bid submitted by the private sector.

The forms shall be useful for all governmental entities, including counties, municipalities, special districts and any other entities that construct public improvements in-house.

Chapter 171 – Regulation of Conflicts of Interest of Officers of Municipalities, Counties and Certain Other Local Governments

This statute defines and regulates conflicts of interest by local government officials. It defines a conflict of interest and details how local government officials can carry on government activities when they have some commercial interest in the entities doing business with the government.

Some citizens are naturally concerned that government officials act in the best interests of the governmental entity, not in their own best interests. So rules of law define what government officials cannot do in government dealings when they stand to possibly gain from the transaction.

On the other hand, sometimes it is advantageous to citizens for their governments to deal with businesses with which the officials have some affiliation. In some instances, especially in smaller jurisdictions, the local government officials are primary businesspersons in the community. This statute addresses proper business practices for these circumstances.

Local Government Code, §171.001

A Local Government Official refers to a member of the governing body or another elected or appointed officer, paid or unpaid, of any district, county, municipality, precinct, central appraisal district, transit authority or district or other local government who exercises responsibilities beyond those which are merely advisory in nature. For the purposes of this manual, it includes all city and county officials, either elected or appointed, but not ordinary employees. To be affected, the official must have a “sovereign authority largely independent of others.”

A business entity includes all the commonly accepted business entities, such as a corporation, partnership, sole proprietorship, trust or any other entity recognized by law. In the case of an official dealing with the government as an individual, as in the sale of real

estate privately owned by the official, the dealing would likely be considered the same as if that official were a business entity.

Local Government Code, §171.002

A substantial interest in a business entity occurs if the official has:

- 10 percent or greater ownership of the voting stock or shares of the business entity or owns 10 percent or more or \$15,000 or more of the fair market value of the entity; or
- 10 percent of the official's gross income from the business entity.

An official has a substantial interest in real property if the interest (equitable or legal) exceeds a fair market value of \$2,500 or more.

The official is considered to have a substantial interest if a person related to the official in the first degree of consanguinity or affinity has a substantial interest under this section.

Local Government Code, §171.003

An official as defined in LGC §171.001 is prohibited from:

- violating §171.004;
- acting as a surety on any official bond required for any official of the government; or
- acting as a surety for any business employed by the government.

A violation of this section is a Class A misdemeanor.

Local Government Code, §171.004

If an official has a substantial interest in a business entity or in real property, the official must file an affidavit stating the nature and extent of the interest before any vote involving the business or real property. The affidavit must be filed with the government's recorder (for example, the city or county clerk). The official must also abstain from any further participation in the matter if:

- for a business entity, the vote will have a special economic effect on the business different from the general effect on the public or
- for real property, it is reasonable to believe that the vote will benefit the property's value over any benefit to the general public.

If a majority of the members of the governmental entity are also required to file an affidavit of similar interest in the same matter, then the official is not required to abstain in the matter.

Local Government Code, §171.005

When voting on the budget, the governing body shall take a separate vote on any budget item specifically devoted to a contract with a business where the official has a substantial interest, and the official shall abstain from voting (except as provided in §171.004). The official may vote on the final budget provided that:

- the member has complied with this chapter; and
- the matter concerned has been resolved.

Local Government Code, §171.006

The finding of a court that a violation of this chapter occurred does not void that action of the governing body unless the vote of the member violating the chapter was the deciding vote on the matter.

Local Government Code, §171.007

This chapter preempts common law on conflicts of interest and is cumulative of municipal charter provisions and municipal ordinances.

Purchasing and Contracting Authority of Municipalities

Local Government Code, Chapter 252 – Purchasing and Contracting Authority of Municipalities

This chapter is divided into four subchapters and comprises what was formerly known as the Bond and Warrant Act of 1931. It contains most of the exclusively municipal law on public purchasing in Texas.

The subchapters are:

- Subchapter A – General Provisions
- Subchapter B – Competitive Procurement or Competitive Proposals Required
- Subchapter C – Procedures
- Subchapter D – Enforcement

This chapter includes the competitive procurement requirements and the exceptions to competitive bidding. It also provides that certain municipal charter provisions prevail over the statute. It covers areas such as awarding bids, changes to plans and specifications, the alternative competitive proposal for high-technology items and criminal penalties for violation of the chapter.

Subchapter A – General Provisions

This subchapter contains definitions of terms used in the statute. Terms defined include bond funds, current funds, high technology procurement and time warrant, as well as separate purchases, sequential purchases and component purchases.

This subchapter also states unequivocally that, in conflicts between this chapter and provisions of the charter of a home-rule municipality that relate to notice of contracts, advertising of the notice, requirements for accepting sealed bids based on specifications for public improvements or purchases, or the manner of publicly opening bids or reading them aloud, the municipal charter provisions will prevail unless the municipality's governing body elects to have this chapter supersede the charter.

A municipality must apply the provisions of VTCA Health and Safety Code §361.426 relating to a purchasing preference for purchased items manufactured using recyclable materials.

Subchapter B – Competitive Bidding or Competitive Proposals Required

This subchapter details the requirements for competitive bidding for municipalities. For those municipalities to whom it applies, it is one of the most, if not the most, important

purchasing statutes. Portions of the chapter are applicable even for home-rule cities that have some charter provisions that override this chapter.

Competitive Bid or Proposal Requirements

Local Government Code §252.021 requires that municipalities use competitive sealed bids or proposals for all expenditures of more than \$50,000, except for a contract for insurance.⁵²

When spending more than \$3,000 but less than \$50,000, a municipality, under Local Government Code §252.0215, must contact at least two disadvantaged businesses on a rotating basis from a list provided by the Office of Small Business Assistance of the Comptroller. If the list fails to identify a disadvantaged business in the county in which the city is located, the city is exempted from this provision.

All bids or proposals must be sealed. Competitive proposals may be used only for high-technology procurements as defined in Subchapter A.

Alternative Competitive Proposals for High Technology Items

Requests for proposals offer an alternative method of competitive purchasing for high-technology items. A request for proposals must include the conditions to be satisfied and the relative importance of price and other evaluation criteria.

High technology procurements include data processing equipment and software, telecommunications equipment, radio and microwave systems, electronic control systems, including building energy management systems and services related to these items.

This subchapter's provisions apply to contracts for which payment will be by current funds, bond funds or time warrants. (If payment is to be made by certificates of obligation, then the provisions of Subchapter C, Chapter 271 may apply, and the bid limit would be \$50,000 for all cities. Subchapter C allows the municipality to use the provisions of either Subchapter C or Chapter 252, and it is not required to specify which is being used.)

In applying any requirements established by this subchapter, all separate, sequential or component purchases (as defined in the definitions section) ordered or purchased with the intent of avoiding the competitive procurement requirements are treated like a single purchase.

Exemptions

The competitive procurement or proposal requirements do not apply to items exempted from the competitive procurement provisions. The items exempted are:

- Purchased in case of public calamity to relieve the needs of the citizens or to preserve city property.
- Used to preserve or protect the public health or safety of the city's residents.
- Necessary because of unforeseen damage to public property.
- Personal or professional services.
- Work paid for on a daily basis (day labor).

- Lands or right-of-way.
- Available from only one source, such as patented, copyrighted natural monopoly or secret process items, films, manuscripts or books, electric power, gas or other utilities, books, papers, other library materials subject to exclusive distribution rights and management services provided by a non-profit organization to a municipal museum, park, zoo or other facility which the organization has financially or otherwise supported.
- Rare books, papers and other library materials for a public library.
- Paving, street widening and other public improvements where at least one-third of the costs are paid by special assessments.
- Public improvement projects that have been authorized but for which there is a deficiency of funds to complete in accordance with the plans as authorized.
- A payment under a contract by which a developer participates in the construction of a public improvement under Subchapter C, Chapter 212.
- Personal property sold at a public auction by a licensed auctioneer, or sold at a going out of business sale, or sold by another political subdivision of the state, a state agency or the federal government.
- Services performed by blind or severely disabled persons.

This chapter does not apply to bonds and warrants issued under Local Government Code, Chapter 421, Seawalls and Levees in Coastal Municipalities and Counties.

Exemption from Referendum Provisions

The provisions for referendums on issuance of time warrants in Subchapter C do not apply to expenditures from:

- current funds;
- bond funds; or
- time warrants, if they are less than amounts set according to the city's population.

Insurance Broker

The city may select an insurance broker on a fee basis as the city's broker of record to obtain insurance proposals and coverage for all the city's liabilities, provided that the broker of record may not be remunerated by any other source. This should bar the broker from any commissions on insurance purchased by the city or from placement fees from any insurance company insuring the city.

Subchapter C – Procedures Notice of Competitive Procurement.

All contracts requiring competitive bids or proposals must be advertised and must contain notice of the date and time at which the bids will be publicly opened and read aloud. The advertising must be:

- in a newspaper published in the city;
- published therein at least once a week for two consecutive weeks before the bid opening; and
- first published on or before the 14th day before the date the bids are publicly opened and read aloud.

If no newspaper is published in the city, the notice must be posted at the city hall for 14 days before the date the bids are publicly opened and read aloud. (If posted inside the city hall, and the city hall is not opened for some days during the period, those days will not count toward the 14-day period.)

If the contract is for the purchase of road maintenance or construction machinery, the notice must contain general specifications for the machinery.

If any part of the payment is by time warrants, certain information on the time warrants is required.

Opening of Bids

Bids must be publicly opened by the city on the specified date, time and place. Bids must be read aloud and then kept on file and available for public inspection. For bids or proposals that contain trade secrets or confidential information, the portion with the secrets and confidential information will not be available, but the remainder of the bid or proposal must be available for public inspection.

Awarding of the Contract

The bids are presented to the governing body, and it must either award the contract to the lowest responsible bidder or reject all bids and rebid the contract. (If identical bids are received, the provisions in Local Government Code §271.901 for determining to whom the bid will be awarded apply.)

For proposals, the contract is awarded to the responsible bidder whose proposal is determined to be the lowest evaluated offer resulting from negotiation, considering the relative importance of all the criteria stated in the request for proposals.

Proposals that contain trade or confidential information that is identified by the bidder will be opened in such a way as to avoid disclosure of this information. All other information in proposals shall be open to the public.

All proposals reasonably susceptible to being selected must be given fair and equal consideration and discussions must be conducted with all these bidders. For the purpose of obtaining best final offers, the proposals may be revised before awarding the contract, in order to give maximum satisfaction to all bidders and the city.

Safety Record

In determining a responsible bidder, the governing body, under Local Government Code §271.0275, may consider the bidder's safety record so long as the city has adopted a written definition and criteria for determining the safety record, the criteria are not arbitrary and capricious and the city has given notice in the specifications that the safety record shall be considered.

Contractors Performance Bond

On contracts for public works, the city must require a performance bond in the full amount of the contract. Any performance bond must be by a surety company authorized to do business in Texas in accordance with Government Code §2253.

Referendum on Time Warrants

If time warrants are to be used to pay for a purchase, and if a proper written petition is filed with the municipal secretary before the deadline for awarding the contract, then the city must order a referendum on the question of using the time warrants. A proper petition must contain at least 10 percent of the city's registered voters whose names appear on the city's latest role of property taxpayers. The governing body may order a referendum without a petition. (See Local Government Code, Chapter 252 for requirements for issuance of municipal bonds.)

If the warrants are payable from current funds, then the municipality must set aside an amount sufficient to pay principal and interest from its current funds. If the contract is for the construction of public works, or for the purchase of materials, equipment and supplies, the municipality may use lump sum or unit prices in the bid, but the contract must give approximate quantities of the items needed. Payment will be on the basis of actual quantities purchased.

Change Orders

After awarding the contract, the governing body may make changes to plans, specifications or quantities if necessary. But the total contract amount may not be increased unless the increase will be paid from current funds, or is provided for by issuing time warrants. If a change order of \$25,000 or less is involved, the governing body may grant authority to an employee to approve the change order. No increase of more than 25 percent may be made, and the contractor must agree to any decrease of 25 percent or more.

Subchapter D – Enforcement Injunction

If the contract is made without complying with this chapter, it is void. Performance of the contract, including payments on the contract, may be enjoined by any property tax paying resident of the municipality.

Criminal Penalties

Any municipal official or employee commits a Class B Misdemeanor if he/she intentionally or knowingly make or authorize separate, sequential or component purchases to avoid the competitive bidding requirements of §252.062. Any other intentional or knowing violation of §252.062 is also a Class B Misdemeanor. Any intentional or knowing violation of any provisions of this subchapter other than §252.062 is a Class C misdemeanor.

Removal and Ineligibility

The final conviction for violations of §252.062, which are Class B Misdemeanors, result in immediate removal from office or employment of that person. Also, for four years following the date of final conviction, the person is ineligible to:

- be a candidate for or to be elected or appointed to a public office in this state;
- be employed by the city; or
- receive compensation through a contract with the city.
- However, the removed official or employee does not lose any retirement or workers compensation benefit rights.

Local Government Code, Chapter 253: Sale or Lease of Property by Municipalities

This chapter is devoted mostly to sale or lease of real properties. Since most purchasing officials are not involved to any great extent with its provisions, the coverage here is brief. Any purchasing official needing detailed knowledge should consult the text of the Local Government Code. The final provision deals with sale or lease of computer software developed by the municipality.

Sale of Park Land, Municipal Building Site or Abandoned Roadway

This section covers sales of these properties and gives the governing body the right to make such sales. A sale of parkland must be submitted to a vote of the citizens. The proceeds of these sales must go to the same purpose as the sold property.

Transactions Concerning an Island, Flat or Submerged Land

The city may sell or otherwise convey this type land if it was titled to the municipality by the state or Republic of Texas before April 23, 1953. A home-rule city must hold a referendum unless the time for petitioning for a referendum has passed before selling or conveying the land. The section does not grant any mineral rights, and prevails over a home-rule city's charter provisions.

Purchase and Sale of Federal Property

Cities of populations of less than 10,000 may purchase federal real property for their use. If the purpose for purchasing the property ceases to exist, the city may sell or convey the property.

Grant or Lease of Property for Juvenile Board

A home-rule city may donate property to the county for use by the juvenile board.

Lease of Oil, Gas or Mineral Land

This property right may be leased as the governing body determines for the benefit of the city, except:

- it may not lease a street, alley or public square; and
- a well may not be drilled in the thickly settled part of the city or within 200 feet of a private residence.

Lease of Municipal Hospital or Swimming Pool

The governing body of a city with a population of 65,000 or less may lease a municipal hospital to be operated by the lessee as a public hospital. They may also lease a municipal swimming pool to be operated by the lessee as a public swimming pool. The leases may not be for a period of greater than 50 years.

Sale of Real Property by Public Auction

The municipality may sell real property owned by the municipality by sealed bid under Local Government Code §272.001 or by public auction under this section.

To sell real property by public auction, the municipality must publish notice of the auction. According to Local Government Code, §253.008, the notice must be published once a week for at least three consecutive weeks, with the first publication at least 20 days before the date the auction is held and in a newspaper of general circulation in both the county in which the municipality is located and the county in which the property is located. The notice must contain a description of the property, including location, and the date, time and location at which the auction is to be held.

Sale or Lease of Computer Software by Certain Municipalities

This section applies to municipalities with a population of more than 5,000. A municipality that independently or in conjunction with any person develops automated information systems software may contract with a person for the sale, lease, marketing or other distribution of the software.

Any release of municipally developed automated information systems software must be under a contract that provides that the municipality will receive a royalty, license right or other appropriate compensation for developing the software. The provisions of the open records law, Chapter 552, Government Code VTCA, relating to the cost of making copies of public records do not apply to automated information systems software subject to a contract under this section.

Local Government Code, Chapter 262: Purchasing and Contracting Authority of Counties

This chapter contains the bulk of the purchasing law concerning Texas counties. While purchasing officers may become familiar with other areas of purchasing law and know where to look when encountering a problem, they should study and learn this chapter in some depth. The more officials deal with purchasing, the more they should know about this chapter.

This chapter contains the competitive bidding requirements and the exceptions to competitive bidding. It also contains the provisions for appointing the county purchasing agent and lists the purchasing agents' duties. Other areas of interest are awarding bids, use of time warrants, changes to plans and specifications, the alternative competitive proposal for high tech items or insurance and criminal penalties for violation of the chapter.

Subchapter A – General Provisions

This subchapter contains the general authority for the commissioners court to appoint an agent to contract for the county for most purposes and specifies that the agent, once appointed, may bind the county to a contract that is properly executed and within his authority. It is generally considered specific event authority and not general authority to appoint a purchasing agent. This subchapter also contains other provisions for the county to purchase road equipment and tires through the State Purchasing and Comptroller. It also specifically exempts from competitive bidding procedures under any statute, purchases of \$50,000 or less available from only one supplier.

A county must apply the provisions of VTCA Health and Safety Code §361.426 relating to a purchasing preference for purchased items manufactured using recyclable materials.

Subchapter B – Purchasing Agents

This subchapter defines the authority of a board to appoint a purchasing agent for the county and sets out the duties of the purchasing agent. It describes the only methods under which an individual can be authorized to act as a county purchasing agent.

If the board decides to appoint the purchasing agent, it is done by majority vote.

For a county with a population of 150,000 or less, the county judge and the district judges make up the board. For counties larger than 150,000, the board is composed of three judges of the county's district courts and two members of the commissioners court. The two members of the commissioners court are selected by majority vote of the commissioners court. If there are fewer than three district court judges, then the board is composed of one district judge and the county judge. In either case, the judge(s) for the board are selected by majority vote of the district judges.

The purchasing agent's term is two years, and the board that appoints the agent has the power to remove the agent.

The purchasing agent's duties include making all purchases not subject to competitive bidding, supervising the competitive bidding process and the delivery of materials purchased in accordance with contracts awarded by bids, and many other aspects of running the purchasing office. Some specific duties are:

- executing a bond in the amount of \$5,000;
- conducting an annual inventory of the property on hand and belonging to the county, and filing it by July 1 with the county auditor for his examination and accounting and with each of the members of the board;
- adopting the rules and procedures to implement the agent's duties;
- adopting procedures to provide for competitive bidding of all purchases of items not requiring competitive bidding under Local Government Code §262.023; and
- transferring materials and supplies from a department where they are not needed to a department or area needing the material or supplies, and accounting for which materials are transferred. This action requires the approval of the commissioners court.

The board that appoints the purchasing agent may also approve the hiring of assistants, and the provision of supplies, equipment and traveling expenses considered necessary. The board also sets the purchasing agent's and assistants' salaries.

The county purchasing agent is not required to make purchases for a municipal or county hospital or other joint undertaking of the municipality and county.

In a county with a purchasing agent, no person other than the purchasing agent may make a purchase for the county.

The county auditor may not approve, and the county treasurer may not honor, a warrant for a purchase unless the purchase is made by the purchasing agent or on competitive bids as provided by law. A person, including an officer, agent or employee of the county, commits a Class C offense if he violates the section creating the position and duties of the purchasing agent.

In a county with a population of more than 125,000, the commissioners court may employ a person to act as the purchasing agent. This provision only applies when the board of judges mentioned above has not appointed a purchasing agent. An agent appointed under this provision will carry out the duties of the purchasing agent as detailed above.

The purchasing agent employed by the commissioners court serves at the pleasure of the commissioners court. The commissioners court may employ other persons to assist the purchasing agent to perform the purchasing agent's duties.

If the position of county purchasing agent under this provision is abolished, the county auditor assumes the duties of the county purchasing agent.

In the two instances listed below, the auditor acts as purchasing agent unless a purchasing agent has been appointed.

A county's commissioners court that employs a county auditor jointly with one or more counties under Local Government Code §84.008, may require the auditor to act as the county's purchasing agent.

Subchapter C – Competitive Bidding

This subchapter contains definitions used in the County Purchasing Act and details the requirements for competitive bidding for counties. Among the terms defined in the Act are high technology item, separate purchases, sequential purchases and component purchases.

For all counties, Local Government Code §262.023 requires competitive bids or proposals for a contract of more than \$50,000, unless the expenditure is specifically exempted.

All bids or proposals must be sealed. This subchapter's provisions apply to contracts for which payment will be by current funds or bond funds or time warrants. If payment is to be made by certificates of obligation, then the provisions of Local Government

Code Subchapter C, Chapter 271 apply. Also, see Transportation Code §252.312 which details the requirement for bids on road and bridge equipment, materials and supplies at amounts exceeding \$50,000 for counties on the court/engineer system (unit road system).

In applying any requirements established by this subchapter, all separate, sequential or component purchases (as defined in the definitions section) ordered or purchased with the intent of avoiding the competitive bidding requirements are treated like a single purchase. (Separate purchases of office supplies, when not intended to avoid competitive bids, are not considered to be a single purchase.)

Exemptions

Items exempted from the competitive bidding provisions only by commissioners court order include:

- Items purchased in case of public calamity to relieve the citizens' needs or to preserve county property.
- Items to preserve or protect the public health or safety of the residents of the county.
- Items necessary because of unforeseen damage to public property.
- Personal or professional services.
- Works paid for on a daily basis.
- Lands or rights-of-way.
- Sole source items, such as patented or copyrighted items, films or manuscripts, electric power, gas or other utilities and replacement parts or components of equipment;
- Food.
- Personal property sold at a public auction by a licensed auctioneer, sold at a going out of business sale or sold by another political subdivision of the state, a state agency or the federal government.
- Work performed under a contract for community and economic development made by a county under Local Government Code §381.004.

The renewal or extension of a lease or equipment maintenance agreement is not required to be bid if the:

- lease or agreement has been bid within the preceding fiscal year;
- renewal or extension does not exceed one year; and
- lease or agreement has not been previously renewed or extended.

If an item is purchased under the sole sources exemption, the county's purchasing official must sign a statement to the commissioners court as to the existence of only one source, and the court must enter in its minutes a statement to that effect.

For foods exempted from formal competitive bidding, the county must obtain three quotations for food purchases either by telephone or by written solicitation at intervals set by the commissioner's court and must accept the lowest and best bid, or to reject all

bids and repeat the process. The purchasing officer must maintain records of the bids for at least one year or until audited by the county auditor, whichever is later.

A county purchasing agent shall adopt procedures to provide for competitive bidding, to the extent practical, of all purchases of items not requiring competitive bidding under Local Government Code §262.023.

Notice of Competitive Procurement

All contracts to be let by competitive bids or proposals must be advertised. The advertising must be in a newspaper of general circulation in the county, and:

- must be published therein at least once a week until the bid opening and
- the first publication must be on or before the 14th day before the date of the bid opening.

If no newspaper of general circulation exists, the notice may be posted in a prominent place in the courthouse that is accessible to the public for the 14 days before the bid opening. (If posted inside the courthouse, and the courthouse is not opened for some days during the period, those days will not count toward the 14-day period.)

The notice must contain:

- Specifications or where the specifications may be obtained.
- Time and place for receiving the bids.
- Time and place for opening the bids.
- Name of the county official or employee to whom bids are to be sent.
- Directions whether to use lump-sum or unit prices in the bid.
- Method of payment and the type of bond, if any, required by the bidder.
- If any part of the payment is by time warrants, certain information on the time warrants is required.

Additional Notice for Heavy Equipment Bids

If the proposed purchase is for earth moving, material handling, road maintenance or construction equipment, the notice may require a request for information about the equipment's operation costs, maintenance and resale value. If the commissioners court desires, it may require the successful bidder to provide a bond to cover the amount of any repurchase agreement.

Opening of Bids

The county commissioners should open bids on the date specified in the notice. The date specified for the bid opening may be extended if the commissioners court determines that it is in the best interest of the county. All bids must be opened at the same time. Opened bids must be kept on file and made available for public inspection.

Awarding of the Contract

The county's purchasing official presents the bids to the commissioners court, and the court must either award the contract to the responsible bidder who submits the lowest and best bid or reject all bids and re-bid the contract. One and only one bid may be awarded for each bid invitation, except for road construction material. If two or more

responsible bidders submit identical lowest and best bids, the commissioners court must decide between those bidders by drawing lots. (Note: If too many identical bids begin to appear, especially from the same bidders, bid rigging or collusion may be a factor.)

In determining the lowest and best bid for a contract for the purchase of earth-moving or road maintenance or construction equipment, the commissioners court may consider any information requested in Local Government Code §262.0255 about costs of repair or maintenance, and the resale value of the equipment in awarding the contract.

The commissioners court may award a contract to more than one bidder if each bidder selected submits the lowest and best bid for road material for a particular location and type of material. In determining the lowest and best bid, 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.

Before a bid is awarded to other than the low-dollar bidder, all lower bidders meeting the specifications must be notified of the proposed award and given an opportunity to appear before the commissioners court to present evidence of their responsibility.

In determining a responsible bidder, the commissioners court may consider the bidder's safety record so long as the commissioners court has adopted a written definition and criteria for determining the safety record, and has given notice in the specifications that the safety record must be considered.

In the specifications for the bid or proposal, the county must state whether lump sum or unit prices will be used. Lump sum means one price must be stated for the entire contract, while unit prices means that a price per unit must be stated, and the county will pay that price for all units purchased. In using unit pricing, the county must give approximate quantities to be purchased, but the compensation to the bidder will be based on actual quantities purchased.

Time Warrants

If a petition of at least 5 percent of the county's registered voters is filed before the time warrants are authorized, the county must hold an election on the issue of using the time warrants.

Alternative Multi-step Competitive Proposal

In a county with a population of 125,000 or more, if the county purchasing official determines that it is impractical to prepare a detailed specification for a purchase, then the official may inform the commissioners court. If the court agrees, the purchase may be made by a multi-step competitive proposal. In this case, the county gives a general description of the item desired instead of detailed specifications and requests unpriced proposals.

Within seven days after the proposals are opened, the county official must request priced bids from the qualifying bidders using the criteria in the request for proposals. Within 30 days after the date of opening, the priced proposals must be presented to the

commissioners court, and the award will go to the bidder whose bid is determined to be the lowest evaluated offer. During this time, discussions may be held with acceptable bidders, and revisions are permitted after submission to determine the best and final offer. All qualified responsible bidders must be accorded fair and equal treatment.

Alternative Competitive Proposals for Insurance and High Technology Items

Proposals offer an alternative method of competitive purchasing. A request for proposals must include the conditions to be met and the relative importance of price and other evaluation criteria. The same public notice requirements as for competitive bids apply. The contract is awarded to the responsible bidder whose proposal is determined to be the lowest evaluated offer resulting from negotiation.

Proposals that contain trade or confidential information as identified by the bidder will be opened in such a way as to avoid disclosure of this information. All other information in proposals must be open to the public.

All proposals must be given fair and equal consideration, and discussions may be conducted with all responsible offers. The proposals may be revised to give maximum satisfaction to all parties before award of the contract for the purpose of obtaining best and final offers.

Modifications and Changes

After awarding a contract, but before it is signed, the county purchasing official may negotiate a modification in the county's best interests, so long as the modification does not substantially change the scope of the contract nor cause the contract to exceed the amount of the next lowest bid. The commissioners court must approve the modification.

After the contract is awarded, the commissioners court may make changes to plans, specifications or quantities. The total contract amount may not be increased unless the increase can be paid from current funds. The court may grant authority to an employee to approve a change order of \$50,000 or less. No increase of more than 25 percent may be made unless the change order is necessary to comply with a federal or state statute, rule, regulation or judicial decision that was enacted after the contract was made. Any decrease of 18 percent or more must have the contractor's consent.

Bid or Performance Bonds

On contracts for public works or for contract amounts exceeding \$100,000, the county may require a bid bond for 5 percent of the bid amount. Within 30 days after the signing of a contract, and prior to beginning the actual work, the bidder or bidder shall provide a performance bond on contracts that exceed \$50,000. This subsection does not apply to a performance bond required under Chapter 2253 of the Government Code. (Note: See Government Code, Chapter 2253, Public Works Contracts Performance and Payment Bonds. Contracts exceeding the specified amount must have a performance bond and a payment bond.) For contracts of \$50,000 or less, the county may provide that no payment will be made until after completion and acceptance of the work, or

fulfillment of the purchase contract. No performance or bid bond may be required of a bidder whose rates are subject to regulation by a state agency.

Criminal Penalties

Any county official or employee commits a Class B Misdemeanor if they intentionally or knowingly make or authorize separate, sequential or component purchases to avoid the competitive bidding requirements of Local Government Code §262.023. Any other intentional or knowing violation of Local Government Code §262.023 is also a Class B Misdemeanor. Any intentional or knowing violation of any provisions in this subchapter other than Local Government Code §262.023 is a Class C misdemeanor.

The final conviction of violations of Local Government Code §262.023, which are Class B Misdemeanors, result in immediate removal from office or employment. Also, for four years from the date of final conviction, the person is ineligible to:

- be a candidate for or to be elected or appointed to a public office in this state;
- be employed by the county; or
- receive compensation through a contract with the county.

However, the removed official or employee does not lose any retirement or workers compensation benefit rights.

Local Government Code, Chapter 263: Sale or Lease of Property by Counties

This chapter concerns statutes covering the sale or lease of property owned by counties. Although most county officials will find some aspects of this chapter relating to real property interesting, the purchasing official will be primarily concerned with Subchapter D – Disposition of Salvage or Surplus Property. This manual will not cover any of the other subchapters in detail other than Subchapter D. The remaining subchapters are:

Subchapter A – General Provisions for Real Property

This covers the sale or lease of real property by the commissioners court. It now allows the use of sealed bids or public auctions to sell or lease real property owned by the county. There are provisions pertaining to abandoned seawall or highway property and school lands and also restrictions, conditions and limitations on the conveyance of real property.

The commissioners court may contract with a licensed real estate agent to sell a tract of county-owned real property, and may pay a fee if the real estate agent produces a ready, willing and able buyer.

Subchapter B – Disposition of Certain Real or Personal Property

This subchapter covers airport land and certain land and facilities acquired from the federal government. It also covers relinquishment of abandoned land.

Subchapter C – Lease or Sale of Real Property for Privately Owned Hotel

This subchapter concerns the leasing or sale of county property (in a county with a population of more than 1.3 million) to a privately owned company for the purpose of constructing a hotel.

Subchapter D – Disposition of Salvage or Surplus Property

This subchapter contains definitions of salvage or surplus property. A county's commissioners court may sell the surplus or salvage material at auction or by competitive bid, offer the material as a trade-in for new property or order the property to be destroyed as worthless if the property cannot be sold by bids or auction.

If the property to be disposed of is earth moving, material handling, road maintenance or construction equipment, the commissioners may consider a repurchase agreement provision in the contract to sell the equipment to the county as a bid in an auction or competitive bid for the sale of the equipment.

If the county has failed to sell property and the property has been found to be worthless, the county may contribute the property to a civic or charitable organization located in the county.

The county must publish notice of a sale of surplus or salvage property in a newspaper in the county on or after the 30th day but before the 10th day preceding the sale. The commissioners court or its representative may reject any offer or bid. The commissioners court must keep records of the sale or destruction of the property for one year.

Proceeds of the sale of surplus or salvage property goes to the credit of the general fund or to the fund from which the property was purchased, except that property used for maintenance or construction of county roads will be credited to the road and bridge fund.

Subchapter E – Conveyance of Real Property from County to United States

This subchapter concerns the conveyance to the federal government of land owned by the county for the purpose of water projects, military installations or federal buildings.

Local Government Code, Chapter 271: Purchasing and Contracting Authority of Municipalities, Counties and Certain Other Local Governments

This chapter contains miscellaneous provisions on purchasing and contracting which affect various types of local governments. The types of local government affected are listed in the definitions of each subchapter. Since these provisions affect municipalities and counties, they will be of interest to all users of this manual.

Some of the subchapters contained in this chapter are:

- Subchapter A – Public Property Finance Act
- Subchapter B – Competitive Bidding on Certain Public Works Contracts
- Subchapter C – Certificate of Obligation Act

- Subchapter D – State Cooperation in Local Purchasing Programs
- Subchapter H – Alternative Project Delivery Methods for Certain Projects
- Subchapter Z – Miscellaneous Provisions

Subchapter A – Public Property Finance Act

The first sections give definitions of terms, and include the types of local government covered by the Act. This Act does not apply to real property, but only to personal property, except for real property and improvements for school districts.

A governmental agency under this chapter must apply the provisions of Health and Safety Code §361.426 relating to a purchasing preference for purchased items manufactured using recyclable materials.

Real Property and Improvements for School Districts: A school district's board of directors may enter into a contract under this Act for the use, purchase or other acquisition of real property or an improvement to real property. The board must give notice of intent to enter into a contract in a newspaper in the district at least 60 days before the date set to approve execution of the contract. The notice must summarize the major provisions of the proposed contract. The board must wait until the 60 days has expired to publish notice for bids for the contract.

The Act provides for a referendum on the question of whether the contract should be approved if 5 percent of the registered voters sign a petition requesting the referendum.

The Act has other provisions under this section, including;

- If ad valorem taxes are not pledged, the contract is a special obligation of the school district.
- If the contract payments are from maintenance taxes previously approved by the voters of the district, or are paid from other than ad valorem taxes, then they are not considered a payment under Tax Code §26.04(c).
- A lease purchase contract under this section shall be submitted to the attorney general for examination of its validity.
- If the attorney general finds that the contract has been authorized as provided by law, then the attorney general shall approve them and the Texas Comptroller of Public Accounts shall register the contract.
- Following approval and registration, the contract is incontestable and is a binding obligation according to its terms.

Authority to Contract for Personal Property

This section defines the authority of the governing body to contract for the purchase or lease of personal property, or for the financing of an acquisition of personal property. It states that the contract is an obligation of the government. Contracts may be:

- on terms acceptable to the governing body;
- a lease, or a lease with option(s) to purchase, or an installment purchase or other type of financing purchase including financing by issuance of bonds, notes, certificates of obligation or certificates of participation (but the bonds, notes, certificates

of obligation or certificates of participation must be approved in accordance with Government Code Chapter 1202);

- for a term approved by the governing body, and contain an option to extend; and
- payable from any revenues or funds available for public purposes.

The contract may call for the payment of interest at stated rates, not in excess of the net effective interest rate allowed under Government Code Chapter 1204.

Compliance with Other Requirements

Under this subchapter, contracts for cities must comply with the purchasing requirements in Local Government Code Chapter 252, and contracts for counties must comply with the purchasing requirements in Local Government Code Chapter 262. However, the awarding of these contracts is not subject to a referendum.

Approved and Registered Contract

A contract that is of an aggregate amount of \$100,000 or greater, after approval by the governing body, may be submitted to the attorney general to determine its constitutionality, under Local Government Code, §271.007. If the attorney general approves the contract, it must be registered with the Comptroller's office. Once these steps have been taken, the contract is valid and incontestable for any cause.

Authorized Investments

Under Local Government Code §271.008, these contracts are legal investments for banks and thrifts, insurance companies, fiduciaries and trustees, and for the sinking fund of any political subdivision or corporation of the state.

Term of Contract

A contract under Local Government Code §271.009 may have a term not to exceed 25 years.

Subchapter B – Competitive Bidding on Certain Public Works Contracts

Local Government Code §271.024 applies to all contracts for construction, repair or renovation of structures, roads or highways, or real property improvements or additions that require an expenditure of more than \$15,000. All provisions in this subchapter must be followed, even if exempted or not required by other statutes.

The first section of this subchapter contains a listing of the local governments covered. Included are municipalities, counties, common or independent school districts, hospital districts or authorities, housing authorities and agencies or instrumentalities of these political subdivisions.

Exempt Contracts

The subchapter does not cover contracts awarded under the provisions of Government Code, Chapter 2254, Professional and Consulting Services.

If a home-rule city has charter provisions which conflict with this subchapter, the charter provisions prevail over this subchapter.

If another statute requires a governmental entity as defined by this act to use competitive bidding to award a contract of more than \$50,000, then the bidding must be accomplished in accordance with this subchapter.

Requirements for Competitive Bidding under this Subchapter

In awarding a contract bid under this subchapter, the governing body must comply with specific legal requirements:

- The bid must be advertised as required by the statute concerned. If no requirements are stated in the statute, the bid must be published at least twice in one or more newspapers of general circulation in the county or counties in which the work is to be performed. The second publication must be at least 10 days before the first date bids may be submitted.
- The advertisement for bids must contain:
 - a description of the work;
 - the location where bidding documents, plans, specifications or other data may be examined by all bidders; and
 - the date and place for submitting bids and the date and place for opening bids.
- If an organization requests in advance to receive notice of competitive bids to be awarded, agrees to pay for mailing costs and certifies in writing that it circulates such notices to the construction trade, then the governmental entity must mail the organization such notice. The notice must be mailed on or before the date the first newspaper advertisement is published.
- Either the governing body or an officer or employee of the governmental entity may open bids in a public session.
- Bids may not be changed to correct an error in the bid price. A bid with such an error may be withdrawn under common law.
- The bids are presented to the governing body, which either awards the contract to the lowest responsible bidder or rejects all bids and re-bids the contract. However, before the governing body can award the contract to other than the lowest bidder, each lower bidder must be given the opportunity to appear before the governing body and present evidence of its responsibility.

In determining a responsible bidder, the governing body may consider the safety record of the bidder. The governing body must have adopted a written definition and criteria for determining the safety record and have given notice in the specifications that the safety record shall be considered.

A contract awarded in violation of this subchapter is void.

Subchapter C – Certificate of Obligation Act

Local Government Code §271.041 and §271.042 contain the Certificate of Obligation Act. The Act applies to cities and counties.

Certificates of obligation are an alternative form of financing to bonds or time warrants and do not require the same formalities to issue.

If the provisions of these sections conflict, the issuer may use the provisions of either one, and does not have to designate under which law the action is taken. A city may use the provisions of Local Government Code §271.044 if it is a home-rule city, or a general or special law city with the authority to levy a property tax of not less than \$1.50. The home-rule city may use these provisions regardless of any contrary provisions in its charter.

Purpose for Which Certificates may be Authorized

Under Local Government Code §271.045, certificates of obligation may be issued to pay a contractual obligation for:

- construction of public works, jails or improvements to jails;
- purchase of materials, supplies, equipment, machinery, buildings, land and rights of way for any authorized needs and purposes; or
- payment of contractual obligations for professional services.

If change orders cause a public works project to require more money, additional certificates of obligation may be authorized for up to 25 percent of the original contractual obligation.

However, certificates may be issued for only the amount actually needed to satisfy the obligation.

Authorization of Certificates

The governing body may authorize certificates of obligation by order or ordinance. Counties must have a quorum present.

The governing body shall specify times and places where certificates are payable, and the form or denominations of the certificates. The certificates may have options for early redemption, and may contain other provisions as determined by the governing body.

According to Government Code §1207.006, the maturity period may not exceed 40 years. The governing body of an issuer may authorize the maximum rate of interest to be borne by the bonds (Government Code §1207.007).

Claims and Accounts; Funding Projects or Exchanging Certificates for Claims

A governing body may authorize certificates of obligation to be exchanged for claims, or to fund projects. The authorization of certificates may be done before a contract is executed to complete the project. This section does not exempt any contract from competitive bidding otherwise required by this subchapter.

Notice of Intention to Issue Certificates: Petition and Election

Certificates may not be issued until the issuer publishes notice of its intentions to issue certificates of obligation. Notice must be published once a week for two consecutive weeks in a newspaper of general circulation in the area, with first publication at least 14 days prior to the date set for issuance. The publication must contain the time and place for passing the order or ordinance authorizing the issuance, as well as the maximum amount to be issued, and the method of payment, whether by taxes, revenues or

both. The purpose of the certificates must also be included. These notice requirements do not apply to contracts or purchases made in case of emergency as defined in Local Government Code §271.056 of this subchapter.

Sale of Certificates

In case of emergency as defined in Local Government Code §271.056, the governing body may sell certificates for cash, and use the proceeds for the purpose authorized. No proceeds may be used for work done by the government's employees and paid for as the work progresses. Any interest earned on proceeds must be deposited in the interest and sinking fund established for the payment of the certificates.

A certified copy of the order or ordinance authorizing the issuance must be submitted to the attorney general for approval, as to having been authorized in accordance with this subchapter. If the attorney general approves it, then it must be registered with the Comptroller of Public Accounts. Once the certificates are duly registered, they become incontestable for any reason.

Certificates as Investments or as Security for Deposits

Certificates approved by the attorney general are legal and authorized investments and security for deposits in the same way as most local government bonds are acceptable.

Certificates Payable from and Secured by Other Revenues

Instead of or in addition to methods of payment set out in this section, the certificates may be paid by or secured by other revenues if the issuer is authorized by law to use those revenues to pay general or special obligations. Under Local Government Code §271.052, certificates secured under this section may be used in the same way as other certificates or sold for cash.

Certificates as Debt or Security

Under Local Government Code §271.053, certificates issued under this section are debt under the Texas constitution, and are general obligations of the issuer and security within the meaning of Texas law.

Competitive Bidding Requirement

Before an issuer may enter into a contract requiring an expenditure exceeding \$50,000, it must submit the contract to competitive bidding.

Notice to Bidders

Notice to bidders of the time, date and place where the issuer will publicly open the bids and read them aloud must be in accordance with the statutes pertaining to that type of government. If there are no statutory requirements, the notice for bidding is given in the same time and manner as the notice for issuing the certificates with first publication at least 14 days prior to the date set for publicly opening and reading the bids aloud, and the notice must state that plans or specifications are on file with a designated official of the issuer and may be examined without charge.

The notice must also state that the successful bidder must accept the certificates in full payment for the contract, or that the governing body has made provisions for the contractor to sell the certificates. The bidders must state whether they will accept the certificates in full or partial payment or assign them to a buyer.

Exemptions from Notice

Notice is not required in cases of emergency as defined in this section. The definitions are fairly close to the definitions in Chapters 252 and 262 of the Local Government Code. In addition, no notice is required if:

- expenditures are for street, sewer and like improvements and at least one-third of the costs are paid by special assessments;
- the project was to have been paid by bonds or current funds, but those funds were not adequate to permit the awarding of the contract, and the certificates are to provide for the deficiency; and
- the contract is for a municipal procurement not required to be competitively bid under Chapter 252 or a county contract not required to be competitively bid under Chapter 262.

In addition, the notice provisions of this subchapter do not apply to the sale of a public security as defined in Government Code §1204.001.

Awarding the Contract

Any contract let under this subchapter that must be competitively bid must be awarded to the lowest responsible bidder, and may be on either the lump sum or unit-price basis. The governing body may reject any and all competitive bids submitted.

If the contract is for construction of public works, and is required to be competitively bid, the successful bidder must execute both a payment and performance bond in the amount of the contract, and in accordance with Government Code, Chapter 2253.

Change orders are allowable to alter specifications or quantities. The contract's total price may not be increased unless provisions have been made to pay the increased amount. No increase or decrease of more than 25 percent may be made without the contractor's consent.

If the contract is on the unit price basis, payment must be on the basis of actual quantities of items constructed or supplied.

Criminal Penalties

The same criminal sanctions as apply to violations of the component, separate or sequential purchasing provisions of Chapters 252 and 262 apply to those violations under this subchapter, and the offense is a Class B Misdemeanor. Other violations of the competitive bidding requirements of this subchapter are also Class B Misdemeanors, and all other violations of the subchapter are Class C Misdemeanors.

Subchapter D – State Cooperation in Local Purchasing Programs

The Comptroller's office is required by this subchapter to establish a program to perform purchasing services for local governments. If feasible, the GSC will extend state contract prices to local governments, solicit bids on items for them and provide information and technical services on the program. The commission is allowed to charge an amount not exceeding the costs of services performed, and is allowed to adopt rules and procedures to administer the program.

Under this subchapter, a local government is defined to include cities, counties, school districts, special districts, junior college districts and other legally constituted political subdivisions of the state.

Local Government Participation

In order for a local government to participate in the program, it must:

- adopt a resolution (one time) that the government is allowed to participate in the program on a voluntary basis, and to the extent the commission deems feasible;
- designate an official, under the direction of the governing body, to act for the local government in all matters relating to the program, including the purchase of items from any contracts under this program;
- submit requisitions for purchases directly to the commission;
- be responsible for payment directly to the vendor; and
- monitor the vendor's compliance with all conditions of the contract.

Subchapter H – Alternative Project Delivery Methods for Certain Projects

Added by the 77th Legislature in 2001, this subchapter provides authority for utilizing competitive bidding, competitive sealed proposals or a design build contract for facility construction. In determining the award, the governmental entity may consider price, vendor reputation, quality, extent to which the goods or services meet governmental needs, past relationships, impact on ability to comply with rules relating to HUB vendors, total long term cost and any other relevant factor specifically listed in the request for bids and proposals.

Subchapter Z – Miscellaneous Provisions - Procedure for Awarding Contract if Municipality or District Receives Identical Bids.

This subchapter, Local Government Code §271.901, provides a method to select a bidder when two or more responsible bidders have submitted lowest and best bids that are identical in both amount and substance. In this case, the governing body must select only one of the bidders and award the contract to that bidder or reject all bids.

If only one of the low responsible bidders is a resident of the city or district, the bid shall be awarded to that bidder. If two or more of the low, responsible bidders are residents, then one of them shall be selected by drawing lots.

In all other cases, the contract shall be awarded to one of the low, responsible bidders by drawing lots. Drawing lots shall be done as directed by the mayor or the governing body in public session.

Prohibition of Conflict of Interest in Purchases

This section prohibits the local government from purchasing from a cooperative association if any member of the governing body will receive a pecuniary benefit from the purchase other than as reflected in an increase in dividends available to all members of the association.

Commitment of Current Revenues

If a contract for the acquisition, including lease, of real or personal property retains to the governing body the continuing right to terminate at the expiration of each budget period during the term of the contract, or is conditioned on a best efforts attempt to obtain and appropriate funds for payment of the contract, or both, then the contract is a commitment of current revenues only. This provision applies to all contracts made by a municipality, county, school district, special purpose district or authority, or other political subdivision of the state.

Local Government Code, Chapter 325: Sports Facility District Established by County

A county's commissioners court may create a sports facility district to finance the acquisition, construction or operation of a sports facility.

The county commissioners will appoint a board of directors as directed by the statute, and the board will govern the district. This includes the power to contract, including the authority to contract for the sports facility's construction and improvement.

Especially relating to purchasing or contracting are the requirements that construction contracts exceeding \$15,000 must be submitted to competitive bidding in accordance with Local Government Code, Chapter 271.

Under provisions of Local Government Code §325.040, change orders may not increase the total cost of the contracts by more than 25 percent. All contracts under this section must have a performance bond, not to exceed the amount of the contract, executed by the contractor and payable to the district. The bond is conditioned on the faithful performance of the contract.

If the district purchases equipment, vehicles or supplies in amounts exceeding \$15,000, the board shall ask for competitive bids in accordance with Local Government Code, Chapter 262. The board shall award the contract. Purchases from public agencies or contracts for personal or professional services are exempt from competitive bids.

County Public Safety

This chapter concerns county jails and law enforcement procedures. Certain subsections contain purchasing requirements. This section briefly outlines those requirements.

Local Government Code §351.103 provides that if a contract by a private company to construct, lease, operate, purchase, maintain or manage a jail for the county includes construction of the facility, the private vendor must post a performance bond approved

by the commissioners court that is adequate for the construction contract. If the prime vendor should become bankrupt, the commissioners court must provide a plan to purchase the facility and operate it.

Local Government Code §351.1035 requires the county to develop guidelines to inform disadvantaged businesses as defined by the section of the county's procurement processes, including specific opportunities to submit bids or proposals. The county must require prime contractors to make a showing of how they intend to use disadvantaged businesses as subcontractors. The county must also identify such disadvantaged businesses for this purpose and identify barriers to participation by such disadvantaged businesses.

Local Government Code §351.137 concerns construction contracts for jail districts. These must be made in accordance with Subchapter B, Chapter 271. The primary requirements are the same as for contracts in other areas of the Local Government Code, that is, contracts exceeding \$15,000 must be submitted to competitive bidding. An order to authorize additional work or modifications may not exceed 25 percent of the original contract. The contract must have attached to it plans, specifications and details for completion of the work in the contract. The contractor must submit a performance bond to the district, in the amount of the contract. The bond must provide that if the contractor defaults on the bond, the contractor shall be liable for damages to the district caused by the default.

The district must submit any purchase of vehicles, equipment or supplies exceeding \$15,000 to competitive bidding. Purchases from public agencies or purchases of professional services are exempted.

Municipal Management Districts

Municipal Management Districts are political subdivisions by the definition in Local Government Code, Chapter 375. This includes all the rights to contract that typically accrue to a political subdivision of Texas, except these districts have no power of eminent domain.

Competitive bidding is required for a contract, other than a contract for services, exceeding \$15,000 for the construction of improvements or purchase of equipment, materials or supplies, except real property. Notice of the contract must be published in a newspaper with general circulation in the district once a week for two weeks with the first publication at least 15 days prior to the date for receiving of the bids.

A board may adopt rules governing the receipt of bids and the award of the contract and may exempt a contract from competitive bids if:

- there is an emergency;
- the materials are available from only one source;
- in a procurement requiring the supplier's design, competitive bidding would not be appropriate, and competitive negotiations, with proposals solicited from a reasonable number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or
- after solicitation, it is ascertained that there will only be one bidder.

If a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials or supplies is for more than \$15,000 but less than \$50,000 or the duration of the contract is more than two years, then competitive bids shall be requested from at least three vendors.

The district shall attempt to encourage disadvantaged businesses to participate in all phases of the district's procurement activities, and to afford them a full and fair opportunity to compete for the district's contracts.

To this end, the district shall establish programs to increase participation by disadvantaged businesses and must review the goals and accomplishments of the program annually to determine if they are effective. Programs must attempt to remedy statistically significant disparities between the disadvantaged businesses that exist in the district and the contracts that are awarded to disadvantaged businesses. Such programs should only continue until their purposes and objectives are met.

Human Resources Code, Chapter 122: Texas Council on Purchasing from People with Disabilities

This chapter sets out the state policy of assisting disabled persons to achieve personal independence by holding useful and productive jobs, while providing state agencies, departments and institutions and political subdivisions with useful products and services at a fair and reasonable price.

While the chapter mandates that state agencies use products and services produced by the blind and severely disabled under this program, it does not make any mandatory requirements on the state's political subdivisions. Cities and counties are encouraged to purchase products from the committee but are not required to do so. (Human Resources Code, §122.017 – Procurement for Political Subdivisions) If they do choose to purchase such products or services, they may do so without competitive bids.

Code of Criminal Procedures, Article 18.17: Disposition of Abandoned or Unclaimed Property

All abandoned or unclaimed property, except contraband subject to seizure under Code of Criminal Procedures, Chapter 59 and alcoholic beverages, seized by a peace officer of the state and not held for evidence, destroyed or returned to the person entitled to receive it, and which is unclaimed for a period of 30 days, must be delivered for disposition to the person designated by the municipality or the purchasing agent of the county in which the property was seized.

If a municipal peace officer seized the property, the property is delivered to the municipality. If any other peace officer seized the property, the property shall be delivered to the purchasing agent of the county. If the county has no purchasing agent, the sheriff will dispose of the property.

Upon receiving the property, the person responsible for the disposition must mail a notice to the owner's last known address by certified mail. The notice must give a general

description of the property, the name of the owner if known, the name and address of the officer holding the property and a statement that if the property is unclaimed within 90 days it will be disposed of, and the proceeds, less costs of storage and disposition, deposited in the county or municipal treasury.

If the property has a fair market value of \$500 or more and the owner is unknown, or if the address is unknown, then the notice is published in a newspaper of general circulation in the city or county. This notice must contain the same information as if the notice was mailed.

If the property has a fair market value of less than \$500 and the owner or address of the owner is unknown, the property may be sold or donated without a notice being published. After the costs of keeping and disposing of the property are deducted, the sale's proceeds shall be deposited in the treasury of the municipality or county selling the property.

After 90 days the property may be disposed of. The sale of any property with a fair market value of \$500 or more must be preceded by a notice published once at least 14 days prior to the sale in a newspaper of general circulation in the city or county where the sale will take place, stating the general description of the property, the name of the owner if known, and the date and place where the sale will take place. The person designated to sell the property may refuse any bid considered insufficient. This Article does not require disposition by sale.

The owner of any such property may file a claim, not later than the 30th day after the date of disposition, for the proceeds of such disposition with the governing body.

If the claim is allowed, the proceeds, less cost of disposition and storage, shall be paid to the owner from the treasury of the city or county. If the claim is denied, the claimant may file suit to recover the proceeds of the sale.

If the Article's provisions are met, and the property is scheduled for disposition, the municipal or county law enforcement agency that originally seized the property may request that the property be converted to the agency's use. The agency must return the property for disposition to the person designated by the municipality, county purchasing agent or sheriff, as the case may be, upon completion of its intended use of the property.

If the abandoned or unclaimed property is money, then the person designated by the municipality, county purchasing agent or sheriff, as the case may be, may deposit the money in the treasury of the municipality or county after giving the required notices.

Code of Criminal Procedures Article 59.06: Disposition of Forfeited Property

The Article does not impose any direct purchasing requirements, but does imply a duty to purchase in a certain way. The only concern will be with money, securities, negotiable instruments or other financial instruments that will be used to fund expenditures for the law enforcement agency. The Article requires that any funds distributed to a county or municipal law enforcement agency (county sheriff or municipal police department) must

be used solely for law enforcement activities. It also requires that the agency submit a budget detailing the proposed expenditures.

The statute does not give any additional authority to the head of the agency to control expenditure or contract with vendors that is not contained in the Local Government Code or elsewhere in the statutes. So any purchases should generally be in accordance with the other provisions of Texas law as contained in this manual. This should be tempered with some consideration for the unique purchasing requirements of covert police work, such as undercover vehicles.

Government Code – Agencies and Political Subdivisions

Government Code, §497.024 – Duties to Purchase

If the Institutional Division of Texas Department of Corrections produces an article or product under the Subchapter, then the state or a political subdivision (county or city included) may only purchase the article from the division.

The Comptroller's office may determine that an article does not meet the requirements of a political subdivision.

The political subdivision may purchase articles under this Code through the Comptroller's office, or directly from the division. The purchase of any items under this Code satisfies any competitive bidding requirements under another statute.

Government Code, Chapter 573: Degrees of Relationship; Nepotism Prohibitions

The nepotism statutes are intended to define degrees of relationship, both relationships by consanguinity (blood) or by affinity (marriage), for purposes of determining allowable or prohibited transactions between persons.

For example, a public official may not appoint, confirm the appointment or vote for the appointment of a person related to the public official within the prohibited degree by either consanguinity or affinity. Likewise, the public official may not agree with another public official to trade appointments, (appoint someone related to the other public official in a prohibited degree in exchange for the other public official appointing someone related to the public official in a prohibited degree).

A person is related to another by consanguinity if one is a descendent of the other or if they share a common ancestor. If one person is descended from another, the degree of relationship by consanguinity is determined by the number of generations that separate them. So a parent and child are related in the first degree, while a grandparent and child are related in the second degree, and so on.

If two persons share a common ancestor, the degree of relationship is found by adding the number of generations between the individual and the nearest common ancestor, and the number of generations between the relative and the nearest common ancestor.

For example, to determine the degree of relationship between a person and a cousin who is the son of the person's father's brother (the person's uncle), first determine the nearest common ancestor. In this case it is the person's grandparent, who is also the cousin's grandparent. There are two generations between the person and the grandparent (second degree of consanguinity), and two generations between the cousin and the grandparent (second degree of consanguinity). Adding the number of degrees, we find the person and the cousin are related in the fourth degree of consanguinity.

A person is related to another by affinity if:

- they are married to one another; or
- either of their spouses is related by consanguinity to the other person in question.

A husband or wife is related to each other in the first degree of affinity. The degree of relationship by affinity with another individual related by consanguinity to the husband or wife is the same as the underlying relationship by consanguinity. So if two individuals are related to one another in the second degree by consanguinity, the spouse of one of the individuals is related to the other in the second degree by affinity.

Government Code, Chapter 791: Interlocal Cooperation Act

The Interlocal Cooperation Act allows local governments to contract with one another, and with an agency of this state, or a similar agency of another state to perform "governmental functions and services."

An agency of this state is defined as including departments, boards, bureaus, commissions, courts, offices, authorities, councils, institutions, universities, colleges, any services or parts of a state institution of higher education and any statewide job or employment-training program for disadvantaged youth that is substantially funded by federal funds and created by executive order.

Local governments are defined as counties; home-rule cities or general-law cities, towns or villages; special districts; school districts; junior college districts; any other legally constituted district of this state or of another state; or a combination of political subdivisions.

Governmental functions and services are defined as any of the following:

- Police protection and detention services.
- Fire protection.
- Streets, roads and drainage.
- Public health and welfare.
- Parks and recreation.
- Library services.
- Museum services.
- Waste disposal.
- Planning.
- Engineering.
- Administrative functions.*

- Other governmental functions which are of mutual concern to the contracting parties.

** Administrative functions are defined as functions normally associated with routine operations of government, such as tax assessment and collection, personnel services, purchasing, data processing, warehousing, equipment repair and printing.*

A local government may make contracts and agreements with one or more other local governments to perform governmental functions or services. The contracts may be for the performance of any governmental function or service that they are legally entitled to perform themselves. This definitely includes cooperative purchasing. The agreements must include provisions for payments in amounts that fairly compensate the performing party for the services performed.

It also allows the parties to name one of them to perform the functions or services or they may create an administrative agency to perform the functions. (This opens the way to purchase goods or services through a regional planning council or council of governments.)

The Interlocal Cooperation Act specifically allows for contracting parties to:

- Contract with Texas Department of Criminal Justice (TDCJ) to construct, operate and maintain a regional correctional facility. Special provisions are that the title to the land on which the facility is constructed must be deeded to TDCJ and the contract must include an agreement about payment for the housing, maintenance and rehabilitation of prisoners held in (county) jails who cannot be transferred to TDCJ.
- Contract with other political subdivisions to provide a regional jail, and to set out procedures to operate the facility. The regional jail would have to be within the geographical boundaries of one of the agreeing political subdivisions, but not necessarily a county seat.
- Secure bonds for the acquisition and construction of the jail facility must be issued by agreeing governments prior to acquisition and construction.
- Decide between naming the police chief or sheriff of the political subdivision in which the facility is located as the jailer of the facility; appointing a jailer by a committee of all police chiefs and sheriffs concerned; or having each sheriff and police chief maintain control and supervision of his/her own prisoners. Additional personnel may be employed to operate and maintain the jail facility. A jailer, if named or appointed, shall have supervision and control of all prisoners incarcerated in the jail until transferred back to the originating subdivision.
- These stipulations must be met:
 - The sheriff or police chief not assigned as the jailer of the regional jail facility is not responsible for the escape of, or injury or damage caused by a prisoner, unless the escape is directly caused by that officer.
 - The jailer in charge of the regional jail facility and any assistant jailers employed by the jail must be commissioned peace officers.
- Agree to cooperative purchasing arrangements, either between and among themselves, or with the state, including cooperative agreements with the Comptroller.

When engaged in cooperative agreements with other types of political subdivisions, the agreement may specify which government's rules, regulations or ordinances will apply. This does not allow for the easing of state statutes. For example, a city with a population of more than 50,000 agreeing to cooperatively purchase certain commodities with a city with a population of 50,000 or less would have to bid all such purchases based on the smaller city's bid limit.

If a county makes an interlocal contract in which the county agrees to undertake projects to construct, improve or repair buildings, roads, streets or other facilities, the commissioners court must give specific written approval to each individual project prior to beginning the project in a document separate from the contract. The county is barred from accepting payment for such a project without the required approval, and another government may not offer such payment. This section provides for any city, town, district or river authority created under the laws and constitution of this state to contract with any of these same political subdivisions to obtain or provide a water supply or waste water treatment facilities, or any interest in such facilities. The contracts may also be to lease or operate such supply or treatment facilities.

The contract may contain any terms or extend for any period that the entities can legally agree to, and may state that the contract is in effect until any bonds or refunding bonds issued in lieu of those bonds are repaid.

No tax revenues may be pledged to the payments of any amounts for a contract under this section.

A local government may provide emergency assistance to another local government regardless of whether they have in place any interlocal agreement to do so, provided that:

- the presiding officer of the local government requesting the assistance believes that a civil emergency exists; and
- before the assistance is rendered, the local government providing the assistance has, by resolution or other official act, authorized the assistance.

This section allows a local government to contract with another local government, a state agency or a transportation corporation to jointly enter into a highway project, including the costs of an easement or interest in land needed for or beneficial to the project. If the project lasts over a period of years, the local government may levy ad valorem taxes to make payments on the project.

Government Code, Chapter 2251: Payment for Goods and Services

This statute sets out:

- deadlines for payment of a government's obligations to its vendors;
- requirements for vendors' payments to their subcontractors;
- penalties for failure to comply with the Chapter; and
- exceptions to the Chapter.

The Chapter applies to all state agencies and political subdivisions, including counties and cities. It requires that they make all payments owed no later than 30 days after the goods or services are received or the date that the invoice is received, whichever is later. However, a payment under this subsection owed by a political subdivision whose governing body meets only once a month is due no later than 45 days after the goods or services are received, or the date that the invoice is received, whichever is later.

The Chapter also requires that political subdivisions not meeting the required payment date automatically add interest to the payment at the monthly rate of 1 percent.

The Chapter also requires that vendors follow the same rules for payments to their subcontractors, including the automatic calculation and payment of interest at the monthly rate of 1 percent. Subcontractors must then pay their suppliers, material men or servicemen within 10 days of receipt of their payment. If they fail to do so, they also become liable for automatic calculation and payment of interest at the same rate.

When the governmental entity believes there is an error on an invoice received from a vendor, it has until the 21st day after receipt to notify the vendor of the dispute. Then, if the dispute is resolved in favor of the government, the vendor must submit a new invoice and the government has 30 days from receipt of the new invoice in which to pay. If the dispute is resolved in favor of the vendor, interest is due from the original date the invoice became overdue.

Other times when the Chapter provides exceptions are:

- when there is a bona fide dispute between the political subdivision and a vendor, contractor, subcontractor or a supplier concerning the supplies, materials or equipment delivered or the services performed which causes the payment to be late;
- when there is a bona fide dispute between the vendor and a subcontractor, or between a subcontractor and its supplier concerning the supplies, materials or equipment delivered or the services performed which causes the payment to be late;
- when the terms of a federal contract, grant, regulation or statute prevent the government from making a timely payment with federal funds; or
- when the invoice is not mailed to the proper office, if an office address is specified in the instructions on the purchase order.

The Chapter is intended to encourage the governments who are purchasing to take all available discounts. However, it is not intended that a government use partial payments to claim discounts. The Chapter provides that if a government does not make full payment within the discount period, it shall not take the discount. If a discount is claimed by only making partial payment within the discount period, interest accrues on the unpaid balance on the day the discount offer expired, not after the 30th day, as usually occurs.

The Comptroller's office is the rule-making agency for implementation of this Chapter.

The Chapter also specifies that in a formal administrative or judicial action to collect an invoice payment or interest due under this act, the party that loses the action is responsible to the prevailing party for reasonable attorney's fees.

Government Code, Chapter 2252: Contracts with Government Entities

Subchapter A – Nonresident Bidders

The Subchapter is intended to encourage equal competition between bidders from Texas and those from other states. In Texas, we currently have no general bid preferences for Texas bidders. Other states impose bid penalties against Texas bidders and other out-of-state bidders. The Subchapter places reciprocal penalties on only those states that have penalties in place against Texas bidders. The penalty is to the same extent and on the same type bids as are imposed on Texas bidders.

The law requires that an included governmental agency may not award a contract to a non-resident bidder (one whose principal place of business is not in Texas) if the bidder's state imposes a penalty on Texans bidding in that state on that same type of contract, unless the non-resident's bid is lower than the lowest Texas resident's bid by the same amount that the Texas bidder would have to underbid the non-resident bidder in their home state. For example, a Texas bidder bidding on a commodities contract in Arkansas must underbid an Arkansas bidder by at least 5 percent in order to be awarded the bid. Thus, an Arkansas bidder will face the same 5 percent penalty in bidding on a Texas commodities contract.

The Subchapter applies to incorporated cities and towns, counties, public school districts, special purpose districts or authorities, or district, county and justice courts. It also applies to all boards, commissions, departments, offices and agencies of the state and to all legislative agencies, and all state courts and the State Bar of Texas.

The Comptroller's office is charged with publishing annually a list of all states which have laws or regulations penalizing Texas bidders. The list is published in the Texas Register. The information may be used and relied upon when evaluating bids under the Subchapter.

Subchapter B – Interest on Retained Public Works Contract Payments

If a political subdivision of the state or a state agency retains a portion of a contract payment that exceeds 5 percent to secure performance of the contract, the government entity shall deposit the money into an interest bearing account and pay the earnings to the contractor upon completion of the contract.

This does not apply to:

- a contract made before Aug. 31, 1981;
- a public works contract in which the total contract price estimate at the time of execution of the contract is less than \$400,000; or
- a public works contract made by the Texas Department of Transportation under VTCS Transportation Code, Chapter 223.

Government Code, Chapter 2253: Public Work Performance and Payment Bonds

The Chapter requires bonds for payment and performance of contracts on certain public works projects and sets the standards for when the bonds are required and the amount of the bond.

The Chapter affects prime contractors that do business with the state, with its political subdivisions or with any other government or quasi-governmental authority, whether specifically named in the Chapter or not, that is authorized by the state to enter into contractual agreements for construction, alteration or repair of public buildings or public works. The prime contractor must execute a bond for performance and a bond for payment of materials or labor, on any public works contract in an amount set by the Chapter.

The performance bond is to ensure the faithful performance of the contract as required by the plans and specifications and contract documents. For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract.

The payment bond protects the vendors supplying materials or labor for the contract. For a contract in excess of \$50,000, a payment bond shall be executed in the contract's amount.

If a vendor is not paid within 60 days of filing a claim, it has the right to sue the principal or the sureties on the payment bond. The claim may include the unpaid amount plus reasonable attorney's fees. The Chapter sets forth requirements for making a claim and for giving notice of claims to the contractors and subcontractors.

Claimants may be suppliers of materials or labor, or mechanics and laborers. They may be those having a direct contractual relationship with the prime contractor, or only with a subcontractor. But if the contract is with a subcontractor, additional notices are required.

If a contract covered by the Chapter has a provision for a retainer to be withheld, and the retainer is being claimed, then the claimant must give notice in writing 90 days before the contract's completion date. But no notice is required if the retainer has been part of a prior claim under the Chapter.

The Chapter defines such terms as claimant, material, labor, subcontractor and other applicable terms.

Government Code, Chapter 2254, Subchapter A: Professional and Consulting Services

The Subchapter states that contracts for the procurement of defined professional services may not be awarded on the basis of bids. Instead, they must be awarded on the basis of demonstrated competence and qualifications, so long as the professional fees are con-

sistent with, and not higher than, the published recommended practices and fees of the various professional associations and do not exceed any maximums provided by state law.

Professional services are defined as those performed by a certified public accountant, licensed architect, physician, optometrist, surgeon, registered surveyor, engineer or any group or association thereof.

When procuring architectural or engineering services, the entity shall use a two-step selection process. First, the entity shall select an individual or firm capable of performing the service on the basis of demonstrated competence and qualifications. The entity shall then enter into negotiations on a contract at a fair and reasonable price.

If the entity is unable to negotiate a satisfactory contract with the most highly qualified individual or firm, it shall formally end negotiations with that person or firm and then proceed to the next most highly qualified person or firm and repeat the process. Negotiations are carried on in this sequence until a contract is made.

If any agreement or contract is entered into with one of the above-mentioned professionals on the basis of a competitive bid, it is contrary to public policy and is void.

The Texas Cooperative Purchasing Program (CO-OP) takes the volume purchasing power of Texas — more than \$13 billion in purchased commodities and services in fiscal 2007 — and brings it to more than 1,900 local government members. CO-OP purchasing means buyers have access to state contracts with no bidding required — just order from more than 200 state contracts. Member governments can purchase copiers, vehicles, road and highway materials and many other products for the same price as state agencies. The Comptroller's office also offers members onsite training as well as training sessions at various statewide events, conference calls, an online CO-OP manual, online Webinars and more.

Exhibits

- Exhibit 1: Requisition for Materials or Supplies**
- Exhibit 2: Purchase Order**
- Exhibit 3: Standard Terms and Conditions**
- Exhibit 4: Sources of Specifications Information Federal Government Sources and Standards Writing Organizations**
- Exhibit 5: Standards of Specifications Information & Standard Units of Measure**
- Exhibit 6: Sample Specification Format**
- Exhibit 7: Invitation for Bid (Sample)**
- Exhibit 8: Request for Proposals (Sample)**
- Exhibit 9: Bid Proposal Envelope (Sample)**
- Exhibit 10: Blanket Purchase Agreement (Sample)**
- Exhibit 11: BPA Monthly Purchase Log (Sample)**
- Exhibit 12: Letter of Agreement (Sample for Interlocal Government Agreements)**
- Exhibit 13: Contract (Sample)**
- Exhibit 14: Resolution (Sample)**
- Exhibit 15: Contract Purchase Requisition (Sample)**
- Exhibit 16: General Journal Fiscal 20XX (Sample)**
- Exhibit 17: Purchase Order/Encumbrance Journal (Sample Entries)**
- Exhibit 18: Appropriations Expenditures Ledger (Sample)**
- Exhibit 19: Cash Disbursements Journal**
- Exhibit 20: Closing Budgetary Accounts (Sample Entries)**
- Exhibit 21: General Journal (Sample Entries)**
- Exhibit 22: General Fixed Assets Account Group (Sample Entries)**
- Exhibit 23: Purchase Order/Encumbrance Journal (Sample Entries)**
- Exhibit 24: Appropriations/Expenditures Ledger (Sample Entries)**
- Exhibit 25: Cash Disbursement Journal (Sample Entries)**
- Exhibit 26: Purchasing Audit Checklist (Sample)**

[illegible]

Exhibit 2: Purchase Order

PURCHASE ORDER				Vendor Copy	
SAMPLE COUNTY SAMPLE CITY, TEXAS		Requisition #: _____		Purchase Order Number 54678	
Government Seal		Dept: _____ Date: _____ Contact: _____ Tel: (____) _____			
The items or service(s) below are needed in the discharge of my official duties: _____ Official By: _____ (Signature And Date) Estimated Amount: \$ _____		I certify that provisions have been made in the budget and funds are, or will be, on hand to pay this obligation when due, or in order of registration. John Q. Checker, County Auditor By: _____ Account Distribution: _____			
Mail Invoices To: County Auditor County Courthouse Sample County, TX 7xxxx		Payment Terms: _____ Delivery Date: _____ Order Against Contract No: _____ Buyer: _____ Tel: (____) _____ Fob Point: Destination () Other(): _____			
Vendor: _____ Code _____ SX SZ ET HC		Ship To: _____			
Confirmation of verbal order placed with your _____ on _____ Do not duplicate shipment. All invoices and packing slips must bear purchase order number. Deliver item(s)/service(s) herein, subject to terms and conditions on the face and reverse hereof, and attachments if any. Notify buyer immediately if unable to deliver as specified.					
ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
NOTICE TO VENDORS: Partial payments will not be made unless specifically authorized in advance by the Purchasing Department. Mail invoices directly to the Auditor's office at the address above.		Sample County Purchasing Department County Courthouse Sample City, Texas 7xxxx BILL B. BUYER _____ DATE _____ (Purchasing Agent)			

Exhibit 3: Standard Terms and Conditions

SELLER TO PACKAGE GOODS:

The seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) the seller's name and address; (b) the consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable; (c) the container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. The seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. The buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

SHIPMENT UNDER RESERVATION PROHIBITED:

The seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

TITLE AND RISK OF LOSS:

The title and risk of loss of the goods shall not pass to the buyer until the buyer actually receives and takes possession of the goods at the point or points of delivery.

DELIVERY TERMS AND TRANSPORTATION CHARGES:

F. O. B. destination freight prepaid unless delivery terms are specified otherwise in bid: the buyer agrees to reimburse the seller for transportation costs in the amount specified in the seller's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided the buyer shall have the right to designate what method of transportation shall be used to ship the goods.

NO PLACEMENT OF DEFECTIVE TENDER:

Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and the seller shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

PLACE OF DELIVERY:

The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications," hereof. The terms of this agreement are no arrival, no sale.

INVOICES AND PAYMENTS:

The seller shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and

the freight weigh bill when applicable, should be attached to the invoice. Mail to: City of Sample City, ATTN: Finance Dept., P. O. Box 10000, Sample City, Texas 7XXXX. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the finance department advised of any changes in your remittance addresses.

The buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for the buyer will return goods to seller.

Do not include federal excise, state or city sales tax. The city shall furnish tax exemption certificate, if required.

GRATUITIES:

The buyer may, by written notice to the seller, cancel this contract without liability to the seller if it is determined by the buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the seller, or any agent, or representative of the seller, to any officer or employee of the city of Sample City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event the buyer cancels this contract pursuant to this provision, the buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the seller in providing such gratuities.

SPECIAL TOOLS AND TEST EQUIPMENT:

If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by the seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the buyer and to the extent feasible shall be identified by the seller as such.

WARRANTY PRICE:

The price to be paid by the buyer shall be that contained in seller's bid which seller warrants to be no higher than the seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event the seller breaches this warranty, the prices of the items shall be reduced to the seller's current prices on orders by others, or in the alternative, the buyer may cancel this contract without liability to the seller for breach or the seller's actual expense.

The seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

WARRANTY PRODUCTS:

The seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the buyer. The seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by the seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

SAFETY WARRANTY:

The seller warrants that the product sold to the buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970. In the event the product does not conform to OSHA standards, the buyer may return the product for correction or replacement at the seller's expense. In the event the seller fails to make the appropriate correction within a reasonable time, correction made by the buyer will be at the seller's expense.

NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:

As part of this contract for sale the seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. The buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall the buyer be liable to the seller for indemnification in the event that the seller is sued on the grounds of infringement or the like. If the seller is of the opinion that an infringement or the like will result, he will notify the buyer to this effect in writing within two weeks after the signing of this agreement. If the buyer does not receive notice and is subsequently held liable for the infringement or the like, the seller will save the buyer harmless. If the seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that the buyer will pay the seller the reasonable cost of his search as to infringements.

RIGHT OF INSPECTION:

The buyer shall have the right to inspect the goods at delivery before accepting them.

CANCELLATION:

The buyer shall have the right to cancel for default of all or any part of the undelivered portion of this order if the seller breaches any of the terms hereof including warranties of the seller or if the seller becomes in-solvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that the buyer may have in law or equity.

TERMINATION:

The buyer may terminate performance of work under this order in whole or in part in accordance with this provision. Termination of work hereunder shall be affected by the delivery to the seller of a notice of termination specifying the extent to which performance of work under the order is terminated and the date upon which such termination

becomes effective. Such right of termination is in addition to and not in lieu of rights of the buyer set forth in Clause 15, herein.

FORCE MAJEURE:

If by reason of force majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement then such party shall give notice and full particulars of force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term force majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the state of Texas or any civil or military authority, insurrections, riots, epidemics, land-slides, lighting, earthquake, fires, hurricanes, storms, floods, wash-outs, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch and shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

ASSIGNMENT DELEGATION:

No right or interest in this contract shall be assigned or delegation of any obligation made by the seller without the written permission of the buyer. Any attempted assignment or delegation by the seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

WAIVER:

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved

MODIFICATIONS:

This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

INTERPRETATION PAROLE EVIDENCE:

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in

a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.

APPLICABLE LAW:

This Uniform Commercial Code shall govern this agreement. Wherever the term “Uniform Commercial Code” is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the state of Texas as effective and in force on the date of this agreement.

ADVERTISING:

The seller shall not advertise or publish, without the buyer’s prior consent, the fact that the buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

RIGHT TO ASSURANCE:

Whenever one party to this contract in good faith has reason to question the other party’s intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

VENUE:

Both parties agree that venue for any litigation arising from this contract shall lie in Sample County, Texas.

PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the city, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation.

Vernon’s Texas Codes Annotated, Local Government Code, Chapter 171.

Exhibit 4: Sources of Specifications Information (Federal Government Sources and Standards Writing Organizations)

Federal Government Sources

General Services Administration
Federal Supply Service – Specifications Section
470 East L'Enfant Plaza, SW
Suite 8100
Washington, DC 20407
(202) 619-8925
(202) 619-8978 (fax)
Website: www.gsa.gov
E-mail: public.affairs@gsa.gov

United States Department of Health and Human Services
National Institute for Occupational Safety and Health
200 Independence Ave., SW
Room 715A
Washington, DC 20201
(202) 401-6997
(800) 356-4674 (toll free)
(888) 232-3299 (fax)
Website: www.cdc.gov/niosh
E-mail: pubstaft@cdc.gov

Document Automation & Production Service
5450 Carlisle Pike, Building 09
Post Office Box 2020
Mechanicsburg, PA 17055-0788
(877) 327-7226 (toll-free)
(717) 605-3971 (fax)
Website: www.daps.dla.mil
E-mail: webmaster@daps.dla.mil

Federal Information Center
(800) 688-9889 (toll-free)
For all federal agencies and miscellaneous information.

Standards Writing Organizations

American Bar Association
740 15th St., NW
Washington, DC 20005-1019
(800) 285-2221 (toll free)
Website: www.abanet.org

American National Standards Institute
25 W. 43rd St., 4th floor
New York, NY 10036
(212) 642-4900
(212) 398-0023 (fax)
Website: www.ansi.org
E-mail: ansionline@ansi.org

American Society for Testing and Materials
100 Barr Harbor Drive
West Conshohocken, PA 19428-2959
(610) 832-9200
(610) 832-9555 (fax)
Website: www.astm.org
E-mail: service@astm.org

American Society of Mechanical Engineers, Intl.
3 Park Ave.
New York, NY 10016-5990
(800) 843-2763 (toll free)
Website: www.asme.org
E-mail: infocentral@asme.org

American Welding Society
550 NW LeJeune Road
Miami, FL 33126
(305) 443-9353
(800) 443-9353 (toll free)
Website: www.aws.org
E-mail: info@aws.org

National Institute of Standards and Technology
Standards Information Center
100 Bureau Drive, Stop 2100
Gaithersburg, MD 20899-2100
(301) 975-4040
Website: www.nist.gov
E-mail: inquiries@nist.gov

National Fire Protection Association
Headquarters
1 Battery March Park
Quincy, MA 02269-9101
(617) 770-3000
(617) 770-0700 (fax)
Website: www.nfpa.org
E-mail: public_affairs@nfpa.org

United States Department of Commerce,
Technology Administration
National Technical Information Service
Springfield, VA 22161
(703) 605-6000
(800) 553-6847 (toll free)
Website: www.ntis.gov
E-mail: helpdesk@fedworld.gov

Society of Automotive Engineers
400 Commonwealth Drive
Warrendale, PA 15096-0001
(877) 606-7323 (toll free)
Website: www.sae.org
E-mail: custsvc@sae.org

Underwriters Laboratories, Inc.
2600 N.W. Lake Rd.
Camas, WA 98607-8542
(877) 854-3577 (toll free)
(360) 817-6278
Website: www.ul.com
E-mail: info@us.ul.com

Other Sources of Specifications Information

Association for the Advancement of
Medical Instrumentation
1110 N. Glebe Road
Suite 220
Arlington, VA 22201-4795
(800) 332-2264, ext. 247 (toll free)
(703) 276-0793 (fax)
Website: www.aami.org
E-mail: customerservice@aami.org

American Association of State Highway and
Transportation Officials
444 North Capitol St., N.W., Ste. 249
Washington, DC 20001
(202) 624-5800
(202) 624-5806 (fax)
Website: www.transportation.org
E-mail: info@aaashto.org

American Association of Textile Chemists and Colorists
Post Office Box 12215
Research Triangle Park, NC 27709-2215
(919) 549-8141
(919) 549-8933 (fax)
Website: www.aatcc.org

American Concrete Institute
38800 Country Club Dr.
Farmington Hills, MI 48331
(248) 848-3700
(248) 848-3701 (fax)
Website: www.aci-int.net
E-mail: webmaster@aci-int.org

CSA International
8501 East Pleasant Valley Road
Cleveland, OH 44131-5575
(216) 524-4990
(216) 642-3463 (fax)
Website: www.iasapprovals.org

American Gear Manufacturers Association
500 Montgomery Street, Ste. 350
Alexandria, VA 22314-1581
(703) 684-0211
(703) 684-0242 (fax)
Website: www.agma.org
E-mail: webmaster@agma.org

The Asphalt Institute
2696 Research Park Drive
Lexington, KY 40511-8480
(859) 288-4960
(859) 288-4999 (fax)
Website: www.asphaltinstitute.org

Aerospace Industries Association
1000 Wilson Blvd., Ste. 1700
Arlington, VA 22209-3928
(703) 358-1000
Website: www.aia-aerospace.org
E-mail: neale@aia-aerospace.org

American Institute of Chemical Engineers
3 Park Ave.
New York, NY 10016-5991
(203) 702-7660
(800) 242-4363 (toll free)
(203) 775-5177 (fax)
Website: www.aiche.org
E-mail: xpress@aiiche.org

The American Institute of Architects
1735 New York Ave., NW
Washington, D.C. 20006-5292
(202) 626-7300
(800) AIA-3837 (toll free)
(202) 626-7547 (fax)
Website: www.aia.org

American Institute of Steel Construction
One East Wacker Drive
Suite 3100
Chicago, IL 60601-2001
(312) 670-2400
(312) 670-5403 (fax)
Website: www.aisc.org

American Nuclear Society
555 North Kensington Ave.
LaGrange Park, IL 60526
(708) 352-6611
(800) 323-3044
(708) 352-0499 (fax)
Website: www.ans.org
E-mail: outreach@ans.org

American Petroleum Institute
1220 L St., NW
Suite 900
Washington, D.C. 20005-4070
(202) 682-8000
Website: www.api.org

American Railway Engineering and
Maintenance-of-Way Association
10003 Deredwood Lane, Ste. 210
Landover, MD 20706
(301) 459-3200
(301) 459-8077 (fax)
Website: www.arena.org

Air Conditioning, Heating and Refrigeration Institute
4100 Fairfax Drive
Arlington, VA 22203-1623
(703) 524-8800
(703) 524-3816 (fax)
Website: www.ahrinet.org
E-mail: ahri@ahrinet.org

American Society of Agricultural and Biological Engineers
2950 Niles Road
St. Joseph, MI 49085-9659
(616) 429-0300
(616) 429-3852 (fax)
Website: www.asabe.org

American Society of Civil Engineers
1801 Alexander Bell Drive
Reston, VA 20191
(800) 548-2723 (toll free)
Website: www.asce.org
E-mail: cybrarian@asce.org

American Society of Heating, Refrigerating, and
Air Conditioning Engineers
1791 Tullie Circle, N.E.
Atlanta, GA 30329
(404) 636-8400
(800) 527-4723 (toll free)
(404) 321-5478 (fax)
Website: www.ashrae.org

The American Society for Nondestructive Testing
1711 Arlingate Lane
Post Office Box 28518
Columbus, OH 43228-0518
(614) 274-6003
(800) 222-2768
(614) 274-6899 (fax)
Website: www.asnt.org
E-mail: president@asnt.org

American Society for Quality
Post Office Box 3005
Milwaukee, WI 53201-3005
(414) 272-8575
(800) 248-1946 (toll-free)
(414) 272-1734 (fax)
Website: www.asq.org
E-mail: cs@asq.org

American Society of Sanitary Engineering
901 Canterbury, Suite A
Westlake, OH 44145
(440) 835-3040
(440) 835-3488 (fax)
Website: www.asse-plumbing.org
E-mail: info@asse-plumbing.org

American Water Works Association
6666 West Quincy Ave.
Denver, CO 80235
(303) 794-7711
(800) 926-7337
(303) 347-0804 (fax)
Website: www.awwa.org
E-mail: custsvc@awwa.org

Buyers Laboratory, Inc.
20 Railroad Ave.
Hackensack, NJ 07601-3399
(201) 488-0404
(201) 488-0461 (fax)
Website: www.buyerslab.com
E-mail: info@buyers-lab.com

Compressed Gas Association
4221 Walney Road, 5th Floor
Chantilly, VA 20151
(703) 788-2700
(703) 961-1831 (fax)
Website: www.cganet.com
E-mail: cga@cganet.com

Gas Processors Association
6526 East 60th St.
Tulsa, OK 74145
(918) 493-3872
(918) 493-3875 (fax)
Website: www.gasprocessors.com

Institute of Electrical and Electronics Engineers
3 Park Ave., 17th floor
New York, NY 10016-5997
(212) 419-7900
(212) 752-4929 (fax)
Website: www.ieee.org
E-mail: customer-service@ieee.org

Illuminating Engineering Society of North America (IES)
536 LaGuardia Place
New York, NY 10012
(212) 993-6460
(212) 248-5017 (fax)
Website www.iesny.org
E-mail: admin@iesnyc.org

IPC (formerly Institute for Interconnecting and Packaging
Electronic Circuits)
2215 Sanders Road
Northbrook, IL 60062-6135
(847) 509-9700
(847) 509-9798 (fax)
Website: www.ipc.org
E-mail: answersipc@ipc.org

International Society of Automation (ISA)
Post Office Box 12277
Research Triangle Park, NC 27709
(919) 549-8411
(919) 549-8288 (fax)
Website: www.isamarketplace.org
E-mail: info@isa.org

Manufacturers Standardization Society of the
Valve and Fittings Industry
127 Park St., NE
Vienna, VA 22180-4602
(703) 281-6613
(703) 281-6671 (fax)
Website: www.mss-hq.com
E-mail: info@mss-hq.com

National Association of Corrosion Engineers (NACE, Intl)
1440 South Creek Drive
Houston, TX 77084-4906
(281) 228-6200
(800) 797-6223
(281) 228-6300 (fax)
Website: www.nace.org

National Association of Purchasing Management
Institute for Supply Management (ISM)
2005 East Centennial Circle
Post Office Box 22160
Tempe, AZ 85285-2160
(480) 752-6276
(800) 888-6276 (toll-free)
(480) 752-7890 (fax)
Website: www.napm.org

National Electrical Manufacturers Association
1300 North 17th St.
Suite 1752
Rosslyn, VA 22209
(703) 841-3200
(703) 841-5900 (fax)
Website: www.nema.org
E-mail: webmaster@nema.org

National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02169-7471
(617) 770-3000
(617) 770-0700 (fax)
Website: www.nfpa.org
E-mail: public_affairs@nfpa.org

National Fluid Power Association
3333 North Mayfair Road
Suite 211
Milwaukee, WI 53222-3219
(414) 778-3344
(414) 778-3361 (fax)
Website: www.nfpa.com
E-mail: nfpa@nfpa.com

National Institute of Governmental Purchasing (NIGP)
151 Spring St.
Herndon, VA 20170-5223
(800) 367-6447 (toll free)
(703) 736-2818 (fax)
Website: www.nigp.org

Exhibit 4: Sources of Specifications Information (Federal Government Sources and Standards Writing Organizations)

National Institute of Justice
United States Department of Justice
810 Seventh St., NW
Washington, DC 20531
(800) 851-3420 (toll free)
Website: www.ojp.usdoj.gov/nij

National Sanitation Foundation, Intl. (NSF International)
789 North Dixboro Road
Post Office Box 130140
Ann Arbor, MI 48113-0140
(734) 769-8010
(800) NSF-MARK (toll free)
(734) 769-0109 (fax)
Website: www.nsf.org
E-mail: info@nsf.org

Pipe Fabrication Institute
511 Ave. of the Americas, #601
New York, NY 10011
(514) 634-3434
(514) 634-9736 (fax)
Website: www.pfi-institute.org
E-mail: pfi@pfi-institute.org

Public Technology Institute, Inc.
1301 Pennsylvania Ave., NW
Suite 830
Washington, D.C. 20004
(866) 664-6368 (toll free)
Website: www.pti.org
E-mail: info@pti.org

RTCA, Inc. (formerly Radio Technical Commission for
Aeronautics, Inc.)
1828 L St., NW, Suite 805
Washington, DC 20036
(202) 833-9339
(202) 833-9434 (fax)
Website: www.rtca.org
E-mail: info@rtca.org

Semiconductor Equipment and Materials International
3081 Zanker Road
San Jose, CA 95134-2127
(408) 943-6900
(408) 428-9600 (fax)
Website: www.semi.org
E-mail: semihq@semi.org

Technical Association of the Pulp and Paper Industry
15 Technology Parkway
Norcross, GA 30092
(770) 446-1400
(800) 332-8686 (toll-free)
(770) 446-6947 (fax)
Website: www.tappi.org
E-mail: memberconnection@tappi.org

Exhibit 5: Standards of Specifications Information and Standard Units of Measure

STANDARD UNIT	STANDARD ABBREVIATION	SUBSTITUTE ABBREVIATION	STANDARD UNIT	STANDARD ABBREVIATION	SUBSTITUTE ABBREVIATION	STANDARD UNIT	STANDARD ABBREVIATION	SUBSTITUTE ABBREVIATION
AMPOULE *	AM	AMP	DRUM	DM	DRM	PLATE	PM	
ASSEMBLY	AY	ASSY	EACH	EA		QUART	QT	
ASSORTMENT	AT	AST	FIVE HUNDRED	D		QUIRE *	QR	
BAG	BG		FOOT	FT		RATION	RA	
BALE	BE	BLE	GALLON	GL	GAL	REAM	RM	
BALL	BA		GROSS	GR		REEL	RL	
BARREL	BL		HANK *	HK		ROLL	RO	
BOARD FEET	BF		HOURL	HR	HRS	SET	ST	
BOLT	BO		HUNDRED	C	HD	SHEET	SH	SHT
BOOK	BK		HUNDRED FEET	CF	CFT	SHOT	SO	
BOTTLE	BT	BOT	HUNDRED WEIGHT	CW	CWT	SKEIN *	SK	
BOX	BX		JAR	JR		SKID *	SD	
BUNDLE	BD	BNDL	JUG	JU		SPOOL	SL	
CAKE	CK		KIT	KT		SQUARE FOOT	SF	SQFT
CAN	CN		LENGTH	LG	LGTH	SQUARE INCH	SI	
CARBOY *	CB		LINE	LN		SQUARE YARD	SY	
CARTON	CT	CAR CTN	LITER	LI	LTR	STICK	SX	
CARTRIDGE	CA	CRTG CTG CART	LOT	LO		STRIP	SP	
CASE	CS	CSE	MEAL	ME		TON	TN	
COIL	CL		METER	MR		TRAY	TY	
CONE	CE	CNE	OUNCE	OZ		TROY OUNCE *	TO	
CONTAINER	CO	CNT	OUTFIT	OT		TUBE	TU	
CUBIC FOOT	CF	CUFT	PACKAGE	PG	PKG	UNIT	UN	
CUBIC METER	CZ		PACKET	PZ		VIAL	VL	
CUBIC YARD	CD		PAD	PD		YARD	YD	
CYLINDER	CY	CYL	PAIL	PL		WORD	WD	
DOSE	DS		PAIR	PR				
DOZEN	DZ	DZN DOZ.	PINT	PT				

* Description of certain units of measure:

AMPOULE - a container for a dose of medicine

CARBOY - a large glass container used for acids, etc.

HANK - a loop or coil of something flexible.

QUIRE - a group of sheets of paper folded one within the next in a book.

SKEIN - a coil of thread or yarn.

SKID - a devise for moving heavy objects, etc.

TROY OUNCE - weights used for precious metals.

Exhibit 6: Sample Specification Format

Specification for good/service

1.0 SCOPE AND INTENT

- 1.1 Scope – Explain title and summarize the applicable sections of the specification.
- 1.2 Intent – State the use of the item and the departments that will use it. The intent section also defines the classification of the item.

2.0 DEFINITIONS AND APPLICABLE DOCUMENTS

- 2.1 Definitions – Define technical and critical terms where necessary.
- 2.2 Applicable documents – List and reference all documents referred to in the specification, including title, edition or issue number, year of publication and publisher or originating organization. If necessary, state where the documents are located.

3.0 REQUIREMENTS

- 3.1 Performance requirements and characteristics – List all needs and performance requirements. Include work-related needs that the item must fulfill.
- 3.2 Design features and requirements – List all design requirements, including materials, manufacturing standards and directions, dimensions, physical characteristics and workmanship standards.
- 3.3 Other requirements – List any requirements not covered in the first two sections.

4.0 QUALITY ASSURANCE

- 4.1 Test requirements – List any testing requirements including sampling, inspection, laboratory certifications and other quality control requirements.
- 4.2 Remedies and penalties – List all remedies available to the government for non-compliance with specifications. Detail penalties for failure to perform or comply.

Exhibit 7: Invitation for Bid (Sample)

(The Invitation for Bid format will vary according to the individual needs of the government, but there should be some common requirements. The following is only suggested, and should be tailored to the needs of the local government.)

COUNTY OF GOOD PUBLIC SERVANTS, TEXAS

INVITATION FOR BID - Bid No. 03-07-55

RETURN BID TO:

COUNTY OF GOOD PUBLIC SERVANTS
PURCHASING OFFICE
COUNTY COURTHOUSE, ROOM 405
123 MAIN ST.
GOOD GOVERNMENT, TEXAS 7XXXX-XXXX

The enclosed INVITATION FOR BID (IFB) and accompanying SPECIFICATIONS AND BID SHEET (S) are for your convenience in bidding the enclosed referenced products and/or services for COUNTY OF GOOD PUBLIC SERVANTS.

- Sealed bids shall be received no later than:
- 2 p.m., Monday, June 30, 2011
- MARK ENVELOPE: "BID NO. 03-07-55; FLOOR WAX AND FLOOR CLEANER PRODUCTS."
- BIDDER SHALL SIGN AND DATE THE BID ON EACH PAGE. BIDS WHICH ARE NOT SIGNED AND DATED IN THIS MANNER WILL BE REJECTED.

COUNTY OF GOOD PUBLIC SERVANTS appreciates your time and effort in preparing a bid. Please note that all bids **must be received at the designated location by the deadline shown**. Bids received after the deadline will not be considered for the award of the contract, and shall be considered void and unacceptable. Opening is scheduled for the Commissioners Courtroom, Sixth Floor, County Courthouse, Good Government, Texas. **You are invited to attend.**

If you do not wish to bid at this time, but wish to remain on the bid list for this commodity, please submit a "No Bid" by the same time and at the same location as stated for bidding. If a response is not received in the form of a "Bid" or "No Bid" for three consecutive IFBs, you shall be removed from the bid list. If you wish to be removed from the bid list, or changed to the bid list for another commodity, please let us know. Information on which commodities and services we maintain bid lists for is available from the COUNTY OF GOOD PUBLIC SERVANTS PURCHASING OFFICE.

COUNTY OF GOOD PUBLIC SERVANTS is aware of the time and effort you expend in preparing and submitting bids to the county. Please let us know of any bid

requirements that are causing you difficulty in responding to our bids. We want to make the process as easy and painless as possible so that all responsible vendors can compete for the county's business.

Awards should be made approximately two weeks after the bid opening date. To obtain results, or if you have any questions, please contact the COUNTY OF GOOD PUBLIC SERVANTS PURCHASING OFFICE, at (214) 555-6666, ext. 4444.

COUNTY OF GOOD PUBLIC SERVANTS
INVITATION FOR BID
INSTRUCTIONS/TERMS OF CONTRACT
BID NO. 03-07-55

By order of the Commissioners Court of COUNTY OF GOOD PUBLIC SERVANTS, Texas, sealed bids will be received for:

FLOOR WAX AND FLOOR CLEANING PRODUCTS
provided for in an annual contract commencing thirty-days (30) after the date of the award and continuing for a 12-month period. Commissioners court reserves the right to extend this contract for four (4) additional one-year periods as it deems to be in the best interest of the county.

IT IS UNDERSTOOD that the commissioners court of COUNTY OF GOOD PUBLIC SERVANTS, Texas reserves the right to reject any or all bids for any or all products and/or services covered in this bid request and to waive informalities or defects in bids or to accept such bids as it shall deem to be in the best interests of COUNTY OF GOOD PUBLIC SERVANTS.

BIDS MUST BE submitted on the pricing forms included for that purpose in this packet. Each bid shall be placed in a separate sealed envelope, with **each page manually signed by a person having the authority to bind the firm in a contract** and marked clearly on the outside as shown below. **FACSIMILE TRANSMITTALS SHALL NOT BE ACCEPTED.**

SUBMISSION OF BIDS, Sealed bids shall be submitted to:

COUNTY OF GOOD PUBLIC SERVANTS PURCHASING OFFICE
COUNTY OF GOOD PUBLIC SERVANTS COURTHOUSE, ROOM 405
123 MAIN STREET
GOOD GOVERNMENT, TEXAS 7XXXX

Not later than 2 p.m., Monday June 30, 2011
**MARK ENVELOPE: "BID NO. 03-07-55;
FLOOR WAX AND FLOOR CLEANER PRODUCTS."**

**ALL BIDS MUST BE RECEIVED IN THE COUNTY PURCHASING OFFICE
BEFORE OPENING DATE AND TIME.**

Bid No. 03-07-55**FUNDING:**

Funds for payment have been provided through the COUNTY OF GOOD PUBLIC SERVANTS budget approved by the commissioners court for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current COUNTY OF GOOD PUBLIC SERVANTS fiscal year shall be subject to budget approval.

LATE BIDS:

Bids received in the county purchasing office after submission deadline will be considered void and unacceptable. COUNTY OF GOOD PUBLIC SERVANTS is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the purchasing office shall be the official time of receipt.

ALTERING BIDS:

Bids cannot be altered or amended after submission deadline. The signer of the bid, guaranteeing authenticity, must initial any interlineations, alterations or erasures made before opening time.

WITHDRAWAL OF BID:

A bid may not be withdrawn or cancelled by the bidder without the permission of the county for a period of 90 days following the date designated for the receipt of bids, and bidder so agrees upon submittal of their bid.

SALES TAX:

COUNTY OF GOOD PUBLIC SERVANTS is exempt by law from payment of Texas sales tax and federal excise tax. Bidder shall include any sales taxes from concession sales of taxable items on county property in the total price of the sale, and shall be responsible to report and pay such taxes in a timely manner.

BID AWARD:

COUNTY OF GOOD PUBLIC SERVANTS reserves the right to award bids on the lump sum or unit price basis, whichever is in the best interest of the county.

CONTRACT:

This bid, when properly accepted by COUNTY OF GOOD PUBLIC SERVANTS, shall constitute a contract equally binding between the successful bidder and COUNTY OF GOOD PUBLIC SERVANTS. No different or additional terms will become a part of this contract with the exception of change orders.

CHANGE ORDERS:

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. The COUNTY OF GOOD PUBLIC SERVANTS purchase agent will make all change orders to the contract in writing.

IF DURING THE life of the contract, the successful bidder's net prices to other customers for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to COUNTY OF GOOD PUBLIC SERVANTS.

A PRICE recalculation may be considered by COUNTY OF GOOD PUBLIC SERVANTS only at the anniversary date of the contract and shall be substantiated in writing (i.e., manufacturer's direct cost, postage rates, Railroad Commission rates, wage/labor rates, etc.). The bidder's history of honoring contracts at the bid price will be an important consideration in the evaluation of the lowest and best bid. COUNTY OF GOOD PUBLIC SERVANTS reserves the right to accept or reject any/all of the price recalculation as it deems to be in the best interest of the county.

DELIVERY:

All delivery and freight charges (F.O.B. COUNTY OF GOOD PUBLIC SERVANTS designated location) are to be included in the bid price.

CONFLICT OF INTEREST:

No public official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

ETHICS:

The bidder shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of COUNTY OF GOOD PUBLIC SERVANTS.

EXCEPTIONS/SUBSTITUTIONS:

All bids meeting the intent of this invitation for bid will be considered for award. Bidders taking exception to the specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the bid. The absence of such a list shall indicate that the bidder has not taken exceptions and shall hold the bidder responsible to perform in strict accordance with the specifications of the invitation. COUNTY OF GOOD PUBLIC SERVANTS commissioners court reserves the right to accept any and all or none of the exception(s)/substitution(s) deemed to be in the best interest of the county.

DESCRIPTIONS:

Any reference to model and/or make/manufacture used in bid specifications is descriptive, not restrictive. It is used to indicate the type and quality desired. Bids on items of like quality will be considered.

ADDENDA:

Any interpretations, corrections or changes to this invitation for bid and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in COUNTY OF GOOD PUBLIC SERVANTS purchasing agent. Addenda will be mailed to all who are known to have received a copy of this invitation for bid. Bidders shall acknowledge receipt of all addenda.

BID MUST COMPLY with all federal, state, county and local laws concerning these types of service.

DESIGN, STRENGTH, QUALITY of materials must conform to the highest standards of manufacturing practice.

ALL FOOD ITEMS SOLD must be fresh at all times and of current manufacture.

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS:

A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must:

- have adequate financial resources, or the ability to obtain such resources as required;
- be able to comply with the required or proposed delivery schedule;
- have a satisfactory record of performance;
- have a satisfactory record of integrity and ethics; and
- be otherwise qualified and eligible to receive an award.

COUNTY OF GOOD PUBLIC SERVANTS may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.

REFERENCES: COUNTY OF GOOD PUBLIC SERVANTS requests bidder to supply, with this IFB, a list of at least three (3) references where their firm supplied like services. Include name of firm, address, telephone number and name of representative.

BIDDER SHALL PROVIDE with this bid response, all documentation required by this IFB. Failure to provide this information may result in rejection of bid.

SUCCESSFUL BIDDER SHALL defend, indemnify and save harmless COUNTY OF GOOD PUBLIC SERVANTS and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award. Successful bidder indemnifies and will indemnify and save harmless COUNTY OF GOOD PUBLIC SERVANTS from liability, claim or demand on their part, agents, servants, customers, and/or employees whether such liability, claim or demand arise from event or casualty happening or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways or approaches of or to the facilities within which the occupied premises are located. Successful bidder shall pay any judgment with costs that may be obtained against COUNTY OF GOOD PUBLIC SERVANTS growing out of such injury or damages.

WAGES:

Successful bidder shall pay or cause to be paid, without cost or expense to COUNTY OF GOOD PUBLIC SERVANTS, all Social Security, unemployment and federal

income withholding taxes of all such employees and all such employees shall be paid wages and benefits as required by federal and/or state law.

TERMINATION OF CONTRACT:

This contract shall remain in effect until contract expires, delivery and acceptance of products and/or performance of services ordered or terminated by either party with a thirty (30) days written notice prior to any cancellation. The successful bidder must state therein the reasons for such cancellation. COUNTY OF GOOD PUBLIC SERVANTS reserves the right to award cancelled contract to next lowest and best bidder as it deems to be in the best interest of the county.

TERMINATION FOR DEFAULT:

COUNTY OF GOOD PUBLIC SERVANTS reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the county in the event of breach or default of this contract. COUNTY OF GOOD PUBLIC SERVANTS reserves the right to terminate the contract immediately in the event the successful bidder fails to:

- meet schedules;
- pay any fees; and
- otherwise perform in accordance with these specifications.

Breach of contract or default authorizes the county to exercise any or all of the following rights:

- COUNTY OF GOOD PUBLIC SERVANTS may take possession of the assigned premises and any fees accrued or becoming due to date,
- COUNTY OF GOOD PUBLIC SERVANTS may take possession of all goods, fixtures and materials of successful bidder therein and may foreclose its lien against such personal property, applying the proceeds toward fees due or thereafter becoming due;

In the event the successful bidder shall fail to perform, keep or observe any of the terms and conditions to be performed, kept or observed, COUNTY OF GOOD PUBLIC SERVANTS shall give the successful bidder written notice of such default; and in the event said default is not remedied to the satisfaction and approval of the county within two (2) working days of receipt of such notice by the successful bidder, default will be declared and all the successful bidder's rights shall terminate.

Bidder, in submitting this bid, agrees that COUNTY OF GOOD PUBLIC SERVANTS shall not be liable to prosecution for damages in the event that the county declares the bidder in default.

NOTICE:

Any notice provided by this bid (or required by Law) to be given to the successful bidder by COUNTY OF GOOD PUBLIC SERVANTS shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in GOOD GOVERNMENT, Texas, by registered or certified mail with

sufficient postage affixed thereto, addressed to the successful bidder at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

PATENTS/COPYRIGHTS:

The successful bidder agrees to protect COUNTY OF GOOD PUBLIC SERVANTS from claims involving infringements of patents and/or copyrights.

CONTRACT ADMINISTRATOR:

Under this contract, COUNTY OF GOOD PUBLIC SERVANTS may appoint a contract administrator with designated responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. The contract administrator will serve as liaison between the COUNTY OF GOOD PUBLIC SERVANTS purchasing department (which has the overall contract administration responsibilities) and the successful bidder.

PURCHASE ORDER:

The COUNTY OF GOOD PUBLIC SERVANTS shall generate a purchase order(s) to the successful bidder. The purchase order number must appear on all itemized invoices and packing slips. COUNTY OF GOOD PUBLIC SERVANTS will not be held responsible for any orders placed/delivered without a valid current purchase order number.

PACKING SLIPS or other suitable shipping documents shall accompany each special order shipment and shall show: (a) name and address of successful bidder, (b) name and address of receiving department and/or delivery location, (c) COUNTY OF GOOD PUBLIC SERVANTS purchase order number, and (d) descriptive information as to the item(s) delivered, including product code, item number, quantity, number of containers, etc.

INVOICES shall show all information as stated above, shall be issued for each purchase order and shall be mailed directly to the COUNTY OF GOOD PUBLIC SERVANTS Auditor's Office, 123 Main Street, Fifth Floor, GOOD GOVERNMENT, Texas 7XXXX-XXXX.

PAYMENT will be made upon receipt and acceptance by the county of item(s) ordered and receipt of a valid invoice, in accordance with the State of Texas Prompt Payment Act, Chapter 2251, Government Code VTCA. Successful bidder(s) is required to pay subcontractors within ten (10) days.

ITEMS supplied under this contract shall be subject to the county's approval. Items found defective or not meeting specifications shall be picked up and replaced by the successful bidder at the next service date at no expense to the county. If item is not picked up within one (1) week after notification, the item will become a donation to the county for disposition.

SAMPLES:

When requested, samples shall be furnished free of expense to COUNTY OF GOOD PUBLIC SERVANTS.

WARRANTY:

Successful bidder shall warrant that all items/services shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

REMEDIES:

The successful bidder and COUNTY OF GOOD PUBLIC SERVANTS agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code.

VENUE:

This agreement will be governed and construed according to the laws of the state of Texas. This agreement is performable in COUNTY OF GOOD PUBLIC SERVANTS, Texas.

ASSIGNMENT:

The successful bidder shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of COUNTY OF GOOD PUBLIC SERVANTS.

SILENCE OF SPECIFICATION:

The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made based on this statement.

Each insurance policy to be furnished by successful bidder shall include, by endorsement to the policy, a statement that a notice shall be given to COUNTY OF GOOD PUBLIC SERVANTS by certified mail thirty-days (30) before cancellation or upon any material change in coverage.

ANY QUESTIONS concerning this Invitation for Bid and Specifications should be directed to the purchasing department at (214) 555-6666, ext. 4444.

Exhibit 8: Request for Proposals (Sample)

(The Request for Proposals format, like the Invitation for Bid, will vary according to the individual needs of the government, and is similar to the format in 130-EXH-1. This example is to show some of the differences. Again, the following is only suggested, and should be tailored to the local government's needs.)

COUNTY OF GOOD PUBLIC SERVANTS, TEXAS REQUEST FOR PROPOSAL - RFP No. 03-07-72

RETURN PROPOSAL TO:

COUNTY OF GOOD PUBLIC SERVANTS
PURCHASING OFFICE
COUNTY COURTHOUSE, ROOM 405
123 MAIN STREET
GOOD GOVERNMENT, TEXAS 7XXXX-XXXX

The enclosed REQUEST FOR PROPOSAL (RFP) and accompanying SPECIFICATIONS are for your convenience in submitting an offer for the enclosed referenced products and/or services for COUNTY OF GOOD PUBLIC SERVANTS.

Sealed proposals shall be received no later than:

2 p.m., Monday, July 31, 2011

MARK ENVELOPE: "RFP No. 03-05-72 FACSIMILE MACHINES."

**PROPOSER SHALL SIGN AND DATE THE PROPOSAL ON EACH PAGE.
PROPOSALS THAT ARE NOT SIGNED AND DATED IN THIS MANNER WILL
BE REJECTED.**

COUNTY OF GOOD PUBLIC SERVANTS appreciates your time and effort in preparing this proposal. Please note that all proposals **must be received at the designated location by the deadline shown**. Proposals received after the deadline **will not be considered** for the award of the contract, and shall be considered void and unacceptable. Opening is scheduled for the commissioners courtroom, Sixth Floor, Courthouse, GOOD GOVERNMENT, Texas. **You are invited to attend.**

If you do not wish to submit a proposal at this time, but wish to remain on the bid list for this commodity, please submit a "No Offer" by the same time and at the same location as stated above. If a response is not received in the form of a "Proposal" or "No Offer" for three consecutive RFPs, you shall be removed from the bid list. If you wish to be removed from the bid list, or changed to the bid list for another commodity, please let us know.

Information on which commodities and services we maintain bid lists for is available from the COUNTY OF GOOD PUBLIC SERVANTS PURCHASING OFFICE.

COUNTY OF GOOD PUBLIC SERVANTS is very conscious and extremely appreciative of the time and effort you have expended to submit an offer. We would appreciate it if you would indicate on any “No Offer” response any requirement of this RFP that may have influenced your decision to “No Offer”.

Awards should be made approximately two weeks after the proposal opening date. To obtain results, or if you have any questions, please contact the COUNTY OF GOOD PUBLIC SERVANTS PURCHASING OFFICE, at 214-555-6666, ext. 4444.

COUNTY OF GOOD PUBLIC SERVANTS
REQUEST FOR PROPOSAL
INSTRUCTIONS/TERMS OF CONTRACT

RFP NO. 03-05-72

By order of the commissioners court of COUNTY OF GOOD PUBLIC SERVANTS, Texas, sealed proposals will be received for:

FACSIMILE MACHINES
(SINGLE SHEET BOND PAPER UNITS ONLY)

and provide an annual contract commencing on the date of the award and continuing for a 12-month period. The commissioners court reserves the right to extend this contract for four (4) additional one-year periods as it deems to be in the best interest of the county.

IT IS UNDERSTOOD that the commissioners court of COUNTY OF GOOD PUBLIC SERVANTS, Texas reserves the right to reject any or all proposals as it shall deem to be in the best interests of COUNTY OF GOOD PUBLIC SERVANTS. Receipt of any proposal shall under no circumstances obligate COUNTY OF GOOD PUBLIC SERVANTS to accept the lowest dollar proposal. The award of this contract shall be made to the responsible bidder, whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and the other evaluation factors set forth in the request for proposals.

PROPOSALS SHALL include this RFP and all additional documents submitted. Each proposal shall be placed in a separate sealed envelope, with **each page manually signed by a person having the authority to bind the firm in a contract** and marked clearly on the outside as shown below. FACSIMILE TRANSMITTALS SHALL NOT BE ACCEPTED.

SUBMISSION OF PROPOSALS; Five (5) copies of all proposal documents shall be sealed and submitted as their response to:

COUNTY OF GOOD PUBLIC SERVANTS PURCHASING OFFICE
COUNTY OF GOOD PUBLIC SERVANTS COURTHOUSE, ROOM 405
123 MAIN STREET
GOOD GOVERNMENT, TEXAS 7XXXX-XXXX

Not later than 2:00 p.m., Monday, July 31, 2011.

MARK ENVELOPE: "RFP NO. 03-05-72; FACSIMILE MACHINES."

ALL PROPOSALS MUST BE RECEIVED IN THE COUNTY PURCHASING OFFICE BEFORE OPENING DATE AND TIME.

RFP No. 03-07-72

FUNDING:

Funds for payment have been provided through the COUNTY OF GOOD PUBLIC SERVANTS budget approved by the commissioners court for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current COUNTY OF GOOD PUBLIC SERVANTS fiscal year shall be subject to budget approval.

LATE PROPOSALS:

Proposals received in the county purchasing office after submission deadline will be considered void and unacceptable. COUNTY OF GOOD PUBLIC SERVANTS is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the purchasing office shall be the official time of receipt.

ALTERING PROPOSALS:

The signer of the proposal must initial any interlineations, alteration or erasure made before opening time, to guarantee authenticity.

WITHDRAWAL OF PROPOSAL:

A proposal may not be withdrawn or cancelled by the bidder without the permission of the county for a period of 90 days following the date designated for the receipt of proposals, and bidder so agrees upon submittal of their proposal.

PROPOSALS WILL BE received and publicly acknowledged at the location, date and time stated above. Bidders, their representatives and interested persons may be present. The proposals shall be received and acknowledged only to avoid disclosure of the contents to competing bidders and kept secret during negotiations.

However, all proposals shall be open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposal and identified by bidder as such.

SALES TAX: COUNTY OF GOOD PUBLIC SERVANTS is exempt by law from payment of Texas Sales Tax and Federal Excise Tax; therefore, the proposal shall not include sales taxes.

CONTRACT:

This proposal, accompanying documents and any negotiated terms, when properly accepted by COUNTY OF GOOD PUBLIC SERVANTS, shall constitute a contract equally binding between the successful bidder and COUNTY OF GOOD PUBLIC SERVANTS.

No different or additional terms will become a part of this contract with the exception of change orders.

CHANGE ORDERS:

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the resulting contract. The COUNTY OF GOOD PUBLIC SERVANTS purchase agent will make all change orders to the contract in writing.

If, during the life of the contract, the successful bidder's net prices to other customers for facsimile machines/accessories/services awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to COUNTY OF GOOD PUBLIC SERVANTS.

A price recalculation may be considered by COUNTY OF GOOD PUBLIC SERVANTS only at the time of a model change during the year or at the anniversary date of the contract and shall be substantiated in writing (i.e., manufacturer's direct cost, postage rates, Railroad Commission rates, Wage/Labor rates, etc.). The bidder's history of honoring contracts at the contract price will be an important consideration in the evaluation of the lowest and best proposal. COUNTY OF GOOD PUBLIC SERVANTS reserves the right to accept or reject any/all of the price recalculation as it deems to be in the county's best interest.

RIGHT TO PURCHASE ELSEWHERE:

COUNTY OF GOOD PUBLIC SERVANTS will not actively solicit bids, proposals, quotations or otherwise test the market solely for the purpose of seeking alternative sources; however, COUNTY OF GOOD PUBLIC SERVANTS reserves the right to purchase elsewhere any and/or all items covered by this contract if available from another source at a price lower than the contract price or if contract term(s) are not met.

DELIVERY:

All delivery and freight charges (FOB COUNTY OF GOOD PUBLIC SERVANTS designated location) are to be included in the contract price.

DELIVERY TIME:

Bidder shall address number of days required to place facsimile equipment/accessories at the county's designated location. Successful bidder shall notify the Purchasing Department immediately if delivery schedule cannot be met. If delay is foreseen, successful bidder shall give written notice to the purchasing agent. The county has the right to extend delivery time if reason appears valid. Successful bidder must keep the Purchasing Department advised at all times of the order status.

CONFLICT OF INTEREST:

No public official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

ETHICS:

The bidder shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of COUNTY OF GOOD PUBLIC SERVANTS.

EXCEPTIONS/SUBSTITUTIONS:

All proposals meeting the intent of this request for proposal will be considered for negotiations. Bidders taking exception to the specifications or offering substitutions shall state these exceptions in the section provided or by attachment as part of the proposal. The absence of such a list shall indicate that the bidder has not taken exceptions, and the bidder shall be responsible for performing in strict accordance with the specifications of the RFP. COUNTY OF GOOD PUBLIC SERVANTS Commissioners Court reserves the right to accept any and all or none of the exception(s)/substitution(s) deemed to be in the best interest of the county.

DESCRIPTIONS:

Any reference to model and/or make/manufacture used in RFP specifications is descriptive, not restrictive. It is used to indicate the type and quality desired. Proposals on items of like quality will be considered.

ADDENDA:

Any interpretations, corrections or changes to this RFP and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in COUNTY OF GOOD PUBLIC SERVANTS Purchasing Agent. Addenda will be mailed to all who are known to have received a copy of this RFP. Bidders shall acknowledge receipt of all addenda.

PROPOSAL MUST COMPLY with all federal, state, county and local laws concerning these types of facsimile/accessories/service.

DESIGN, STRENGTH, QUALITY of materials and workmanship must conform to the highest standards of manufacturing and engineering practice.

ALL FACSIMILE EQUIPMENT/ACCESSORIES must be new and unused, unless otherwise specified, in first-class condition and of current manufacture.

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE bidders: A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must:

1. have adequate financial resources, or the ability to obtain such resources as required;
2. be able to comply with the required or proposed delivery schedule;
3. have a satisfactory record of performance;
4. have a satisfactory record of integrity and ethics; and
5. be otherwise qualified and eligible to receive an award.

COUNTY OF GOOD PUBLIC SERVANTS may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.

REFERENCES: COUNTY OF GOOD PUBLIC SERVANTS requests bidder to supply, with this RFP, a list of at least three (3) references where their firm supplied like services. Include name of firm, address, telephone number and name of representative.

BIDDER SHALL PROVIDE with this proposal response, all documentation required by this RFP. Failure to provide this information may result in rejection of proposal.

SUCCESSFUL BIDDER SHALL defend, indemnify and save harmless COUNTY OF GOOD PUBLIC SERVANTS and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from proposal award. Successful bidder shall pay any judgment with costs that may be obtained against COUNTY OF GOOD PUBLIC SERVANTS growing out of such injury or damages.

TERMINATION OF CONTRACT:

This contract shall remain in effect until contract expires, delivery/completion and acceptance of products and/or performance of services ordered or until terminated by either party with a 30-days written notice before any cancellation. The successful bidder must state therein the reasons for such cancellation. COUNTY OF GOOD PUBLIC SERVANTS reserves the right to award cancelled contract to the next best bidder as it deems to be in the best interest of the county.

TERMINATION FOR DEFAULT:

In the event of breach or default of this contract, COUNTY OF GOOD PUBLIC SERVANTS reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the county. COUNTY OF GOOD PUBLIC SERVANTS reserves the right to terminate the contract immediately in the event the successful bidder fails to:

- meet delivery or completion schedules; and/or
- otherwise perform in accordance with the accepted proposal.

Breach of contract or default authorizes the county to award to another bidder, purchase elsewhere and charge the full increase in cost to the defaulting bidder.

NOTICE:

Any notice provided by this proposal (or required by law) to be given to the successful bidder by COUNTY OF GOOD PUBLIC SERVANTS shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in GOOD GOVERNMENT, Texas, by Registered or Certified Mail with

sufficient postage affixed thereto, addressed to the successful bidder at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

PATENTS/COPYRIGHT:

The successful bidder agrees to protect COUNTY OF GOOD PUBLIC SERVANTS from claims involving infringements of patents and/or copyrights.

CONTRACT ADMINISTRATOR:

Under this contract, COUNTY OF GOOD PUBLIC SERVANTS may appoint a contract administrator with designated responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. The contract administrator will serve as liaison between the COUNTY OF GOOD PUBLIC SERVANTS Purchasing Department (which has the overall contract administration responsibilities) and the successful bidder.

TESTING:

An agent so designated, without expense to COUNTY OF GOOD PUBLIC SERVANTS, may perform testing at the request of COUNTY OF GOOD PUBLIC SERVANTS.

PURCHASE ORDER:

COUNTY OF GOOD PUBLIC SERVANTS shall generate a purchase order(s) to the successful bidder. The purchase order number must appear on all itemized invoices and packing slips. COUNTY OF GOOD PUBLIC SERVANTS will not be held responsible for any orders placed/delivered without a valid current purchase order number.

Packing slips or other suitable shipping documents shall accompany each special order shipment and shall show: (a) name and address of successful bidder, (b) name and address of receiving department and/or delivery location, (c) COUNTY OF GOOD PUBLIC SERVANTS purchase order number, and (d) descriptive information as to the facsimile equipment/accessories delivered, including serial number, quantity, number of containers, etc.

Invoices shall show all information as stated above, shall be issued for each purchase order and shall be mailed directly to the COUNTY OF GOOD PUBLIC SERVANTS Auditor's Office, 123 Main Street, Fifth Floor, GOOD GOVERNMENT, Texas 7XXXX-XXXX.

PAYMENT will be made upon receipt and acceptance by the county of all completed services and/or item(s) ordered and receipt of a valid invoice, in accordance with the State of Texas Prompt Payment Act, Chapter 2251, Government Code VTCA. Successful bidder(s) is required to pay subcontractors within 10 days.

FACSIMILE EQUIPMENT/ACCESSORY (IES) supplied under this contract shall be subject to the county's approval. Item(s) found defective or not meeting specifications shall be picked up and replaced by the successful bidder within one (1) week after notifi-

cation at no expense to the county. If item(s) is not picked up within one (1) week after notification, the item(s) will become a donation to the county for disposition.

WARRANTY:

A successful bidder shall warrant that all facsimile equipment/accessories/services shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

REMEDIES:

The successful bidder and COUNTY OF GOOD PUBLIC SERVANTS agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code.

VENUE:

This agreement will be governed and construed according to the laws of the state of Texas. This agreement is performable in COUNTY OF GOOD PUBLIC SERVANTS, Texas.

ASSIGNMENT:

The successful bidder shall not sell, assign, transfer or convey any contract resulting from this RFP, in whole or in part, without the prior written consent of COUNTY OF GOOD PUBLIC SERVANTS.

SILENCE OF SPECIFICATION:

The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made based on this statement.

ANY QUESTIONS concerning this Request for Proposals and Specifications should be directed to the Purchasing Department at (214) 555-6666, ext. 4444.

RFP No. 03-07-72

COUNTY OF GOOD PUBLIC SERVANTS, TEXAS
REQUEST FOR PROPOSAL
FOR
FACSIMILE MACHINES
(SINGLE SHEET BOND PAPER UNITS ONLY)

I. GENERAL INFORMATION:

A. INTENT OF REQUEST FOR PROPOSAL:

The intent of this request for proposal (RFP) is to provide bidders with sufficient information to prepare a proposal for an annual contract for various types of facsimile equipment, accessories and services needed by COUNTY OF GOOD PUBLIC SERVANTS. Bidder is requested to address its entire line of

facsimile equipment and accessories to include but not be limited to: various types of standalone facsimile machines utilizing single sheet plain bond paper; facsimile equipment with ability to work with copiers/laser printers; pay facsimile machines; etc.

B. INQUIRIES:

All questions prior to closing date should be directed to the COUNTY OF GOOD PUBLIC SERVANTS Purchasing Agent at (214) 555-6666, ext. 4444. Inquiries should refer to specific section numbers of the RFP.

C. SELECTION:

The award of the contract shall be made to the responsible bidder whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the RFPs in accordance with the Local Government Code, Chapter 262.

The evaluation criteria will be grouped into percentage factors as follows:

- 10 percent bidder's qualifications/experience;
- 15 percent bidder's total proposed price;
- 20 percent bidder's support/service;
- 15 percent bidder's warranty/maintenance; and
- 40 percent the proposed product meeting COUNTY OF GOOD PUBLIC SERVANTS' present needs and requirements as well as future needs through enhancements and upgrades.

D. GUIDELINES FOR PROPOSAL EVALUATION:

Proposals will be evaluated using a comprehensive set of criteria. A list of these criteria is presented below:

- Are the equipment and compatibility requirements addressed in the proposal?
- Are the proposed facsimile equipment, accessories and services responsive to COUNTY OF GOOD PUBLIC SERVANTS' needs?
- Has bidder addressed its **entire line** of facsimile equipment and accessories available?
- Is bidder's participation and responsibility clearly defined?
- Is COUNTY OF GOOD PUBLIC SERVANTS' participation and responsibility clearly defined?
- Are high quality service, warranty and maintenance available?
- What are the bidder's service hours?
- Has requested information been supplied?
- Due to the technical nature of equipment, has bidder addressed future use of equipment, future expansion possibilities and possible upgrading?
- Has all accessory equipment been addressed?
- Has cost, both total and itemized, been addressed?

- Has bidder addressed previous experience in providing/servicing these types of facsimile equipment?
- Has bidder addressed the type of support and repair service available?
- Have installation procedures been defined?
- Have consumable supplies needed for the operation of each machine and cost for these supplies been addressed?

E. SUBMITTAL:

For proper comparison and evaluation, COUNTY OF GOOD PUBLIC SERVANTS requests that proposals address, at a minimum, Section III by number as stated herein.

F. FINANCIAL STATEMENTS:

Bidders shall submit recent financial statements with their proposal. Audited financial statements are not mandatory, although preferred. While unaudited financial statements will be accepted, if bidder's firm does have audited statements, please include a copy with your proposal.

G. CONFIDENTIAL MATERIAL:

Any material that is to be considered as confidential in nature must be clearly marked as such and will be treated as confidential by COUNTY OF GOOD PUBLIC SERVANTS to the extent allowable in the Open Records Act.

H. CONTRACT NEGOTIATIONS:

COUNTY OF GOOD PUBLIC SERVANTS reserves the right to negotiate a contract with the selected bidder.

I. CONTRACT OBLIGATIONS:

This proposal, submitted documents and any negotiations, when properly accepted by COUNTY OF GOOD PUBLIC SERVANTS, shall constitute a contract equally binding between the successful bidder and COUNTY OF GOOD PUBLIC SERVANTS. The selected bidder will be considered as the prime contractor and shall assume total responsibility for the facsimile equipment, accessories and services. Failure to meet obligations may result in the cancellation of any contracts.

J. SUPPORTING MATERIALS:

All questions asked in this RFP will be used in making a selection and should be addressed by section and number.

Various departments within COUNTY OF GOOD PUBLIC SERVANTS require different types of facsimile equipment and accessories with various features. Therefore, bidder is requested to submit five (5) copies of descriptive literature for each type of facsimile equipment and accessories offered with their proposal.

II. MINIMUM TECHNICAL REQUIREMENTS:

A. BASIC FEATURES:

All proposed equipment's basic features must include:

- utilizes single sheet plain bond paper;
- automatic feeder;
- modem data speed capabilities: 9600, 7200, 4800, 2400 and 1200 BPS; and
- confirmation receipt of transmissions.

Bidders are requested to address their entire line of facsimile equipment and accessories meeting these minimum requirements.

B. OPTIONAL FEATURES:

Other features for consideration by individual departments include but are not limited to:

- broadcasting (multiple sending at one time);
- high speed transmission;
- multiple gray scale/halftones;
- security capabilities;
- delayed transmission; and
- polling.

C. ANCILLARY EQUIPMENT:

All items and accessories (i.e. cables, components, etc.) necessary to render the facsimile equipment complete, operable and ready to use shall be included as part of the equipment. Any item appearing in the manufacturer's published specifications are to be included. Any additions, deletions or variations shall be outlined.

D. QUANTITY:

It is estimated that COUNTY OF GOOD PUBLIC SERVANTS will purchase between 10 and 12 units of various types over the next year. This approximate quantity does not constitute an order, but only implies the probable quantity the county will use. Facsimile equipment and accessories will be ordered on an as-needed basis.

E. DELIVERY:

Delivery and installation location shall be indicated on each purchase order issued for the facsimile equipment and/or accessories.

F. ACCEPTANCE:

All components, materials, equipment, parts and supplies necessary to render the installation complete shall be included. COUNTY OF GOOD PUBLIC SERVANTS shall not accept all facsimile equipment and accessories until system is complete and operational.

G. WARRANTY SERVICE:

Warranty service shall be performed on-site at COUNTY OF GOOD PUBLIC SERVANTS locations.

H. MANUALS:

All user/owner/technical reference manuals shall be included with each type of equipment.

I. AUTHORIZED DEALER:

Bidder shall be an authorized dealer for the equipment proposed.

J. DEDICATED TELEPHONE LINES:

COUNTY OF GOOD PUBLIC SERVANTS will be responsible for making available or installing any dedicated phone lines necessary for the operation of facsimile equipment.

III. ADDITIONAL POINTS TO BE ADDRESSED:

A. COOPERATIVE PURCHASES:

Will bidder permit other local government entities to purchase from this contract, if awarded, under the same terms and conditions?

B. MAKE/MODEL OF PROPOSED EQUIPMENT:

What is the make/model of the equipment proposed? Address the complete line of facsimile equipment carried including various types of standalone facsimile machines using single sheet plain bond paper; facsimile equipment with ability to work with copiers/laser printers; pay facsimile machines; etc. Address the length and type (i.e. parts only or parts and labor) of standard on-site (COUNTY OF GOOD PUBLIC SERVANTS location) warranty offered for each type of facsimile equipment. What is the suggested list price for each type of facsimile equipment and what is COUNTY OF GOOD PUBLIC SERVANTS' price for each type unit? What percent discount off the manufacturer's latest suggested published list prices do these prices represent? Bidder shall address basic features of each model to include but not be limited to:

- make/model;
- utilizes single sheet plain bond paper;
- automatic feeder input size;
- modem data speed: 9600, 7200, 4800, 2400, & 1200 BPS;
- output tray size;
- number of gray scale/halftone levels;
- recording method: thermal, laser, electrostatic, etc.;
- broadcasting capacity;
- memory capacity (# of pages);
- paper size;
- machine dimensions;
- machine type (desktop, floor); and
- machine volume capacity (weekly).

Please layout your response as follows:

Make Model	List Features Included	Warranty Period and Type	Suggested List Price	Sample County's Price	Percent Discount
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C. INSTALLATION PROCEDURES:

Occasionally, COUNTY OF GOOD PUBLIC SERVANTS may require installation of equipment. Bidder shall address installation procedures, estimated setup time required and cost, if any. If included in price of equipment, please state.

D. DELIVERY/INSTALLATION TIME:

Bidder shall state length of time necessary to deliver and/or install facsimile equipment and accessories after receipt of purchase order (ARO).

E. PAY FACSIMILE MACHINES:

Bidder is requested to address pay facsimile machines, to include but not be limited to: availability, pricing, features, method of payment for individual use, etc.

F. ADDITIONAL FEATURES/ACCESSORIES:

List additional features/accessories for each type unit, such as, RS232 interface, pedestal/stand, memory upgrades, consumable supplies required, surge protector for unit, etc. What are the costs for these additional accessories?

Please layout your response as follows:

Make Model	List Features Included	Warranty Period and Type	Suggested List Price	Sample County's Price	Percent Discount
------------	------------------------	--------------------------	----------------------	-----------------------	------------------

G. NEW PRODUCT/ACCESSORY DISCOUNT:

Will COUNTY OF GOOD PUBLIC SERVANTS' discount under this contract apply to new products/accessories?

H. EQUIPMENT ENHANCEMENTS:

Explain possible equipment enhancements/upgrades that may be available for each type of equipment. Can additional features be added to purchase units?

I. OPTIONAL MAINTENANCE CONTRACTS:

Are optional maintenance contracts available? If so, please address maintenance coverage, special arrangements, staff, service times (of day), weekend/off hour coverage, etc. Does bidder's local staff perform the maintenance?

J. ON-SITE MAINTENANCE:

Address whether on-site (COUNTY OF GOOD PUBLIC SERVANTS Location) or telephone consulting support is available for routine service problems, etc., and pricing.

K. LOANER UNITS:

Address availability of loaner units.

L. BIDDER'S PRINCIPAL LOCATION:

Give your principal location address, and all other service locations, including contact persons and telephone numbers.

M. TRADE-INS:

Will bidder accept trade-ins of old facsimile equipment and accessories for new updated equipment? Explain your trade-in policy.

N. TRAINING AND MANUALS:

Are user manuals and training available? Address.

O. DESCRIPTIVE LITERATURE:

Please provide all available descriptive literature on facsimile equipment and accessories.

P. HISTORIC BACKGROUND:

Provide an historic background for bidder's company.

Q. EXPERIENCE:

How long have you been selling this type of equipment? Give background experience.

R. PRIMARY LINE OF BUSINESS:

What is your primary line of business?

FIRM/BIDDER: _____

BY: _____
Signature *Title*

ADDRESS: _____

PHONE: _____

BIDDER MUST SIGN AFFIDAVIT ON PAGE 13 AS PART OF THIS RFP
RETURN ENTIRE PACKET AND ALL DOCUMENTATION
REQUIRED BY THIS REQUEST FOR PROPOSALS

PROPOSAL AFFIDAVIT

All pages in bidder's proposal containing statements, letters, etc., shall be signed by a duly authorized officer of the company, whose signature is binding on the proposal.

The undersigned offers and agrees to furnish all of the items/services upon which prices are stated in the accompanying proposal. The period of acceptance of this proposal will be _____ calendar days from the date of the proposal opening. (Period of acceptance will be 90 calendar days unless otherwise indicated by bidder.)

STATE OF _____ COUNTY OF _____

BEFORE ME, the undersigned authority, a Notary Public in and for the state of _____, on this day personally appeared _____, who after being by me duly sworn, did depose and say: "I, _____, am a duly authorized officer of/agent for, (name)

(name of firm)

and have been duly authorized to execute the foregoing proposal on behalf of the said

(name of firm)

I hereby certify that the foregoing proposal has not been prepared in collusion with any other bidder or other persons engaged in the same line of business before the official receipt of this proposal.

Further, I certify that the bidder is not now, nor has ever been for the past six (6) months, directly or indirectly concerned in any pool or agreement or combination, to control the price of services/items offered, or to influence any person or persons to offer or not to offer thereon."

Name and address of bidder: _____

Telephone number: _____

by: _____ Title: _____

(print name)

Signature: _____

SUBSCRIBED AND SWORN to before me by the above-named _____

_____ on this the _____ day of _____, 20____.

Notary Public in and for the state of _____.

RETURN THIS AFFIDAVIT AS PART OF THE PROPOSAL

Exhibit 9: Bid Proposal Envelope (Sample)

Example of marking/addressing of sealed envelope for bid/proposal. Sealed bid envelopes should be marked with the date/time received as soon as possible after receipt.

ABC Construction Company
345 Broadway St.
Any Town, TX 7XXXX-XXXX

BID (Proposal) ID # 123456789
To Provide (Good and/or Service)

ATTN: Purchasing Office
County Clerk's Office
County Courthouse
123 Main St.
Good Government, Texas 7XXXX-XXXX

Exhibit 10: Blanket Purchase Agreement (Sample)

This Blanket Purchase Agreement (BPA) covers delivery of the categories of only the items shown below from Oct. 1, 2XXX, to Sept. 30, 2XXX. The amount of all purchases made against this BPA shall not exceed \$500 per month, and no individual purchase shall exceed \$50. Only items authorized for purchase by this BPA may be ordered and only personnel authorized herein may place orders. Sample City shall not be responsible for payment of any invoices except for those placed under this agreement.

Category of items: (EXAMPLE) Hardware, electrical, building materials, paint and related items.

Orders may be placed by telephone, in person or in writing by the following personnel:

Name	Title	Division	Telephone #
Joe Doaks	Foreman	Gen. Maintenance	555-1111
John Doe	Stock Clerk	Warehouse	555-1111
Faye Fadeaway	Foreman	Elec. Shop	555-1212
Johnny B. Good	Asst. Foreman	Elec. Shop	555-1212

All items shall be charged at the established list prices minus a discount of 15 (example) percent. The person authorized to place orders shall assign a separate, sequential number for each purchase made, and shall communicate the number to the person taking the order. This order number, together with the purchase order number assigned to this blanket purchase order (attached) shall be shown on each sales ticket for orders placed.

Sales tickets must contain:

- vendor name and address;
- BPA Number;
- purchase order number/order number;
- department/location;
- a brief item description;
- unit price (for each item);
- quantity (for each item);
- extension price (for each item);
- total price (for all items); and
- the printed name, title, date and signature of the person receiving delivery.

Upon delivery or pick up of each order, a copy of the sales ticket shall be supplied to the individual taking the delivery. The sales ticket shall be returned to the ordering department and retained for the monthly report.

A consolidated monthly invoice shall be issued for all orders made during that month. No advance payment may be made for back-ordered items. The invoice shall include orders completed during the month and the sales ticket numbers for orders completed.

If more than one BPA has been made with a vendor, a separate invoice shall be sent for each BPA. Invoices shall be forwarded to:

- Sample City
- Purchasing Department
- City Hall
- Sample City, Texas 7XXXX-XXXX

The monthly invoice may not exceed the \$500 limit. Payments beyond \$500 will not be made by Sample City, nor will payments be made for orders placed by unauthorized persons.

Payment shall be made by Sample City upon verification of all deliveries and accuracy of sales tickets and invoices.

Exhibit 12: Letter of Agreement (Sample for Interlocal Government Agreements)

This Letter of Agreement made this _____ day of _____ 2XXX by and between:

In consideration of the mutual promises contained in the Letter of Understanding and of the mutual benefits to result there from, the participants agree as follows:

1. Commonly used goods and services, which may be designated by the participants to this agreement, may be purchased jointly from the period commencing with the execution of this agreement and continuing until terminated as herein provided.
2. There is hereby established the Cooperative Purchasing Coordinating Committee, herein called the committee. The committee shall consist of one representative appointed by the governing body of each participating entity in this agreement, and the committee then elects a chairperson and a secretary. The committee shall adopt rules and regulations for the necessary conduct of its business.
3. The representatives from each entity shall agree on the specific supplies and services that shall be procured, as well as their specifications. The representatives shall set forth in writing, as a minimum, a description of each supply or service to be procured, the quantity and quality required, the delivery date and the location for delivery.
4. The committee shall designate the participant or lead entity that shall assume the responsibility for preparing the invitation for bid and advertising for bids. Such jurisdiction shall also be designated to receive and open the bids at the time and in the manner specified in the invitation for bid.
5. All bids shall be on a requirements basis, unless all parties agree to specify otherwise. All specifications shall be fully competitive.
6. Upon receipt and tabulation of the bids by the participant who has advertised, the same will be submitted to the committee within 15 days after the formal opening of bids. The committee shall submit to the appropriate authority of each jurisdiction participating in the joint purchase a complete tabulation of all bids and shall certify as to the lowest and best responsive and responsible bidder.
7. If the committee finds that the lowest bidder is either not responsive or responsible and accordingly certifies that another bidder is the lowest responsive and responsible bidder, it shall include an explanation and report on its findings when it transmits its tabulation and certification. The committee shall not certify as the lowest responsive bidder any bidder who does not

- comply with the specifications as advertised in all respects or who seeks to vary the specifications as advertised in any respect.
8. The lead jurisdiction reserves the right to reject any and all bids. The committee shall also reserve the right to reject all bids where deemed appropriate. When the committee exercises the right to reject all bids, it shall furnish each participant with an explanation and report on its action along with a complete tabulation of all bids received.
 9. Purchase contracts shall be awarded to the lowest and best responsive and responsible bidder as certified by the committee. Each jurisdiction participating in the purchase contract shall execute separate contracts with the successful bidder.
 10. Each participant shall be responsible for expediting its own purchase orders, receiving shipments, inspecting goods, verifying invoices and paying bills. No participant shall by execution of this agreement or by participation in any purchase contract be liable for any materials, supplies or equipment ordered or received by any other participant.
 11. Nothing in this agreement shall prevent any participant from advertising for bids and awarding a contract on its own behalf for the purchase of any supplies, materials or equipment designated as a joint purchase item by the committee.
 12. Any dispute arising between any of the participants hereto and a successful bidder not relating to 1) the validity of the award of the purchase contract, or 2) the rejection of the bids, shall be settled by and at the cost of that participant involved in the dispute.
 13. This agreement shall take effect upon execution of the signatures.
 14. Any of the participants hereto may terminate their participation in this agreement upon 30 days written notice to the chair of the committee.
 15. Any additional entities may, from time to time, execute this agreement in the form prescribed by the committee, and such execution subsequent to the effective date of this agreement shall not require re-execution by the original participants.

The above Letter of Agreement has been read, duly considered and discussed and is hereby adopted this _____ day of _____, 2XXX.

Entity Name _____ Entity Signature _____

Entity Name _____ Entity Signature _____

Entity Name _____ Entity Signature _____

THE STATE OF TEXAS \$
COUNTY OF _____ \$

WITNESSETH:

1. It is understood and agreed by the parties to this agreement that the following classes of items, and such other items as may be designated in writing by the participating governments, may be purchased jointly for the year 20__.
 - a. Road aggregate, blacktop mixes and oils
 - b. Storm sewer and pipe
 - c. Regular and premium grades of gasoline
 - d. Fuel oils and motor oils
 - e. Automobile tires, truck tires and tubes
 - f. Traffic paint

- g. Guard-rail posts
- h. Water and sewage chemicals
- i. Printing and reproduction supplies and equipment
- j. Office and stationery supplies

Each participating government at the time agreed upon for bidding shall designate, in writing, the items to be purchased and indicate therein the quantities desired and the location for delivery.

2. For the aforesaid purpose there is hereby established the (name of local area) Cooperative Purchasing Council, hereinafter called Purchasing Council, which shall consist of the administrative head of each participating government, or his or her designee, and at the option of each participating government, may also include a member of its governing body. The Purchasing Council shall adopt such rules for organization and procedure as it may deem suitable for the conduct of its business and shall adopt a regular schedule for meetings.
3. Specifications for purchase of items covered under this agreement or by supplementary written agreements of the participating governments shall be prepared by the Purchasing Council.
4. The (name of a participating government) shall be responsible for advertisement of bids and such other administrative duties as may be necessary to facilitate processing and preparation of joint bid requests. Said participating government shall also be responsible for receiving and opening the bids.
5. It is understood and agreed by all participating governments that all bids shall be on a requirement basis.
6. The cost of advertising and any other cost incidental to the bidding shall be divided equally among the participating governments, and shall be paid to the participating government responsible for bid advertisements within 30 days following the submission of statements by said participating government.
7. It is understood and agreed by all participating governments that after the receipt of the bids from prospective vendors, the Purchasing Council will examine the bids. Within one week following the bid opening, the Purchasing Council shall submit to the administrative head of each participating government a complete tabulation of all bids received and shall certify as to the lowest responsible bidder.

If the Purchasing Council finds that the lowest bidder is not responsible and accordingly certifies that some other bidder is the lowest responsible bidder, it shall include an explanation and report on its findings when it transmits its tabulations and certification.

The Purchasing Council shall not certify as the lowest responsible bid any bid that indicates a specification differing from the specifications advertised.

The participating governments hereto agree that they shall award the bid, for items that they had previously designated for purchase, to the lowest responsible bidder as certified by the Purchasing Council.

8. The participating governments hereto agree that the ordering of supplies and materials purchased through this agreement shall be their individual responsibility and that the successful bidder or bidders shall bill each participating government directly for the materials ordered by it.
9. Each participating government shall be liable to the successful bidder only for supplies or materials ordered by and received by it, and shall not by the execution of this agreement assume any additional liability.
10. Nothing in this agreement shall prevent any participating government from accepting and awarding bids for commodities subject to this agreement individually and in its own behalf, provided that invitations for such individual bids shall not be advertised, nor shall bids be received individually during the period in which the Purchasing Council is advertising for and receiving bids for the same commodities, except in the case of emergency or hardship.
11. The participating governments hereto agree that once the specifications have been prepared and approved by the Purchasing Council that no changes will be made during the period of advertising except in the case of error or omission. No change may be made without the approval of the Purchasing Council. Nothing herein shall be deemed to prevent changes in specifications in subsequent purchases.
12. Specifications shall require bidder to bid three prices where applicable:
 - F.O.B. plant site
 - F.O.B. delivery point for one designated participating government
 - F.O.B. delivery points for each participating government
13. In the event that any dispute arises between individual participating governments and a successful bidder, the same shall be handled by and between the participating government and the bidder.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their authorized officers thereon the day and year first above written.

ATTEST:	CITY OF _____
_____	BY _____
City Secretary	Mayor

ATTEST:	CITY OF _____
_____	BY _____
City Secretary	Mayor

ATTEST:	CITY OF _____
_____	BY _____
City Secretary	Mayor

Exhibit 14: Resolution (Sample)

Please consult the Texas CO-OP Program of the Texas Comptroller of Public Accounts for the latest sample resolution format, available online at www.window.state.tx.us/procurement/prog/coop/.

Resolution

State of Texas

County of _____

WHEREAS, the Texas State COOP program is authorized to provide purchasing services for local governments pursuant to Title 8, Subtitle C, Chapter 271, Subchapter D, Sections 271.082 and 271.083 of the Local Government Code; and

WHEREAS, the _____
(e.g. Commissioners Court, City Council, School Board, Board of Directors)

of _____, is a: (check one of the following):
(Name of qualified entity)

_____ Local Government

_____ Assistance Organization

_____ Mental Health and Mental Retardation Community Center

defined as an entity qualified to participate in the cooperative purchasing program of the Texas State CO-OP program pursuant to section 271.081 of the Local Government Code; and

The agent(s) of record listed below:

_____, _____
(Name of Person) (Title)

(and)

_____, _____
(Name of Person) (Title)

is/are authorized to execute any and all documentation for

_____ pertaining to its participation in the Texas

Cooperative Purchasing Program; and

WHEREAS, _____ acknowledges its
(Entity Name)
obligation to pay participation fees established by the Texas Cooperative Purchasing Program.

NOW, THEREFORE BE IT RESOLVED, that request be made to the general services commission to approve _____ for
(Entity Name)
participation in the Texas Cooperative Purchasing program.

Adopted this ____ day of _____, ____ by _____
(Entity Name)

By: _____ (Signature of Chair)	_____ (Signature of Agent of Record)
_____ (Printed Name)	_____ (Name/Title of Agent of Record)
_____ (Title of Chair)	_____ (Signature of Agent of Record)
_____ (Name/Title of Agent of Record)	

DOCUMENTS REQUIRED FOR PROOF OF ELIGIBILITY

Submit all documentation required as proof of eligibility at the time you apply for membership in the Texas Cooperative Purchasing program. All documentation must be on file before a determination of eligibility can be made.

LOCAL GOVERNMENTS: County, Independent School District, Municipality, Jr. College District, Volunteer Fire Department

Documents required:

____ Board approved resolution

MHMR COMMUNITY CENTERS

Documents required:

____ Board approved resolution

SPECIAL DISTRICTS OR OTHER LEGALLY CONSTITUTED POLITICAL SUBDIVISIONS OF THE STATE

Documents required:

____ Board approved resolution documentation evidencing creation of entity including statutory citation. This can be in the form of:

____ legislation in which the entity was created by name; and

____ a resolution passed by a city or a county stating that there is a need for the entity to exist and actually creating the entity.

ASSISTANCE ORGANIZATIONS: Non-profit organizations that receive state funds and provide educational, health, or human services or provide assistance to homeless individuals.

Documents required:

- _____ Board approved resolution.
- _____ Articles of incorporation and certificate of authority. A letter from the secretary of state with the entity's charter number evidencing that the entity filed for incorporation will be accepted in lieu of a certificate of authority.
- _____ Current contract or grant from a state agency to prove state funding. This document must show beginning and end dates and these dates must be valid at the time the application is reviewed.

Contract Purchase Requisition

Name and Address to Invoice:	Address Code
Ship to (if different):	Address Code

Phone: _____

Quantity	Unit	Commodity Code	Description and Specifications

Exhibit 16: General Journal Fiscal 20XX (Sample)

Fund

General (10)

Page #

GENERAL JOURNAL

Date	Description	Source Document Number	Coding	Debit	Credit
10/01/201X	Fund Balance		271-000	\$785,000	
	Appropriations-Police Department		525-000		\$785,000
	A/C Detail	Amount			
	525-000 Police Department				
	- 101 Salaries, Wages	295,000.00			
	- 210 Employee Benefits	92,500.00			
	- 310 Office Supplies	21,000.00			
	- 330 Operating Supplies	59,000.00			
	- 350 Food, Jail	95,000.00			
	- 390 Misc. Supplies	55,000.00			
	- 410 Medical Svcs, Jail	46,000.00			
	- 415 Tele Com	6,500.00			
	- 445 Utilities	7,000.00			
	- 450 Repairs/Maint	21,000.00			
	- 625 Capital Outlay	87,000.00			
	Total	\$785,000.00			

Purchase Order/Encumbrance Register

The requesting department starts the normal purchase sequence with a properly prepared requisition. The requisition is routed to each authorizing officer and to the purchasing department.

After the purchasing department receives a properly executed requisition, it prepares a purchase order. A purchase order is a written order placed with vendors or contractors by the government. Acceptance of a properly authorized and approved purchase order gives the vendor authority to ship the goods and binds the government to pay for them if they meet the purchase order specifications. Thus, although no cash disbursement is involved in issuing a purchase order, the government has a commitment for the use of some of its funds.

As described in this procedure, the purchase order/encumbrance journal has two functions. First, it is a register in which purchase orders issued by the government are recorded and monitored. Second, it serves as an encumbrance journal that allows the government to set aside (encumber) certain resources to cover the future obligation to the vendor created by the purchase order. The usefulness and importance of the first function are evident. The second function can be of even greater importance in controlling government expenditures and preventing over-spending government appropriations.

Exhibit 17: Purchase Order/Encumbrance Journal (Sample Entries)

Fund

General (10)

Page #

PURCHASE ORDER/ENCUMBRANCE JOURNAL

Date	Purchase Order #	Vendor/Contractor	Coding	Ref.	Amount 243-000	Order Rec'd
8/12/11	1225	ABC Office Supplies	401-310		\$125.00	
8/14/11	1226	Central Computers, Inc.	471-575		\$15,575.00	
8/17/11	1227	Main Street Janitorial Co.	515-358		\$245.00	

1. A separate line of the journal should be completed for each purchase order issued.
2. Purchase orders should be posted to the journal in numerical order and on a daily or weekly basis.
3. To record each purchase order, complete the following steps:
 - a. In the **Date** column, enter the current date.
 - b. In the **Purchase Order Number** column, enter the number on the pre-numbered purchase order number form.
 - c. In the **Vendor/Contractor** column, enter the name of the vendor or contractor to whom the purchase order is issued.
 - d. In the **Coding** column, enter the appropriate expenditure code for the transaction.
 - e. In the **Ref.** column, place a check (st) when the journal is posted to the appropriations-expenditures ledger.
 - f. In the **Amount** column, enter the amount of the purchase price estimated in the purchase order.
 - g. Place a check (V) in the **Order Rec'd** column once the goods included in the purchase order have been received and a cash disbursement has been made in payment of the obligation.
4. Initial the purchase order form to indicate that it has been entered in the purchase order/encumbrance journal.

Most repetitive transactions that are accumulated in single-column journals, like the purchase order/encumbrance journal, contain data, which must be recorded in subsidiary ledger accounts as well as in the general ledger. In this case, the encumbrance amounts should be posted daily or weekly to appropriation-expenditure ledger accounts as indicated in the procedure below.

5. Post the amount as an encumbrance to an individual account in the appropriations-expenditures ledger on a daily or weekly basis.

File the purchase orders in an open file until shipment of goods or completion of services occurs.

Closing the Purchase Order/Encumbrance Journal

These steps take place at the end of the accounting cycle when the purchase order/encumbrance journal is closed and a summary total is computed for posting to the general ledger.

1. Underline the last line of the **Amount** column in each fund.
2. In the **Date** column, enter the current date.
3. In the **Vendor/Contractor** column, enter the word "Total."
4. In the **Ref.** column, place a check (sf) when the total is posted to the general ledger.
5. Compute the total amount of obligations created by purchase orders issued during the cycle and enter the total in the **Amount** column.
6. Verify the addition of the total.
7. Post the total for each fund to the general ledger as a debit to **Encumbrances** account and a credit to the **Fund Balance – Reserved for Encumbrances** account.

Appropriations/Expenditures Ledger

Once the purchase order is completed and entered in the purchase order/encumbrance journal, it must be posted to the appropriations-expenditures ledger, a subsidiary ledger in the General Accounting System.

The appropriations-expenditures ledger is a subsidiary ledger in which governmental appropriations and actual encumbrances and expenditures are recorded and monitored. The ledger is used to make the following entries:

- appropriations;
- encumbrances on the appropriations;
- actual expenditures; and
- the unencumbered balance of the appropriation available for expenditure.

A separate ledger sheet should be maintained for each expenditure account for which an appropriation is made. Expenditure accounts should be segregated by fund (e.g., General Fund, Road and Bridge Fund, Enterprise Fund, etc.).

Exhibit 18: Appropriations/Expenditures Ledger (Sample)

APPROPRIATIONS/EXPENDITURE LEDGER

Fund: General (10)

Page # 1

Account # 401-310

Account Title: Council Office Supplies

Date	Description Payee	Document P.O. Number	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
10/01/11	Record Budget		GJ-1	(700.00)			(700.00)
10/12/11	ABC Office Supplies	1225	PR-1		125.00		(575.00)
10/21/11	ABC Office Supplies	1225	CD-1		(125.00)	129.50	(570.50)
10/25/11	Wiley's Office Mart	1231	PR-1		70.00		(500.50)
10/31/11	Total-Month				70.00	129.50	
10/31/11	Balances			(700.00)	70.00	129.50	(500.50)

Closing the Year

The annual closing of the ledger is accomplished by simply zeroing out all columns. The entries are actually made to close appropriations in the General Journal. An illustration of an appropriations-expenditures ledger follows.

9/30/11	To Close the Annual Approp/Exp ledger		GJ-23	700.00	(45.00)	(643.00)	(12.00)
				0.00	0.00	0.00	0.00

Posting the Appropriations-Expenditures Ledger

1. Obtain the general journal, purchase order/encumbrance journal and the cash disbursement journal.
2. From the general journal, post the amount of appropriations allocated to the expenditure account for the fiscal year. **NOTE:** This entry should be made at the beginning of the fiscal year and in cases of budget revision only.
3. If there is no corresponding account in the appropriations-expenditures ledger for each account listed in the general journal, open a new appropriations-expenditures ledger page as follows:
 - a. Obtain a blank appropriations-expenditures ledger form.
 - b. Enter the fund name and number on the **Fund** line.
 - c. Enter the number of the new account on the **Account No.** line.
 - d. Enter the name of the new ledger account on the **Account Title** line.

4. Record each appropriation entry in individual ledger accounts as follows:
 - a. In the **Date** column, enter the current date.
 - b. In the **Description/Payee** column, enter the words “Record Budget.”
 - c. In the **Ref.** column, enter the general journal page on which the entry was initially recorded. For the general journal, use the designating letters “GJ” plus the page number — e.g. GJ-1, GJ-2, etc.
 - d. In the **Appropriations** column, enter the expenditure account appropriation from the general journal.
 - e. In the **Balance** column, enter the appropriation amount again.
5. From the purchase order register (if used), post the amounts in the Amount column to the appropriations-expenditures ledger as encumbrances against appropriations.
6. If there is no corresponding account in the appropriations-expenditures ledger for each of the accounts listed in the purchase order register, open a new ledger page for each new account as in Step 3.
7. Record the **encumbrance** entry in the ledger as follows:
 - a. In the **Date** column, enter the current date.
 - b. In the **Description/Payee** column, enter a brief description of the nature of the encumbrance.
 - c. In the **Document** column, make the following entries:
 - d. In the **P.O. Number** subheading, enter the number of the purchase order issued to authorize the transaction.
 - e. In the **Ref.** subheading, enter the page of the purchase order register in which the transaction is recorded. For the purchase order register, use the designating letters “PR” plus the page number — e.g. PR-1, PR-2, etc.
 - f. In the **Encumbrance** column, enter the amount in the Amount column of the purchase order register.
 - g. **Subtract** the amount of the encumbrance from the amount in the **Balance** column.
8. From the cash disbursement journal, post the amounts in the **Expenditures** column **only** to the appropriations-expenditures ledger.
9. If there is no corresponding account in the appropriations-expenditures ledger for each of the accounts listed in the cash disbursements journal **Expenditures** column, open a new ledger page for each new account as in Step 3.
10. Record each expenditure entry in the ledger as follows:
 - a. In the **Date** column, enter the current date.
 - b. In the **Description/Payee** column, enter a brief description of the nature of the expenditure.
 - c. In the **Document** column, make the following entries:
 - i. From the cash disbursement journal, determine whether a purchase order was issued before the expenditure. If so, enter the purchase order number under the **P.O. Number** subheading. If not, leave the subheading blank.

- ii. In the Ref. column, enter the cash disbursement journal page on which the cash disbursement entry was initially recorded. For the cash disbursement journal, use the designating letter “CD,” plus the page number — e.g. CD-1, CD-2, etc.
- d. If a purchase order was issued, enter the amount of the purchase order taken from the cash disbursement journal or the earlier ledger entry in the **Encumbrance** column. Enclose this amount in parentheses. This is an off-set entry against the earlier encumbrance and will always equal the earlier encumbrance.
- e. In the **Expenditures** column, enter the amount of the actual cash disbursed.
- f. Compute the new **Balance** column entry as follows:
 - i. If no encumbrance was made before the cash disbursement occurred, **subtract** the amount in the **Expenditure** column from the **Balance** amount to obtain the new account balance.
 - ii. If the amount in the **Expenditure** column is equal to the amount of original encumbrance, the **Balance** amount does not change and is recorded as the amount in the immediate preceding line.
 - iii. If the amount in the **Expenditure** column is **less** than the amount of the original encumbrance, it is necessary to **add** the difference between the **Expenditure** and **Encumbrance** columns to the Balance.
 - iv. If the amount in the **Expenditure** column is greater than the amount of the original encumbrance, it is necessary to **subtract** the difference between the **Expenditure** column and the **Encumbrance** column.

Monthly Totals

- 1. Prepare a monthly summary of encumbrances and expenditures for each appropriations-expenditures ledger account.
- 2. Underline the last entry in each ledger column.
- 3. In the **Date** column, enter the current date.
- 4. In the **Description/Payee** column, enter the words “Total-Month.”
- 5. Make no entry in the **Appropriations** column.
- 6. In the **Encumbrance** column, total all encumbrances for the month:
 - a. Add those not in parentheses.
 - b. Subtract those in parentheses.Total may be either positive or negative depending on how many expenses encumbered in prior months were paid during the current month. Enter the total in the **Encumbrances** column, with a negative amount enclosed in parentheses.
- 7. In the **Expenditures** column, total all expenditures during the month.
- 8. Make no entry in the **Balance** column.

9. Double rule both monthly totals.
10. Compute and reconcile balance to date.

Reconciliation

1. Reconcile the appropriations-expenditures ledger monthly after computing monthly totals for the **Encumbrances** and **Expenditures** columns.
2. Underline the last entry in each ledger column.
3. In the **Date** column, enter the current date.
4. In the **Description/Payee** column, enter the word "Balances."
5. In the **Appropriations** column, enter the appropriation amount as recorded when the budget was posted from the general journal.
6. In the **Encumbrances** column, enter the sum of the month's encumbrances from Step 6 in the section above plus the entry in the **Encumbrances** column of the previous month's **Balances** line. This will give all outstanding encumbrances to date.
7. In the **Expenditures** column, enter the sum of the month's expenditures from Step 7 in the section above plus the entry in the **Expenditures** column in the previous month's **Balance** line. This will give all expenditures to date.
8. In the **Balance** column, enter the unencumbered balance for the account that is taken from the last entry for the current month.
9. Double rule all totals.
10. To reconcile the appropriations-expenditures ledger, total across **Appropriations** less **Encumbrances** less **Expenditures** on the **Balances** line. The result should equal the amount in the Balance column. If the results do not agree, find and correct any discrepancy before proceeding.
11. Check the total of the various appropriations-expenditures ledger account balances against the balances on the control accounts in the general ledger. Find and correct any discrepancies before proceeding.

Exhibit 19: Cash Disbursements Journal

CASH DISBURSEMENTS JOURNAL

Fund General (10)
Page #

Date	Description/Payee	P.O. #	Voucher #	Warrant/Check #	Cash (Credit)	Account Coding	Expenditures Debit	Liquidate Encumbrance (Credit)	Misc. Disbursements Debits
9/15/11	Office Co Inc.	X2-399	V0012	12,634	(\$295.00)	470-310	\$ 295.00		
9/17/11	Benson Food Service	X2-400	V0024	12,635	(1,955.00)	525-340	1,955.00		
9/18/11	Office Co Inc.	X2-403	V0026	12,636	(172.00)	470-692	172.00		
9/21/11	J&S Automotive	X2-400	V0032	12,637	(855.00)	525-310	855.00		
9/28/11	Jones Police Supplies Inc.	X2-405	V0056	12,638	(1,324.00)	525-330	\$1,324.00		

(purchase of computer capitalized)

10/21/11	Wiley's Office Mart	1231	V0101	13,020	(129.50)	401-310	(129.50)	(\$125.00)	
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Posting Transactions to the Cash Disbursements Journal

1. Receive an approved claim form.
2. Determine the fund affected by the transaction or transactions contained on the form.
3. Record each transaction on the cash disbursements journal page corresponding to the fund affected by the transaction as follows:
 - a. In the **Date** column, enter the current date.
 - b. In the **Description/Payee** column, enter a brief description of the transaction.
 - c. In the **Purchase Order Number** column, record the purchase order number under which the expenditure was originally encumbered.
 - d. In the **Voucher Number** column, enter the number of the voucher on which the purchase was approved.
 - e. In the **Warrant/Check Number** column, enter the number of the warrant or check issued to make the disbursement.
 - f. In the **Cash** column, enter the amount of cash disbursed. (This is the credit entry in the dual-entry system.)
 - g. Enter the credit portion of the entry as follows:
 - i. If the disbursement is an expenditure of government funds, enter the amount of cash disbursed in the **Expenditure** column as follows:
 - ii. Under the **Coding** subheading, enter the appropriate expenditure code for the cash disbursement.
 - iii. Under the **Amount** subheading, enter the amount of the disbursement.
 - iv. If the expenditure was previously encumbered, enter the amount of the prior encumbrance (which may differ from the actual cash disbursement) in the **Liquidate Encumbrance** column.

NOTE: Although it is a single entry, the **Liquidate Encumbrance** entry should signal the reversal of the original encumbrance transaction in the Appropriations-Expenditures Ledger as shown below:

DR Reserve for Encumbrances	XXX.XX
CR Encumbrances	XXX.XX

- h. If the disbursement was made for a purpose other than expenditure, record the disbursement in the **Miscellaneous Disbursements** column as follows:
 - i. Under the Coding subheading, enter the appropriate code for the disbursement.
 - j. Under the Amount subheading, enter the amount of the disbursement.
4. Initial the cash disbursement source document to indicate the transaction has been recorded.

At a regular interval, post the individual warrants/vouchers to the appropriate subsidiary ledger.

File the source document numerically.

Closing the Cash Disbursements Journal

These steps occur at the end of the accounting cycle when the journal is closed and summary totals are computed for posting to the general ledger.

1. Underline the last line of each fund's cash disbursements journal page.
2. In the **Date** column, enter the current date.
3. In the **Description/Payee** column, enter the words "Closing Totals."
4. Compute the totals for each column by adding all amounts entered in each column.
5. In each column, enter the totals on the "Closing Totals" line.
6. Verify addition of totals. The total of all debit columns must equal the total of all credit columns excluding the **Liquidate Encumbrances** column. Resolve any discrepancies before proceeding.
7. To simplify posting, drop down two lines and insert a fund summary. There will be one total for the expenditure column. However, the accountant must prepare separate totals for each account in the Miscellaneous Disbursements Column since they will be posted to different accounts.
8. After the cash disbursements journal for each fund is closed, post amounts to the general ledger.

Exhibit 20: Closing Budgetary Accounts (Sample Entries)

Fund	General (10)	Page #
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GENERAL JOURNAL

Date	Description	Source Document Number	Coding	Debit	Credit
09/30/201X	Appropriations		525-000	\$798,000.00	
	Expenditures		242-000		\$754,102.00
	Encumbrances		243-000		
	Fund Balance		271-000		

To close the appropriations and encumbrances for the sheriff's department.

In the beginning of the next fiscal year, the encumbrances of active purchase orders are done as follows:

Fund	General (10)	Page #
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GENERAL JOURNAL

Date	Description	Source Document Number	Coding	Debit	Credit
10/1/201X	Encumbrances		243-000	\$36,000.00	
	Fund Balance		271-000		\$36,000.00

To re-encumber appropriations for the sheriff's department's prior year P.O.'s.

Accounting Transactions Examples

To illustrate the preceding sections, it will be helpful to show some example entries. These should be typical and will give some idea of how to use the accounting system.

The sequence we are following includes some transactions near year's end, proceeding through the process of budgeting, through entry into the accounts, and then on to each individual type of accounting entry using sample entry amounts.

We have chosen the county sheriff's department to illustrate recording appropriations. Several other departments will be shown as making purchases, but the appropriations recording will not be shown.

The entries will encompass purchases and encumbrances for supplies, utilities, repairs and services, as well as capital acquisitions. Any accounts payable will not be illustrated, since that is a more traditional accounting area not directly linked with purchasing.

Sequence of Events

8/6 The sheriff's department takes delivery of six patrol vehicles that had been previously ordered. The contract calls for payment on satisfactory delivery. Inspections are conducted and the cars meet all specifications. Contract price is \$14,386 per vehicle, or \$86,316 for all six.

Accounting entries: This transaction, the results of an earlier purchase order, produces four different entries. The delivery per contract acts as the invoice, so payment will be due when the claim is approved.

1. **Purchase Order/Encumbrance Journal:** For purchase order (P.O.) Number (x2-533), issued on 7/8/20XX, check the "Order Rec'd" column to indicate the P.O. is completed.
2. **Accounts Payable Ledger:** Enter the payable in the Accounts Payable Ledger, page 35.
3. **Appropriations/Expenditures Ledger for Account No. 525-625:** For Aug. 7, 20XX, enter the expenditure. Enter the vendor name, P.O. Number (x2-533); the ref. (A/P-35); [\$90,000], (in brackets) to show the encumbrance reversal, the Expenditure Amount (\$86,316), and the Balance (the net amount of crediting the Encumbrance column for \$90,000 and debiting the Expenditure column for \$86,316).
4. **General Fixed Assets Account Group:** Enter the acquisition of the patrol cars in the General Fixed Assets Account Group.

8/7 The sheriff's department wants to let a contract for maintenance of patrol vehicles. The contract will begin Oct. 1, and will be let for one year. The specifications are prepared and invitations to bid are mailed to prospective bidders. The first advertisements are published. Bids are due no later than Sept. 16 at 11 a.m.

Accounting entries: None.

8/7 For the six new patrol vehicles put into service, six old vehicles were retired from service. These were sold at auction on 8/30 as advertised.

Accounting entries: None.

8/13 The sheriff's department prepares and delivers to purchasing specifications for the food service contract. The contract will begin Oct. 1, and will be for a period of six months. One renewal (total one year) will be allowed without bids if the commissioners court approves, or the contract may be re-bid.

Accounting entries: None.

8/13 The commissioners court approves invoices received by 8/8/20XX. This includes the payment for the patrol cars.

Accounting entries: None.

8/14 Checks are prepared and mailed by the treasurer's department for claims approved on 8/13.

Accounting entries: The cash disbursement must be recorded.

5. **Cash Disbursements Journal:** Enter the date, payee, P.O. Number (x2-533), the check number, the amount of cash in brackets to indicate a credit ([\$86,316]), the account charged and the expenditure amount (same as cash, but a debit).

8/16 The purchasing department completes purchasing specifications for the food service contract and invitations to bid are mailed to prospective bidders. The first advertisements are published. Bids are due no later than Sept. 16 at 11 a.m.

Accounting entries: None.

6. **8/30** Today the six old patrol vehicles were sold at auction. The total receipts were \$31,034.

Accounting entries: The transaction is shown in two places:

7. **General Journal:** To show the cash received, and the revenues generated. Debit Cash, account number 101-000, Credit Revenues — Sale of Retired Patrol Vehicles, account number 172-000.
8. **General Fixed Assets Account Group:** The vehicles are deleted from the General Fixed Assets Account Group.

9/10 The auditor's office orders ergonomic chairs for four of the staff. Estimated cost is \$840. All authorizations are in order. (Henceforth, it is understood that the authorizations are in order.)

Accounting entries: The entry is made in the Purchase Order/Encumbrance Journal.

9/12 The sheriff's department orders protective (bullet-proof) vests. The estimated cost will be \$550.

Accounting entries: The entry is made in the Purchase Order/Encumbrance Journal.

9/16 Bids are opened for the contract for maintenance of patrol vehicles, and the food service contract. They will be considered in commissioners court for award on 9/24.

Accounting entries: None.

9/21 The treasurer's department orders computer paper costing about \$375. The supplier says it is out of stock and will take about two weeks to be delivered.

Accounting entries: The entry is made in the Purchase Order/Encumbrance Journal.

9/24 The commissioners court awarded the bids for maintenance of patrol vehicles and the food services contract. Food services will be billed monthly on a per-serving basis. The estimated total contract will be \$40,000 for the six-month contract awarded. The maintenance contract will be billed per shop hour, with a discounted price for parts, billed monthly. The total cost should be \$15,000 for the year. Both contracts will be effective Oct. 1.

Accounting entries: None.

- 9/28** The county clerk's office orders its monthly order of office supplies for October. Estimated cost is \$145.

Accounting entries: The entry is made in the Purchase Order/Encumbrance Journal.

- 9/30** The accounts for the fiscal year are closed. There are four items carried over from the previous year. The purchase orders were encumbered and not delivered at the fiscal year's end. They are as follows:

Department	Description	Amount
Sheriff	Protective vests	\$550
Treasurer	Office supplies (computer paper)	\$375
Auditor	Ergonomic desk chairs (4)	\$840
Clerk	Office supplies (misc.)	\$145
Total		\$1,910

Accounting entries: The entry is made in the following accounts:

9. Purchase Order/Encumbrance Journal: Close the encumbrances to the fund balance.
10. Appropriations-Expenditures Ledgers to close the fund balance.
11. General Journal to close the accounts for the fiscal year. (Note: There are two closing entries shown, but in fact, there would be more. Each appropriation account would be closed.)

- 10/1** The county passed its annual budget and records the amounts in the general ledger. The amounts for purchase orders from the prior year have been provided for in the new budget.

Accounting entries: The entry is made in the following accounts:

12. Purchase Order/Encumbrance Journal to re-encumber the open purchase orders.

- 10/1** The county commissioners court's appropriation for the sheriff's department operations (Account Number 10-525) follow:

Expenditure Code	Description	Amount
101	Salaries, Wages	\$385,000
210	Employee Benefits	105,000
310	Office Supplies	15,000
330	Operating Supplies	60,000
350	Food, Jail	85,000
390	Misc. Supplies	45,000
410	Medical Services, Jail	46,000
415	Telephone, Communications	6,500

Expenditure Code	Description	Amount
445	Utilities	7,000
450	Repairs/Maintenance	21,000
625	Capital Outlay	87,000
TOTAL		\$862,500

Accounting entries: The entry is made in the following accounts:

13. The General Journal is posted with the appropriations for the sheriff's account.

- 10/1** The county fuel and petroleum products annual contract specifications, which were approved and bid last month, will be effective on this date. Billings will be monthly, and the accounts will be encumbered for a monthly estimated amount at the month's beginning. The sheriff's department estimates it will buy \$14,000 in gasoline and oil. The account is encumbered for October.

Accounting entries: The entry is made in the following accounts:

14. Purchase Order/Encumbrance Journal.

- 10/1** The food services account and the vehicle maintenance account are encumbered for October.

Accounting entries: The entry is made in the following accounts:

15. Purchase Order/Encumbrance Journal.

- 10/4** The treasurer's department submits an order for a computer software package to assist in investment activities. Cost is estimated to be \$750 on the requisition.

Accounting entries: The entry is made in the following accounts:

16. Purchase Order/Encumbrance Journal.

- 10/4** The road and bridge department submits a requisition for a tractor and mowing attachments. Estimated cost is \$28,500.

Accounting entries: None.

- 10/7** The sheriff's department orders office supplies for the month of November. The estimated cost is \$1,050.

Accounting entries: The entry is made in the following accounts:

17. Purchase Order/Encumbrance Journal.

- 10/10** The treasurer's software is delivered. Actual cost is \$743.

Accounting entries: None.

- 10/11** The sheriff's order for office supplies is delivered. Actual cost is \$1,073. The treasurer and clerk's backorders from last fiscal year are delivered, and the actual costs are (respectively) \$375 and \$152.

Accounting entries: None.

- 10/12** The county judge's office orders a recording system for the court recorder in the county court. The order is to replace the current system that broke down. The order was on an emergency basis and was delivered immediately. The cost was \$1,537. An invoice for payment of the county judge's recording system is delivered at the same time.

Accounting entries: The entry is made in the following accounts:

- 18. Purchase Order/Encumbrance Journal.
- 19. The Appropriations/Expenditures Ledger to record the expenditure in the county judge's account (No. 10-400-610 - Capital Equipment and Machinery).
- 20. The payable is entered in the accounts payable ledger (not shown).

- 10/14** Invoices for the office supplies (sheriff's, treasurer's and clerk's) are received.

Accounting entries: None.

- 10/15** An invoice for the treasurer's software is received.

Accounting entries: None.

- 10/16** The invitations for bids for the road and bridge department's tractor are sent out and the first advertisements are published. Bids are due no later than Nov. 17 at 11 a.m.

Accounting entries: None.

- 10/22** All invoices received by 10/16 are approved by commissioners court.

Accounting entries: The payable is entered in the accounts payable ledger (not shown).

- 10/23** Checks are prepared and mailed by the treasurer's department for claims approved on 10/22.

Accounting entries: The entry is made in the following accounts:

- 21. In the Cash Disbursements Journal, enter the date, payee; under P.O. Number, enter the appropriate P.O. numbers (x2-577, x2-578, x3-004, x3-005, x3-006); under Ref., the check numbers; Under Cash, the amount of the check (in brackets to indicate a credit), under Account Coding, the account number charged, and under Expenditures, the expenditure amount (same as the cash column, but a debit).
- 22. The account payable is closed.

- 10/23** The invoice for the sheriff's protective vests is received.

Accounting entries: None. (When an invoice is received before the order is received, no payable should be set up. When the order is received, and the receiving order and purchase order are matched up, then the payable is appropriate.)

- 10/24** The sheriff's department submits an order for uniforms for deputies. The requisition is for \$1,600.

Accounting entries: The entry is made in the following accounts:

- 23. Purchase Order/Encumbrance Journal to record the issuance of a purchase order and the encumbrance of the account.

10/24 The sheriff's backorder for protective vests is delivered. Actual cost is \$550.

Accounting entries: The entry is made in the following accounts:

- 24. The Purchase Order/Encumbrance Journal to close the P.O.
- 25. The accounts payable ledger (not shown), to set up the payable.

10/29 All invoices received by 10/23 are approved by the commissioners court.

Accounting entries: The entry is made in the following accounts:

- 26. The Appropriations/Expenditures Ledger to record the expenditure in the proper accounts (Only the Sheriff's A-E Ledger, No. 425-310-Sheriff Office Supplies is shown).

10/30 Checks are prepared and mailed by the treasurer's department for claims approved on 10/29.

Accounting entries: The entry is made in the following accounts:

- 27. In the Cash Disbursements Journal, make the appropriate entries. The only disbursement is for the protective vests for the sheriff.
- 28. The account payable is closed.

11/1 The food services account, the motor fuel account and the vehicle maintenance account are encumbered for November.

Accounting entries: The entry is made in the following accounts:

- 29. Purchase Order/Encumbrance Journal to record the issuance of a purchase order and the encumbrance of the account.

11/5 The invoice for the prior month's food service is received. The amount is \$6,523.

Accounting entries: The entry is made in the following accounts:

- 30. The Appropriations/Expenditures Ledger to record the expenditure in the proper accounts (Only the Sheriff's A-E Ledger, No. 425-310-Sheriff Office Supplies is shown).

11/6 The invoice for the prior month's vehicle maintenance is received. The amount is \$1,205.

Accounting entries: The entry is made in the following accounts:

- 31. The Appropriations/Expenditures Ledger to record the expenditure in the proper accounts (Only the Sheriff's A-E Ledger, No. 425-310-Sheriff Office Supplies is shown).

11/6 The invoice for the prior month's motor fuel is received. The amount is \$1,178.

Accounting entries: The entry is made in the following accounts:

32. The Appropriations/Expenditures Ledger to record the expenditure in the proper accounts (Only the Sheriff's A-E Ledger, No. 425-310-Sheriff Office Supplies is shown).

11/13 Checks are prepared and mailed by the treasurer's department for claims approved on 11/12.

Accounting entries: The entry is made in the following accounts:

33. In the Cash Disbursements Journal, make the appropriate entries. The only disbursement is for the protective vests for the sheriff.
34. The account payable is closed.

11/14 A tracer is sent out on the chairs for the auditor's office.

Accounting entries: None.

Exhibit 21: General Journal (Sample Entries)

Fund General (10) Page #

GENERAL JOURNAL

Date	Description	Source Document Number	Coding	Debit	Credit
8/30/201X	Cash		101-000	\$31,034.00	
	Revenues-Sales of Patrol Vehicles		172-000		\$31,034.00
	Sales of 6 retired patrol vehicles at auction.				
9/30/201X	Appropriations		525-000	\$787,000.00	
	Expenditures				\$769,102.00
	Encumbrances				\$550.00
	Fund Balance				\$17,348.00
	To close appropriations and encumbrances for the sheriff's department.				
9/30/201X	Fund Balance		271-000	\$1,910.00	
	Encumbrances		243-000		\$1,910.00
	To cancel encumbrances at year's end and establish a reserve for encumbrances in the Fund Balance for fiscal 201X purchase orders still outstanding that will be honored.				
	(Example opening appropriation entries for sheriff's department only.)				
10/1/201X	Fund Balance		271-000	\$862,500.00	
	Appropriations-Sheriff		525-000		\$862,500.00

A/C	Detail	Amount
525-000	Sheriff's Department	
-101	Salaries, Wages	385,000.00
-210	Employee Benefits	105,000.00
-310	Office Supplies	15,000.00
-330	Operating Supplies	60,000.00
-350	Food, Jail	85,000.00
-390	Miscellaneous Supplies	45,000.00
-410	Medical Services, Jail	46,000.00
-415	Telephone, Communications	6,500.00
-445	Utilities	7,000.00
-450	Repairs/Maintenance	21,000.00
-625	Capital Outlay	87,000.00
Total		\$862,500.00

10/1/201X	Encumbrances 201X		243-000		\$1,910.00
	Fund Balance – Unreserved		271-000		\$1,910.00

To reclassify fund balance for purchase orders expected and held over from the previous year.

Exhibit 22: General Fixed Assets Account Group(Sample Entries)

Fund	General (10)	Page #
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GENERAL JOURNAL

Date	Description	Source Document Number	Coding	Debit	Credit
8/6/201X	Fixed Assets - Automobiles		166-000		\$86,316.00
	Investment in General Fixed Assets		280-000	\$86,316.00	
	To record acquisition of 6 patrol vehicles.				
8/30/201X	Investment in General Fixed Assets		280-000	\$61,195.00	
	Fixed Assets - Automobiles		166-000	\$61,195.00	
	To record retirement of 6 patrol vehicles.				

Exhibit 23: Purchase Order/Encumbrance Journal (Sample Entries)

Fund General (10) Page #

PURCHASE ORDER/ENCUMBRANCE JOURNAL

Date	Purchase Order #	Vendor/Contractor	Coding	Ref.	Encumbrance Amount 243-000	Received
7/8/201X	X2-533	Merchants Ford Inc.	471-690	√	\$90,000.00	√
9/10/201X	X2-575	Fraley's Office Furniture Co.	471-690	√	\$840.00	
9/12/201X	X2-576	Wesson-Smith Police Equip. Inc.	525-330	√	\$550.00	
9/21/201X	X2-577	ABC Office Supplies Inc.	470-310	√	\$375.00	
9/28/201X	X2-578	ABC Office Supplies Inc.	403-310	√	\$145.00	
9/30/201X		Closing Totals Four POs still active.		√	\$1,910.00	

Purchase Order/Encunberance Journal Example Entries

Fund General (10) Page #

PURCHASE ORDER/ENCUMBRANCE JOURNAL

Date	Purchase Order #	Vendor/Contractor	Coding	Ref.	Encumbrance Amount 243-000	Received
10/1/201X	X2-575	Fraley's Office Furniture Co.	471-690	√	\$840.00	√
10/1/201X	X2-576	Wesson-Smith Police Equip. Inc.	525-330	√	\$550.00	√
10/1/201X	X2-577	ABC Office Supplies Inc.	470-310	√	\$375.00	√
10/1/201X	X2-578	ABC Office Supplies Inc.	403-310	√	\$145.00	√
10/1/201X	Y2-001	Stears Petroleum Distributors Inc.	525-335	√	\$1,200.00	√
10/1/201X	Y2-002	Acme Catering Service	525-350	√	\$6,700.00	√
10/1/201X	Y2-003	E&S Automotive	525-450	√	\$1,250.00	√
10/4/201X	Y2-004	Camelot Computers Inc.	470-692	√	\$750.00	√
10/7/201X	Y2-005	ABC Office Supplies Inc.	525-310	√	\$1,050.00	√
10/12/201X	Y2-006	Bradley Sound Systems Inc. (emerg)	400-610	√	\$1,537.00	√
10/24/201X	Y2-007	Smith's Uniform Co.	525-330		\$1,600.00	
11/1/201X	Y2-008	Stears Petroleum Distributors Inc.	525-335		\$1,200.00	
11/1/201X	Y2-009	Acme Catering Service	525-350		\$6,700.00	
11/1/201X	Y2-010	E&S Automotive	525-450		\$1,250.00	

Exhibit 24: Appropriations/Expenditures Ledger (Sample Entries)

Fund General (10) Page #

Account #

Account Title: Sheriff – Capital – Machinery and Equipment

APPROPRIATIONS/EXPENDITURE LEDGER

Date	P.O. Description/Payee #	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
7/8/201X	Merchant's Ford Inc.	X2-533 P/E-11		\$90,000.00		(\$551.00)
8/7/201X	Merchant's Ford Inc.	X2-533 A/P-35	(\$90,000.00)	\$86,316.00	(\$4,235.00)	
9/30/201X	Close A/E Ledger to Fund Balance			GJ-5	\$4,235.00	(570.50)

Fund General (10) Page #

Account # 525-330

Account Title: Sheriff – Operating Supplies

APPROPRIATIONS/EXPENDITURE LEDGER

Date	P.O. Description/Payee #	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
9/12/201X	Wesson-Smith Police Equip, Inc.	X2-576	P/E-1		\$550.00	(\$745.00)
9/30/201X	Wesson-Smith Police Equip, Inc.	X2-576	P/E-1		(\$550.00)	(\$1,295.00)
9/30/201X	Close/A/E Ledger to Fund Balance		\$1,295.00			\$0.00

Fund General (10) Page #

Account #400-610

Account Title: Capital – Machinery and Equipment

APPROPRIATIONS/EXPENDITURE LEDGER

Date	P.O. Description/Payee #	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
10/1/201X	Record Budget	GJ-1	(\$5,000.00)			(\$5,000.00)
10/12/201X	Bradley Sound Systems, Inc.	Y2-006 P/E-1	\$1,537.00			(\$3,463.00)

Fund General (10) Page #

Account # 525-310

Account Title: Sheriff – Office Supplies

APPROPRIATIONS/EXPENDITURE LEDGER

Date	P.O. Description/Payee #	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
10/1/201X	Record Budget	GJ-1		(\$15,000.00)		(\$15,000.00)
10/7/201X	ABC Office Supplies	Y2-005 P/E-1		\$1,050.00		(\$13,950.00)
10/14/201X	ABC Office Supplies	Y2-005 A/P-2		(\$1,050.00)	\$1,073.00	(\$13,927.00)

Fund General (10) Page #

Account # 525-330

Account Title: Sheriff – Operating Supplies

APPROPRIATIONS/EXPENDITURE LEDGER

Date	P.O. Description/Payee #	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
10/1/201X	Record Budget	GJ-1	(\$60,000.00)			(\$60,000.00)
10/1/201X	Wesson-Smith Police Equip. Inc.	X2-576 P/E-1		\$550.00		(\$59,450.00)
10/1/201X	Stears Petroleum Distributors Inc.	Y2-001 P/E-1		\$1,250.00		(\$58,800.00)
10/24/201X	Wesson-Smith Police Equip. Inc.	X2-576 A/P-2		(\$550.00)	\$550.00	(\$58,250.00)
11/1/201X	Stears Petroleum Distributors Inc.	Y2-008 P/E-1		\$1,200.00		(\$57,050.00)
11/6/201X	Stears Petroleum Distributors Inc.	Y2-001 A/P-2		(\$1,200.00)	\$1,178.00	(\$57,072.00)

Fund General (10) Page #

Account # 525-350

Account Title: Sheriff – Food – Jail

APPROPRIATIONS/EXPENDITURE LEDGER

Date	P.O. Description/Payee #	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
10/1/201X	Record Budget	GJ-1	(\$85,000.00)			(\$85,000.00)
10/1/201X	Acme Catering Service	Y2-002 P/E-1		\$6,700.00		(\$78,330.00)

Exhibit 24: Appropriations/Expenditure Ledger (Sample Entries)

11/1/201X	Acme Catering Service	Y2-009 P/E-1		\$6,700.00		(\$71,600.00)
11/5/201X	Acme Catering Service	Y2-002 A/P-3		(\$6,700.00)	\$6,523.00	(\$71,177.00)

Fund	General (10)	Page #
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Account # 525-450**Account Title: Sheriff – Repairs/Maintenance****APPROPRIATIONS/EXPENDITURE LEDGER**

Date	P.O. Description/Payee #	Ref.	Appropriation (Credit)	Encumbrance Dr/(Cr)	Expenditures Debit	Balance Dr/(Cr)
10/1/201X	Record Budget	GJ-1	(\$21,000.00)			(\$21,000.00)
10/1/201X	E&S Automotive	Y2- 003 P/E-1		\$1,250.00	(\$19,750.00)	
11/1/201X	E&S Automotive	Y2-010 P/E-1		\$1,250.00	(\$18,500.00)	
11/6/201X	E&S Automotive	Y2-003 A/P-3		(\$1,250.00)	\$1,250.00	(\$18,545.00)

Exhibit 25: Cash Disbursement Journal (Sample Entries)

Fund General (10) Page #

CASH DISBURSEMENT JOURNAL

Date	Description/Payee	P.O. #	Check #	Cash (Credit)	Acc't Coding	Expenditures Debit	Misc Disbursements
8/14/201X	Merchants Ford, Inc.	X2-533		12,566	(\$86,316.00)	525-625	\$86,316.00

Fund General (10) Page #

CASH DISBURSEMENT JOURNAL

Date	Description/Payee	P.O. #	Check #	Cash (Credit)	Acc't Coding	Expenditures Debit	Misc Disbursements
10/23/201X	ABC Office Supplies	X2-577		12,634	(\$375.00)	470-310	\$375.00
10/23/201X	ABC Office Supplies	Y3-004		12,635	(\$152.00)	403-310	\$152.00
10/23/201X	Camelot Computers Inc.	X2-578		12,636	(\$743.00)	470-692	\$743.00
10/23/201X	ABC Office Supplies	Y2-005		12,637	(\$1,073.00)	525-310	\$1,073.00
10/23/201X	Bradley Sound Systems, Inc.	Y2-006		12,638	(\$1,537.00)	400-610	\$1,537.00
10/30/201X	Wesson-Smith Police Equip, Inc.	X2-576		12,639	(\$550.00)	525-330	\$550.00
11/13/201X	Acme Catering Service	Y2-002		12,640	(\$6,523.00)	525-350	\$6,523.00
11/13/201X	E&S Automotive	Y2-003		12,641	(\$1,205.00)	525-450	\$1,205.00
11/13/201X	Stears Petroleum Distributors Inc.	Y2-001		12,642	(\$1,178.00)	525-330	\$1,178.00

Exhibit 26: Purchasing Audit Checklist (Sample)

Purchasing Audit Checklist

For an audit of the financial statements of the entity, use items coded F. For a self-audit, use items coded S. For an internal audit of the operation, the most comprehensive audit, use items coded I.

PART 1 - GENERAL

Administrative Review

1. Is the authority to purchase centralized in one office or with one person? (F, S, I)

NOTE: An almost universal recommendation of all authorities on purchasing is that the function be centralized. In a small government, this can be done by routing transactions through a designated purchasing individual.

2. Are all purchases and contracts coordinated through this office or person (except minor items urgently needed to prevent interruptions of service)? (S, I)
3. Are contracts exceeding bid limits authorized or approved by the governing body? (F, S, I)
4. Are the purchasing officers and all assistants encouraged to expand their skill and knowledge by attending continuing education seminars when practical, and to belong to a professional purchasing association? (S, I)
5. Does the government assume the cost of:
 - a. the continuing education? (S, I)
 - b. the professional purchasing association's dues? (S, I)
6. Is there a written procurement policy statement that describes the overall goals and objectives of purchasing? (F, S, I)
7. Does the statement or another authoritative document specify the authority of the purchasing officer:
 - a. to act as the government's purchasing agent? (F, S, I)
 - b. to evaluate and rank bids and proposals and to make recommendations to the governing body as to which to accept? (S, I)
 - c. to perform quality assurance testing and to recommend products? (S, I)
 - d. to recommend which properties and assets should be declared surplus or salvage, and to dispose of such surplus and salvage property? (S, I)
 - e. to inventory and maintain records of fixed assets? (S, I)

8. Does the government prepare a schedule of capital asset acquisitions, taking into account expected cash flow, requirements of the using department, and the most advantageous time of the year to purchase that asset? (S, I)
9. Is the purchasing officer involved in scheduling capital asset acquisitions? (I)
10. Do all other departments in the government view purchasing as a source of assistance for solving all types of material problems? (I)
11. Do the purchasing office's policies clearly state that service to the user departments is one of its highest priorities? (I)
12. Is there an adequate library of catalogs and price lists for frequent vendors? (S, I)
13. Is there a written code of ethics for the purchasing officer and all Purchasing employees? (F, S, I)
14. Do all members of the purchasing office annually certify that they have read, understand and will abide by the code of ethics? (F, S, I)
15. Is the purchasing office independent of control by any department head? (I)
16. If not, is the purchasing office under a compatible department such as finance or support services? (S, I)
17. Is there a specific written authority that says purchasing may issue policies and directives to implement its procedures? (I)

Procedural Review

NOTE: With proper safeguards, such as confidential codes, computer-generated requisitions are as good or better than written requisitions.

18. Are manual or electronic requisitions required for all purchases processed by the purchasing office, except for occasional urgent, minor purchases of supplies that may be requested orally and followed by a proper authorization later? (S, I)
19. If a manual or electronic requisition is processed, is it always confirmed by a written requisition? (S, I)
20. Does purchasing require that requisitions be signed or otherwise properly authorized by persons designated by the responsible department head? (S, I)
21. Is there a written policy or order naming the people authorized to sign the requisitions for goods or services? (S, I)
22. Are requisitions checked for the signature or confidential code of a properly authorized person prior to processing by the purchasing office? (S, I)

23. Are requisitions checked to ensure that the purchase is covered by a budget line item authorization before the purchasing office issues a purchase order? (F, S, I)
24. Are requisitions checked to ensure that the budget line item has a sufficient unencumbered balance to cover the purchase before the purchasing office issues a purchase order? (S, I)
25. If the government has a policy allowing departments to make minor purchases without going through the purchasing office, does the policy require that the departmental user verify the budget line item authorization and sufficient balance prior to the purchase? (S, I)
26. Does the purchasing office monitor requisitions and purchase orders to ensure that they are executed on a timely basis? (S, I)
27. Has the cost of processing a purchase order been determined, including a study of the steps to produce the document and what each step costs? (I)
28. Does the purchasing office always schedule purchases for centrally stocked supplies and materials so that out-of-stock conditions are rare? (I)
29. Are centrally stocked supplies and materials normally inventoried on a continuing basis so that the purchasing office is aware of the amount invested at all times? (I)
30. Are blanket purchase orders (as described in Chapter 5) used only under limited circumstances and for low-cost purchases of items that are not centrally stocked? (I)
31. If so, are the authorized purchasers strictly limited to a few assigned personnel and to limited categories of work-related items? (I)
32. Are receipts for blanket purchase order purchases retained and matched to the monthly invoice from the vendor? (S, I)
33. When blanket purchase orders are negotiated, are discounts routinely received? (S, I)

Legal Review-General

NOTE: For a comprehensive review of statutory requirements, see Parts Six – Nine.

34. Have federal grant regulations been examined closely to determine their impact on the purchasing program, such as for more stringent purchasing or reporting requirements? (F, S, I)
35. Have state statutes (Local Government Code, Chapter 252, subchapter b for municipalities, 262 for counties and Chapter 271 for both, as well as other applicable statutes) been closely examined to determine their impact on the purchasing program? (F, S, I)

36. Have local laws such as city ordinances and county court orders been examined closely to determine their impact on the purchasing program? (F, S, I)
37. Have the terms and conditions on purchase order forms been thoroughly checked by an attorney to ensure that the government is fully protected under applicable common law and the Uniform Commercial Code (UCC)? (S, I)
38. Are all proposed contracts to purchase goods or services examined by the attorney to ensure that the government is fully protected under applicable common law and the UCC? (S, I)
39. Does the purchasing system determine if the entity is purchasing more than the law allows without bids? For instance, can the system aggregate purchases by commodity code across all divisions or departments? (S, I)
40. Do all purchase orders contain a statement to the vendor that if this is a multi-year contract the local government is not obligated if the future council/commissioners court does not budget for this purchase? (S, I)

PART 2 - STANDARDS AND SPECIFICATIONS

1. Does the government have a policy for standardizing products when the same type of item is used in more than one department? (S, I)
2. Is there a standardization committee to control the proliferation of products ordered? (I)
3. Does the purchasing office standardize items commonly used by two or more departments? (I)
4. Are generic products purchased if they can replace more expensive, brand name items? (S, I)
5. Is there a central stockroom from which all departments draw commonly used supplies and materials? (S, I)
6. Is there a catalog or list of items available from the stockroom? (S, I)
7. Are departments required to justify in writing the purchase of a non-standard item if a similar standard item is centrally stocked? (S, I)
8. Is there a product evaluation committee? (S, I)
9. If so, is the purchasing officer or another member of the purchasing office a member? (S, I)
10. Is a value analysis made of products to be sure which best meet the intended needs of the government? (S, I)

11. If so, does the value analysis consider:
 - a. new sources of supply? (S, I)
 - b. standardization of items? (S, I)
 - c. identification of alternative products, including price and quality? (S, I)
 - d. availability, ease of maintenance and delivery when needed? (S, I)
 - e. amortization and trade-in schedule? (S, I)
12. Are brand names avoided or used only as descriptions? (S, I)
13. Are vendor performance files maintained? (S, I)
14. Are performance or design specifications rather than descriptive specifications, such as name brands, used whenever possible? (S, I)
15. Does the purchasing office use commercial standards or specifications developed by federal, state, other local governments, professional associations or other entities whenever possible, instead of developing new specifications? (S, I)
16. Do the specifications establish minimum standards for acceptability? (S, I)
17. Do the specifications allow adequate competition among vendors, without specifications slanted toward one vendor's product or service? (S, I)
18. Do the specifications contain provisions for test methods to determine whether the items comply with the specifications? (S, I)
19. For items where quality is critical, or the cost of inspection and testing is too expensive, are qualified products lists developed? (S, I)
20. Are listed products tested prior to inclusion on the list? (S, I)
21. Are vendors invited to submit their product for testing? (S, I)
22. When specifications are developed, do the authors consider whether the product will be stocked when it is delivered, delivered in installments to be stocked in smaller quantities or delivered as needed? (S, I)
23. Does the purchase order include delivery information?

PART 3 - COMPETITIVE BIDDING AND PROPOSALS

1. Are requirements for supplies and materials consolidated annually to determine whether competitive bids are required? (S, I)
2. Are all substantial purchases subject to competition even if law does not require it? (S, I)

NOTE: Buyers may make some smaller purchases without seeking quotes based on their experience and professional judgment.

3. Are competitive bids used for all non-exempt items with an annual aggregate cost of more than \$3,000 but less than \$50,000? Further, a municipality, in making an expenditure according to the above-mentioned dollar amounts, shall contact at least two historically underutilized businesses (HUB) on a rotating basis, based on information provided by the Comptroller pursuant to Chapter 2161, Government Code. If the list fails to identify a HUB in the county in which the municipality is situated, the municipality is exempt from this section. (F, S, I)
4. Do standard purchasing procedures comply with the provisions of the statutes (Local Government Code, Chapters 252 & 262) for municipalities concerning competitive bidding and proposals? (See Parts Six – Nine for a comprehensive legal review.) (F, S, I)
5. Do purchasing procedures comply with other pertinent authorities, such as city ordinances and county court orders concerning competitive bidding? (S, I)
6. Are procedures in place to prevent purchase splitting, such as carpeting one room per purchase order, to avoid submitting them for competitive bidding? (S, I)
7. Are notices of competitive bids for non-exempted purchases advertised or posted as required by state statutes (Local Government Code, Chapters 252 & 262 for municipalities? (F, S, I)
8. Does the purchasing office have written procedures for securing competitive bids? (S, I)
9. Does the purchasing office have written procedures governing the receipt, control and opening and reading of bids? (S, I)
10. Does the purchasing office have written procedures governing the review and evaluation of bids? (S, I)
11. Does the purchasing office examine all bids received for compliance with the terms and conditions of the bid invitation? (S, I)
12. Does the purchasing office contract for professional services? (S, I)
13. Does the purchasing office submit contracts for professional services to competition in a way that will attract qualified professionals at a fair price to the government? (S, I)
14. Does the purchasing office maintain a list, classified by commodity or service, of prospective, qualified bidders? (S, I)

15. If so, does the purchasing office periodically review the list to remove bidders that prove unresponsive, unqualified or have a history of poor performance? (S, I)
16. Does the purchasing office maintain sufficient records of bids and contracts to help identify problem areas such as non-responsive or unqualified vendors, or vendors possibly engaging in collusive bidding practices? (S, I)
17. Does the purchasing office consolidate requirements for similar items such as office supplies when extending invitations to bid? (F, S, I)
18. Are bid invitations for contracts involving categories of items such as office supplies structured so that the government may award contracts on selected items to the low bidder on those items, rather than awarding the whole contract to the lowest overall bidder (i.e., cherry-picked items)? (S, I)
19. Are bid invitations written to allow the government to choose:
 - a. one-time delivery of the entire order, or delivery on an “as needed” basis? (S, I)
 - b. single or multiple payments? (S, I)
 - c. single, multiple or designated delivery points? (S, I)
37. Does the purchasing office have a written policy requiring informal bids or quotes on all items except minor purchases when the statutes do not require sealed, competitive bids? (S, I)
38. If the purchase price exceeds a set level, does the policy require those quotes to be in writing? (S, I)
39. Does the policy state a period during which the price will be valid? (S, I)
40. For counties, when competitive bidding is not required because the purchase is exempted, does the commissioners court grant the exemption by order? (S, I)
41. Are emergency purchases recorded and tracked to see that the process is not abused? (S, I)
42. Does the purchasing office have a written guide for vendors to keep them informed of all relevant local policies and procedures? (S, I)
43. Does the government have a program for notifying and encouraging new suppliers to compete for the government’s business? (S, I)
44. Does the government have a program that ensures adequate supplies of critical items by using multi-award bids, such as the first contract awarded supplies 70 percent of commodity, while the second contract awarded supplies 20 percent, etc.? If this were the case, the bid invitation would need to specify two or more contracts. (S, I)

45. Does the purchasing office use a multi-step process when the government is unsure of its needs or system specifications? Step one is a pre-bid conference with as many bidders as possible to formulate requirements; step two is normal bidding. Or is an alternative multi-step bidding allowed for municipalities under the Local Government Code Section 262.0276 used? (S, I)
46. Does the purchasing office make sole-source purchases only after the lack of alternate sources is determined? And, for counties, is the purchase approved by the commissioners court and recorded in its minutes with a signed affidavit from the official certifying sole source status, according to Local Government Code Section 262.0276? (F, S, I)
47. Are all bids received on time given full consideration, including those not issued bid invitations, unless the bids are restricted to a qualified bidders list? (F, S, I)
48. Are all late bids disqualified?
49. Are bidders encouraged to attend bid openings so they will better understand the bidding process? (S, I)
50. Are bid tabulations made available to the public? (S, I)
51. Does the purchasing office have a written procedure for emergency purchases? (100 percent of all emergency purchases must be accompanied by a written request.) (S, I)
52. When the government purchases items without bids under the emergency purchasing exemptions, do the written procedures require a signed acknowledgement from the department head that the purchase falls within the exemptions of the statutes? (S, I)
53. Do bid invitations contain adequate details to allow bidders to develop good bids? (S, I)

PART 4 - COOPERATIVE PURCHASING

Local Cooperative Purchasing

1. Does the government have an ordinance or order allowing the purchasing office to purchase goods or services in cooperation with other governments when it is to their mutual benefit? (S, I)
2. Does the purchasing office enter into cooperative purchasing agreements with other local governments? (S, I)
3. Does the purchasing office maintain contact with other local governments' purchasing offices through the regional council or association of governments to exchange information and engage in cooperative purchasing contracts? (S, I)

4. If a government is in the area of a larger government, has the purchasing office investigated the possibility of buying from its contracts? (S, I)
5. Is the government represented on a regional purchasing committee? (F, S, I)
6. Does the purchasing office have an active program to search for ways to extend savings through cooperative purchasing? (S, I)
7. Does the purchasing office have a program for evaluating the savings or costs of cooperative purchasing? (S, I)
8. Has the government considered creating joint service contracts with nearby governments? (S, I)

Cooperative Purchasing with the State

9. Does the purchasing office, when possible, enter into agreements to purchase from state contracts? (S, I)

PART 5 - INTERNAL CONTROLS

NOTE: The next seven questions concern general principles of internal control.

1. Does the government have clear, well-defined, written policies on purchasing? (F, S, I)
2. Are reports on purchasing periodically forwarded to the governing body? (F, S, I)
3. Are electronic or pre-printed, pre-numbered receipts, requisitions, purchase orders, inventory forms and other forms that have the government name and address used for all transactions that may constitute part of the audit trail? (F, S, I)
4. Are electronic or printed forms logically routed to each required workstation to avoid backtracking and bottlenecks? (F, S, I)
5. Does the government have well-defined policies for the authorization of capital acquisitions, such as advance approval by the governing body prior to major acquisitions and planned scheduling of major purchases during the year? (F, S, I)
6. Is there a requirement for an authorization or verification at each of the following stages of the purchasing cycle, including:
 - a. requisition of goods or services (authorized by department head or representative); (F, S, I)
 - b. the commissioner's court of a county that has the office of county auditor may, by a written order, waive the requirement of the county judge's approval of electronic or manual requisitions. The order must be recorded in the minutes of the commissioner's court. If the approval of the county judge

- is waived, all claims must be approved by the commissioner's court in open court. (Texas Local Government Code Section 113.901); (F, S, I)
 - c. selection of vendor (purchasing officer or governing body for bidding process); (F, S, I)
 - d. price and terms (purchasing officer); (F, S, I)
 - e. purchase invoice (user — verifies satisfactory performance); (F, S, I) and
 - f. payment and account/fund to charge (accounting manager). (F, S, I)
7. Are authorizations verified by the purchasing office? (F, S, I)

NOTE: The next four questions concern the separation of duties that should help ensure that one person cannot divert assets or make errors that go undiscovered.

8. Does the government have a policy that, whenever possible, keeps the person with authority to approve a requisition from entering the transaction into the accounting records? (F, S, I)
9. Does the policy state that the person with authority to approve a requisition should not have custody of the asset? (F, S, I)
10. Does the policy state that, when possible, a person who enters a transaction in the accounting records should not have custody of the asset? (F, S, I)
11. If this separation of duties is not entirely possible, are other means of internal control practiced, such as:
- a. rotation of duties; (F, S, I)
 - b. exercising more strict supervision; (F, S, I)
 - c. double-checking work; (F, S, I)
 - d. enforced vacations; (F, S, I)
 - e. additional training to improve the quality of performance; (F, S, I) and
 - f. frequent, strict audits? (F, S, I)

NOTE: The next 11 questions concern the control of assets.

12. Does the office use electronic or pre-numbered forms for all sensitive documents, such as purchase requisitions, purchase orders and receipts? (F, S, I)
13. Are all electronic or pre-numbered forms strictly controlled and accounted for? (F, S, I)
14. Are all electronic or manual copies of spoiled and voided pre-numbered forms retained for control? (F, S, I)
15. Are warehoused assets not released to users without a proper requisition? (F, S, I)

16. Are assets received from vendors counted and examined for compliance with the purchase order? Is this information properly documented on receiving reports or copies of the purchase orders to be sent to accounting? (F, S, I)
17. Are all items classified as capital assets accurately recorded in detailed records? (F, S, I)
18. Are the government's assets periodically inventoried by comparing them with the fixed asset records to determine losses or oversupply? (F, S, I)
19. Are steps taken to account for losses and oversupply? (F, S, I)
20. Are documents relating to the same transaction cross-referenced? (F, S, I)
21. Are assets in the custody of individuals recorded on issue cards and signed for properly? (F, S, I)
22. Are there procedures in place for returning all unneeded or obsolete materials to the purchasing office for disposal? (S, I)

NOTE: The next four questions concern qualified and well-trained purchasing personnel.

23. Do fully qualified people fill staff positions? (F, S, I)
24. Are valid, comprehensive job standards established for purchasing positions? (F, S, I)
25. Are purchasing personnel assigned or hired based on their qualifications in relation to the established job standards and requirements? (F, S, I)
26. Are training programs in purchasing practices established, or outside training programs made available to purchasing personnel? (F, S, I)

NOTE: The next four questions concern written procedures.

27. Does the purchasing office have a procedures manual? (F, S, I)
28. Are procedures strictly enforced? (F, S, I)
29. Are written procedures developed for all duties commonly performed in the purchasing office, including emergency procedures? (F, S, I)
30. Are procedures reviewed at regular intervals to ensure that they are the most efficient, and maintain effective controls? (F, S, I)

PART 6 - GENERAL LEGAL REQUIREMENTS

VTCA Government Code, §2157.061 – Catalogue Purchase Method

31. Does the government consider use bids, proposals or the catalogue purchasing procedure when purchasing information systems such as computer hardware, software and accessories and communications systems? (S, I)
32. If the catalogue purchasing procedure is used, does the government make a “best value” analysis to determine which system best serves the government’s needs? (S, I)

VTCA Government Code, Chapter 2258 – Prevailing Wage Rates

33. Does the government pay the prevailing wage to laborers, workmen and mechanics? (F, S, I)
34. Does the government monitor contractors and subcontractors to ensure that they pay the prevailing wage to laborers, workmen and mechanics? (F, S, I)
35. Does the government determine the general prevailing wage for work of a similar character in the locality in which the work is performed? (F, S, I)
36. Does the government understand that if it does not determine the prevailing wage and specify that the contractor shall pay the prevailing wage, the contractor is relieved from liability under this act? (F, S, I)
37. Do contracts for such projects contain a provision that if the prevailing wage is not paid in accordance with this statute, the contractor or subcontractor must pay to the government a penalty of \$60 per worker per day? (F, S, I)

Transportation Code, Chapter 223 – Bids and Contracts for Highway Projects

38. For paving contracts, does the government require that rubberized asphalt contain scrap tires processed by a facility in the state? (F, S, I)
39. Does the government consider giving a purchasing preference of up to 15 percent for the use of rubberized asphalt in paving contracts? (F, S, I)

VTCA Local Government Code, Chapter 140 – Specialized Local Entities

40. Do “specialized local entities such as district attorneys, juvenile boards and probation departments abide by the county purchasing requirements? (Local Government Code, Subchapter C, Chapter 262) (F, S, I)
41. Do the specialized local entities understand that they may fulfill the requirements by contracting with the county to make purchases on their behalf? (F, S, I)

VTCA Local Government Code, Chapter 171 – Conflicts of Interest

- 42. Does a member of a local government's governing body always file an affidavit stating the nature and extent of any interest in a business entity or real property on which the governing body is discussing or voting, including contracts for the purchase of goods or services? (F, S, I)
- 43. Does the member then abstain from discussion or voting on the issue, unless a majority of the members of the governing body have also filed affidavits of similar interests in the same official action? (F, S, I)
- 44. Does the government take a separate vote on any budget item in which any member has a substantial interest? (F, S, I)
- 45. Does a member with a substantial interest in the budget matter abstain from the vote on that matter? (F, S, I)
- 46. Does a member with a substantial interest in any budget matter participate in the final vote on the budget only after complying with this chapter and only after the matter in which the member is concerned has been resolved? (F, S, I)

VTCA Code of Criminal Procedures, Chapter 18, Article 18.17 – Disposition of Abandoned or Unclaimed Property

- 47. Are all items of abandoned or unclaimed property covered by this act delivered for sale to the purchasing agent of the county or the person designated by the city in which the property was seized and is held? (F, S, I)
- 48. Are all provisions of the act pertaining to notice and advertising of the sale properly carried out? (F, S, I)

VTCA Code of Criminal Procedures, Chapter 59, Article 59.06 – Disposition of Forfeited Property

- 49. Does the law enforcement agency understand that all statutes governing purchasing will apply to purchases made with funds from forfeitures? (F, S, I)
- 50. Does the government have special procedures to ensure that purchasing requirements do not compromise the confidentiality of investigations and ensure proper controls and authorizations? (F, S, I)

VTCA Government Code, Chapter 497, §497.024 – Agencies and Political Subdivisions-Duty to Purchase

- 51. Does the government examine the products available under the Prison Made Goods Act to determine if any are suitable and should be purchased? (F, S, I)

VTCA Government Code, Chapter 573 – Degrees of Relationship; Nepotism Prohibitions

52. Does the government's management require the disclosure of the relationships between related elected or appointed officials and vendors and contractors so that conflicts of interest under VTCA Local Government Code Chapter 171 can be detected and prevented? (F, S, I)

VTCA Government Code, Chapter 791 – The Interlocal Cooperation Act

NOTE: This provides enabling legislation for local governments to improving their collective ability to deliver services to their citizens. Questions on this article marked with an asterisk are phrased so that a NO answer indicates an area where improvement might result by considering the action, but does not necessarily indicate noncompliance with a statute.

53. *Does the government contract with other governments to perform government duties and services? (F, S, I)
54. Does an agreement under this act state the purpose, terms, rights, objectives, duties and responsibilities of each contracting party? (F, S, I)
55. Are such agreements renewed annually? (F, S, I)
56. Do such agreements state that payments for contracted services will be paid from current revenues? (F, S, I)
57. Does the contract between governments state which of the governments' rules and regulations will apply? (F, S, I)
58. If a contract is enacted between a local government and the Department of Corrections (TDC) for the construction, operation and maintenance of a regional correctional facility, does the contract provide that:
- the title to the land for the facility will be deeded to TDC; (F, S, I) and
 - the contract will agree on payment for the housing and required treatment of prisoners who cannot be transferred to the direct control of TDC? (F, S, I)
59. *When contracting between governments for fire protection, did the government consider the civil liability of the government, which would be responsible for those services in the absence of the contract? (F, S, I)
60. When contracting between state political subdivisions to participate in a regional jail facility, is it ensured that:
- the facility will be within the bounds of one of the political subdivisions; (F, S, I)
 - bonds will be issued by participating entities prior to acquisition and construction of the facility in the manner prescribed by law; (F, S, I)

- c. there is an agreement how the jailer will be appointed; (F, S, I)
 - d. prisoners in a regional jail facility shall be under the supervision of the jailer; (F, S, I)
 - e. a sheriff or police chief of one of the political subdivisions with prisoners in the regional facility will not be liable for the escape of, injury or damage caused by, or injury to the prisoner unless the injury or damage is caused by the police chief or sheriff; and (F, S, I)
 - f. jailers and assistant jailers for the facility must be commissioned peace officers? (F, S, I)
61. Does any contract allowed by this article provide that no tax revenues shall be pledged to make payments for the contract? (F, S, I)
62. Prior to beginning a project under an interlocal agreement in which a county agrees to construct, improve or repair buildings, roads, streets or other facilities, does the commissioners court give specific written approval to each project in a document describing the project and location separate from the interlocal contract? (F, S, I)

VTCA Government Code, Chapter 2251 – Payment for Goods and Services

63. Does the government have written procedures to ensure that all undisputed payments owed to suppliers on contracts executed on or after Sept. 1, 1987, are paid no later than the 30th day after the date the goods or services are received (45 days if the governing body meets only once a month), or the date the invoice is received, whichever is latest? (F, S, I)
64. On payments disputed because of errors on the invoices, does the government have a procedure for notifying the vendor of the alleged error no later than the 21st day after the date on which the invoice is received? (F, S, I)
65. In cases where an exception to the Prompt Payment Act is claimed, is it only because:
- a. there is a dispute between the political subdivision and a vendor, contractor, subcontractor or a supplier concerning the supplies, materials or equipment delivered or the performance of services that causes the payment to be late; (F, S, I)
 - b. there is a dispute between the vendor and a subcontractor or between a subcontractor and its supplier concerning the delivery of supplies or materials or the performance of services that causes the payment to be late; (F, S, I)
 - c. the terms of a federal contract, grant regulation or statute prevent the government from making a timely payment; or (F, S, I)
 - d. the invoice is not mailed to the addressee in strict accordance with instructions on the purchase order covering the payment? (F, S, I)

- 66. Do purchase orders issued by the government clearly specify the office where invoices must be received prior to when the 30- or 45-day period begins? (F, S, I)
- 67. On undisputed invoices or invoices where the dispute is resolved in favor of the vendor, where the payment is not made within the required period of time, does the government automatically add one percent per month interest to the amount due? (F, S, I)

VTCA Government Code, Chapter 2252, Subchapter A – Nonresident Bidders

- 68. If bids are received from bidders with a principal place of business not in Texas, does the government require that their bids be lower than bids from Texas bidders by the same amount that a Texas bidder would be required to underbid a nonresident bidder in that state? (F, S, I)

VTCA Government Code, Chapter 2252, Subchapter B – Interest on Retained Public Works Contracts

- 69. On contracts exceeding \$400,000 for which the government retains more than 5 percent of the payment to ensure performance, does the government deposit the retainage into an interest-bearing account and pay the earnings to the contractor upon completion of the contract? (F, S, I)

VTCA Government Code, Chapter 2253 – Public Works Performance and Payment Bond

- 70. For public works contracts exceeding \$25,000, does the contract require a bond for payment of labor and materials by the contractor and subcontractors? (F, S, I)
- 71. For public works contracts exceeding \$100,000, does the contract require a bond to guarantee faithful performance of the contract? (F, S, I)

VTCA Government Code, Chapter 2254, Subchapter A – Professional and Consulting Services

- 72. Does the government have procedures other than sealed competitive bidding to contract for professional services based on the professionals' qualifications and demonstrated competence? (F, S, I)
- 73. For professional architectural or engineering services, does the government negotiate a contract with the professional or firm at a fair price, and if unable to do so, does the government proceed to the next most-qualified professional, until a contract is negotiated? (F, S, I)

VTCA Human Resources Code, Chapter 122 – Texas Council on Purchasing from People with Disabilities

74. Does the government consider purchasing products produced by the blind and severely disabled under this program, for which no competitive bidding is required? (F, S, I)

Worker's Compensation Agency Rule 110.110

75. Does the bid/contract have the required language regarding the availability of workers compensation? (F, S, I)

PART 7 - LEGAL REQUIREMENTS FOR CITIES

VTCA Local Government Code Chapter 252 – Purchasing and Contracting Authority of Municipalities

1. With the exception of exempted procurements or high technology procurements, are all proposed contracts submitted for sealed competitive bids if the contracts are for \$25,000 or more? (F, S, I)
2. With the exception of exempted procurements, are all proposed contracts for high technology submitted for sealed competitive proposals if the contracts are for \$15,000 or more? (F, S, I)
3. For all expenditures of more than \$3,000 but less than \$25,000, does the city contact at least two disadvantaged businesses from the county on a rotating basis from a list provided by the Office of Small Business Assistance of the Comptroller? If no disadvantaged businesses are identified by the list, the city is exempt from this requirement. (F, S, I)
4. Are all separate, sequential and/or component purchases of items ordered or purchased each fiscal year treated as a single purchase? (F, S, I)
5. Are notices of proposed contracts published at least once a week in a newspaper of general circulation in the city, with the first publication at least 14 days prior to the date of bid opening; or if no such newspaper exists, are they posted at a prominent place at the city hall for at least 14 days prior to the opening? (F, S, I)
6. If the safety record of bidders is considered in determining their responsibility, has the city adopted a written definition and criteria for determining the safety record and does the specification contain notice that safety will be a consideration? (F, S, I)
7. Is the lowest-cost, most-responsible bidder awarded the contract? (F, S, I)
8. If not, are all bids rejected? (F, S, I)

9. On contracts for public works, does the city require the bidder to furnish the municipality with a performance bond for the amount of the contract before work on the contract begins? If the contract is made without compliance with this chapter, it is void and the performance of the contract, including the payment of any money under the contract may be enjoined by: any property tax-paying resident of the municipality; or a person who submitted a bid for a contract for which the competitive sealed bidding requirement applies, regardless of residency, if the contract is for the construction of public works. (F, S, I)
10. For cities seeking competitive sealed proposals, is the same notice given as for competitive sealed bids? (F, S, I)
11. Do the requests for proposals specify the relative weight given the evaluation factors used to award the contract? (F, S, I)
12. Are contracts awarded in this manner given to the most-responsible bidder whose proposal is the highest-rated proposal using the weighted evaluation factors? (F, S, I)
13. If provided in the request for proposals, are proposals opened without disclosing their contents to other bidders and kept secret during the negotiation process? (F, S, I)
14. After a contract is awarded, are all proposals opened for public inspection, except those that contain trade secrets and confidential information? (F, S, I)
15. Are discussions held with all bidders who are reasonably qualified for selection? (F, S, I)
16. Are all officials aware that any contract that conflicts with the provisions of the act is void and not enforceable in any court? (F, S, I)
17. Do contracts state that the unit price basis stated and? quantities listed are approximate, and payment will be for the actual quantity received? (F, S, I)
18. Does the governing body approve changes that increase the cost of the contract when provisions for payment are made, either by appropriating other available funds or by authorizing the issuance of time warrants? (F, S, I)
19. When bonds are issued for payment of a contract, and when at least 10 percent of the qualified voters petition for a bond election, does the governing body award the contract after the bonds are authorized by a majority of the voters? (F, S, I)
20. Are municipal officials informed that a municipal officer or employee who intentionally:
 - a. violates this act commits a Class C misdemeanor; (F, S, I)

- b. violates the competitive bidding requirements commits a Class B misdemeanor; (F, S, I) or
- c. makes or authorizes separate, sequential and/or component purchases in order to avoid the competitive bidding requirements commits a Class B misdemeanor that will result in removal from office if convicted? (F, S, I)

PART 8 - LEGAL REQUIREMENTS FOR COUNTIES

VTCA Local Government Code, Chapter 262, Subchapter B – Purchasing Agents

- 1. If an appointing board appoints a purchasing agent for the county, does the purchasing agent execute a bond for \$5,000 payable to the county for the faithful performance of his or her duties? (F, S, I)
- 2. Does he or she make all purchases for the county except those subject to competitive bidding? (F, S, I)

NOTE: The purchasing agent must supervise competitive bids.

- 3. Does the purchasing agent file an inventory of all of the county's property with the county auditor and each member of the board that appoints the purchasing agent each July 1? (F, S, I)
- 4. Does the purchasing agent, with the approval of the commissioners court, transfer supplies, materials and equipment unneeded by a department to those that need the materials, and furnish the county auditor with a list of materials transferred? (F, S, I)

VTCA Local Government Code, Chapter 262, Subchapter C – Competitive Bidding for Counties

- 5. Are all non-exempt purchases of one or more items under a contract exceeding \$25,000 subject to:
 - a. competitive sealed bidding; (F, S, I) and
 - b. competitive sealed proposals if the procurement is a high-technology item or insurance? (F, S, I)

NOTE: Purchases of supplies, materials and equipment by counties under the Court/Engineer System (VTCS Article 6702-1, Section 3.211) must be bid at any amount, except, on recommendation of the county engineer and approval by the commissioners court, purchases not exceeding \$15,000 made through negotiation by the commissioners court or authorized representative. The exemptions under Chapter 262 apply.

- 6. Are contracts of \$25,000 or more paid through certificates of obligation subject to competitive bidding? (F, S, I)

NOTE: All items purchased from certificates of obligation that exceed \$25,000 must be bid. The exemptions under Chapter 262 do not apply.

7. Are all separate, sequential and/or component purchases of items ordered or purchased each fiscal year treated as a single purchase? (F, S, I)
8. When items are exempted from competitive bids because there's only one source, does the commissioners court:
 - a. require a signed statement from the authorizing official that only one source for procurement exists; (F, S, I) and
 - b. enter into its minutes a statement to that effect? (F, S, I)
9. Are notices of proposed bids published at least once a week in a newspaper of general circulation in the county, with the first publication at least 14 days prior to the date of bid opening; or if no such newspaper exists, are they posted at a prominent place at the courthouse at least 14 days prior to the opening? (F, S, I)
10. Do the notices contain:
 - a. specifications or say where specifications may be obtained; (F, S, I)
 - b. the time and place for receiving, opening and reading aloud bids and the person to whom bids are to be sent; (F, S, I)
 - c. lump sum or unit pricing to be used; (F, S, I)
 - d. the method of payment the county will use; (F, S, I)
 - e. the type of bond required by the bidder; (F, S, I) and
 - f. a statement of the maximum amount of time warrants indebtedness, the rate of interest on the time warrants and their maximum maturity date, if any part of the payment will be made by time warrants? (F, S, I)
11. If the bids are for earth-moving, material-handling, road maintenance or construction equipment, does the county request information about repair costs, maintenance or the trade-in value of the equipment? (F, S, I)
12. Are bids opened and read aloud by the county's purchasing official on the date specified in the notice? (F, S, I)
13. Are opened bids kept on file and available for inspection? (F, S, I)
14. After opened bids are presented to the commissioners court, is the bid awarded to:
 - a. all the lowest and most responsible bidders, if the bids are for a contract to supply road construction material and there are two or more lowest and most responsible bidders, and if the commissioners court chooses to award the contract to them; (F, S, I) or
 - b. if not for road materials, the lowest and most responsible bidder? (F, S, I)
15. If the safety record of bidders is considered when determining their level of responsibility, has the county adopted a written definition and criteria for determin-

- ing the safety record, and does the specification contain notice that safety will be a consideration? (F, S, I)
16. If the bids are for earth-moving, material-handling, road maintenance or construction equipment and the bid notices called for this information, does the commissioners court consider the costs of repair, maintenance and trade-in value when determining the lowest and best bid? (F, S, I)
 17. Except for road materials, if two or more identical lowest and best bids are submitted by responsible bidders, does the county judge cast lots to select the one bidder to receive the contract? (F, S, I)
 18. If not, are all bids rejected and the bidding process reopened with a new notice? (F, S, I)
 19. If a bid is awarded to a bidder who is not the lowest bidder meeting specifications, is each lower bidder notified and given an opportunity to appear and present evidence of responsibility? (F, S, I)
 20. If a purchase is based on unit prices, is the compensation based on the quantities purchased? (F, S, I)
 21. If a valid petition of the registered voters of the county is properly presented protesting the issuance of time warrants, are the time warrants issued after they are approved at a proper county bond election? (F, S, I)
 22. If competitive proposals are used for the purchase of insurance or high technology items, is public notice given in the same way it would be for competitive bids? (F, S, I)
 23. For competitive proposals, is the relative importance of price and other evaluation factors specified in the request for proposals? (F, S, I)
 24. Is the award made to the responsible bidder, whose proposal is determined to be the lowest offer resulting from negotiation, taking into consideration the specified factors? (F, S, I)
 25. If so provided, are proposals opened in a manner that avoids content disclosure and kept secret during negotiations? (F, S, I)
 26. After awarding of the contract, are all proposals open to the public, except trade secrets and confidential information? (F, S, I)
 27. If changes to plans, specifications or proposals become necessary after the contract is made, are the increases in cost paid only from available funds? (F, S, I)

28. With the exception of changes mandated by state or federal law or court decision, are increases in contract prices due to changes approved by the court or by an employee given general authority by the court to approve changes of \$15,000 or less restricted to 25 percent or less? (F, S, I)
29. Are contract prices decreased by 18 percent or more only with the consent of the contractor? (F, S, I)
30. If the contract is for construction of public works or exceeds a cost of \$100,000, does the government consider requiring the bidder to furnish a bid bond of 5 percent of the contract price? (F, S, I)
31. On contracts exceeding \$50,000, does the bidder furnish the county with a performance bond for the amount of the contract within 10 days of signing the contract or issuance of the purchase order? This subsection does not apply to a performance bond required under VTCA Government Code Chapter 2253. (F, S, I)
32. If provided by the county in the bid notice for contracts of \$50,000 or less, does the contract state that no money will be paid until completion and acceptance of the work or fulfillment of the purchase obligation? (F, S, I)
33. Does the successful bidder furnish the county a bond to cover the repurchase costs of heavy road equipment? (F, S, I)
34. Are county officials informed that any citizen of the county who pays property taxes may enjoin contracts not in compliance with this act? (F, S, I)
35. In counties with a population greater than 225,000, has the auditor certified the availability of funds required under VTCA Local Government Code §111.093(c)? (S, I)
36. Are county officials informed that a county officer or employee who intentionally:
 - a. violates this Act commits a Class C misdemeanor; (F, S, I)
 - b. violates the competitive bidding requirements of this Act (Sec. 3) commits a Class B misdemeanor; (F, S, I) or
 - c. makes or authorizes separate, sequential and/or component purchases to avoid competitive bidding requirements commits a Class B misdemeanor, which will result in removal from office on final conviction? (F, S, I)

VTCA Local Government Code, Chapter 263, Subchapter D – Disposition of Salvage or Surplus Property

37. If the county wants to dispose of salvage or surplus property, does it sell it at auction, by competitive bid, or offer it as a trade-in on the same type of new property? (F, S, I)

38. If the surplus or salvage property to be sold is earth-moving, material-handling, road maintenance or construction equipment, and the contract provided a repurchase agreement covering the equipment, does the commissioners court consider the repurchase amount to be a bid under the competitive bids or auction required above? (F, S, I)
39. If a county commissioners court sells the county salvage or surplus materials by competitive bid or auction, does it publish a notice of the sale in at least one newspaper of general circulation in the county at least 10 days but not more than 30 days prior to the sale? (F, S, I)
40. Are records kept of each item sold and its sales price? (F, S, I)
41. Are the proceeds from the sale of surplus or salvage items deposited in the county treasury to the account of:
 - a. the fund from which the property was purchased; (F, S, I)
 - b. the general fund; (F, S, I) or
 - c. the road and bridge fund, if the item was used for maintenance or construction of county roads or bridges? (F, S, I)
42. If such property cannot be sold because it is worthless and is destroyed by order of the county commissioners court, are records kept of each destroyed item? (F, S, I)
43. If such property cannot be sold because it is worthless and is donated to a civic or charitable organization in the county, are records kept of each donated item? (F, S, I)

Transportation Code §252.312 – County Road Department System; Competitive Bidding

44. Does the county road engineer prepare all specifications and estimates for purchases of materials, supplies and equipment for the county road department? (F, S, I)
45. Except for purchases of less than \$25,000, which may be made by negotiation if the commissioners court approves the road engineer's recommendation, does the county competitively bid purchases of materials, supplies and equipment for the county road department? No exemptions under other statutes apply to these purchases. (F, S, I)

PART 9 - LEGAL REQUIREMENTS FOR CITIES AND COUNTIES

VTCA Local Government Code, Chapter 271, Subchapter A – Public Property Finance Act

1. If a government contracts for the use, acquisition or purchase of property on an installment purchase, lease or lease option basis, or engages in another contract including an obligation for periodic payments extending for more than one budget period, does the government submit the contracts to the county attorney? (F, S, I)

2. On those contracts, is the interest rate equal to or less than the interest rate at which public securities may be issued in accordance with Article 717K.2 of Vernon's Texas Civil Statutes? (F, S, I)
3. On contracts of \$100,000 or more including principal and interest, does the government consider submitting the contract to the attorney general? (F, S, I)
4. Is the contract registered with the Comptroller of Public Accounts, if the attorney general approves it? (F, S, I)
5. Are all contracts enacted under the provisions of this Act for 25 years or less? (F, S, I)

VTCA Local Government Code, Chapter 271, Subchapter B – Competitive Bidding on Certain Public Works Contracts

6. If the government awards a contract exceeding \$15,000 covered by this Act by competitive bidding, does it advertise that bids will be taken? (F, S, I)
7. Does the advertising for bids include:
 - a. a description of the work; (F, S, I)
 - b. the location where bidding documents, specifications or other data may be examined by bidders; (F, S, I)
 - c. the place and time for submitting bids; (F, S, I)
 - d. the place and time bids will be opened; (F, S, I) and
 - e. the method of payment? (F, S, I)
8. Are the advertisements published as required by the statute under which the bid was issued? (F, S, I)
9. If legal requirements for advertising do not apply under other statutes, are the advertisements published twice or more in a newspaper of general circulation in the county or counties in which the work is to be performed? (F, S, I)
10. Is the second publication no later than the 10th day prior to the first day on which bids may be submitted? (F, S, I)
11. Does the government mail notices containing the information described in question six to any organization that:
 - a. requests in advance that notices for bids be sent to it; (F, S, I)
 - b. agrees in writing to pay the actual costs of mailing the notice; (F, S, I) and
 - c. certifies that it circulates notices of bids to the construction trade in general? (F, S, I)
12. If so, are such notices mailed no later than the date on which the first newspaper advertisement required is published? (F, S, I)

13. If an award is given to a firm other than the lowest bidder, is each lower bidder given notice and an opportunity to meet with the governing body and give evidence concerning the bidder's level of responsibility? (F, S, I)

VTCA Local Government Code, Chapter 271, Subchapter C – Certificate of Obligations Act

14. If the government authorizes certificates of obligation to pay contractual obligations, does it limit the amount of the certificate to the amount of the contractual obligation plus no more than 25 percent to allow change orders? (F, S, I)
15. If certificates of obligation are issued, does the notice to bidders state that the certificates must be accepted in payment, or that the governing body has made provisions to sell and assign any certificates issued? (F, S, I)
16. Is each bidder required to accept the certificates as payment or assign the certificates in accordance with the arrangements? (F, S, I)
17. Are all contracts for more than \$25,000 where certificates of obligation are issued first submitted for competitive bids? (F, S, I)
18. Are notices of contracts published once a week for two consecutive weeks in a newspaper of general circulation in the city or county, beginning at least 14 days prior to the date set for the receipt of bids? (F, S, I)
19. If the contract requires changes that increase the total cost, are changes limited to 25 percent of the original contracted price? (F, S, I)
20. If the contract requires changes that reduce the total cost by more than 25 percent, does the city or county obtain the consent of the contractor? (F, S, I)
21. If certificates are sold for cash rather than given to the contractor in payment, are the proceeds used only for the purpose for which the certificates were authorized? (F, S, I)
22. If certificates have been sold and the proceeds deposited until payments are due, is all interest earned deposited to the interest and sinking fund established to pay for the certificates? (F, S, I)

VTCA Local Government Code, Chapter 271, Subchapter D – State Cooperation in Local Government Purchasing Programs

23. If the government participates in the purchasing program of the Comptroller, does it:
 - a. adopt a one-time resolution requesting to do so; (F, S, I)
 - b. designate an official to act for it in all matters relating to the program; (F, S, I)
 - c. state that the governing body will direct the decisions of the representative; (F, S, I)

- d. agree to be responsible for payment directly to the vendor; (F, S, I)
 - e. agree to be responsible for enforcing the vendor's compliance with all conditions of delivery and quality; (F, S, I) and
 - f. pay the annual fee for participating in the program? (F, S, I)
24. Has the government adopted procedures to efficiently monitor the orders from state contracts? (F, S, I)

VTCA Local Government Code, Chapter 271, Subchapter Z §271.901 – Procedures for Awarding Contract if Municipality or District Receives Identical Bids

25. Does the municipality or district select one bidder to receive the contract by casting lots, if the lowest responsible bidders submit two or more identical bids? (F, S, I)
26. If not, are all bids rejected? (F, S, I)

VTCA Local Government Code, Chapter 271, Subchapter Z §271.902 – Prohibition of Conflicts of Interest in Purchases

27. If the government purchases items from a cooperative association to which any member of the governing body or of an appointed board or commission belongs, does it ensure that the member will not receive any benefit except an increase in dividends distributed to all members of the cooperative association? (F, S, I)

VTCA Local Government Code, Chapter 271, Subchapter Z §271.903 – Commitment of Current Revenues

28. If a contract is for the acquisition of real or personal property including leases, does it retain the right to the governing body of a local government to terminate the contract at the end of any fiscal period during the term of the contract? (F, S, I)
29. Does a member of a local government's governing body always file an affidavit stating the nature and extent of any interest in a business entity or real property on which the governing body is discussing or voting on, including contracts for the purchase of goods or services? (F, S, I)
30. Do members of the governing body file affidavits of similar interests in the same official action? (F, S, I)
31. On budget items specifically dedicated to a contract with a business entity in which a member has a substantial interest, does the member abstain from discussion or a separate vote on the items? (F, S, I)
32. Does the member participate in the final vote on the budget if it complies with the provisions of Chapter 171, and the matter in which the member is concerned is resolved? (F, S, I)

PART 10 – CONSTITUTIONAL REQUIREMENTS

1. If a contract that crosses fiscal years does not have a clause allowing termination for failure to fund, does the contract have a provision that commits to establishing a tax sufficient to pay the obligation? (F, S, I)
2. Does the contract state that the governmental entity does not indemnify the other party? (F, S, I)
3. If the contract allows for the government entity to indemnify the other party, does the contract have a provision that commits to establishing a tax sufficient to pay the obligation? (F, S, I)
4. Does the government contract with private organizations to perform government duties and services? (F, S, I)
5. Does the government have the authority to perform the service covered by the contract? (F, S, I)
6. Did the governing body find that a public purpose was served by the contract? (F, S, I)
7. Does the agreement include sufficient terms and performance measures to ensure the public purpose will be met? (F, S, I)
8. Are such agreements renewed annually? (F, S, I)
9. Do such agreements note that contracted services will be paid from current revenues? (F, S, I)⁵³

Appendices

Appendix 1: Index of Attorney General's Opinions Listed by Date

Appendix 2: Index of Attorney General's Opinions by Topic

Appendix 3: Index of Open Records Decisions

Appendix 4: Texas County and Municipal Procurement Laws

Appendix 1: Index of Attorney General's Opinions Listed by Date

AG OP. No.	Date	Subject
V-285	07/30/47	Whether county auditor may pay claim for purchases when they were not properly bid.
M-955	09/17/71	County auditor has no authority to require auditor's approval on requisitions or purchase orders.
H-977	04/08/77	County purchases requiring requisitions.
H-1019	06/23/77	County contracting with city to pave parking lot.
H-1086	11/07/77	Rejecting low bid because bidder was non-resident.
H-1219	07/28/78	Restricting award to unionized company.
H-1237	09/05/78	County paying claim on purchase without purchase order.
H-1262	11/15/78	County purchasing through a council of governments.
MW-91	11/29/79	City contracting with developer without competitive bids.
MW-139	02/06/80	County prohibiting purchase of foreign-made items.
MW-296	03/05/81	Negotiating contract terms prior to accepting bid.
MW-299	03/09/81	County taking bid, escalation clause not in specifications.
MW-344	05/29/81	Personal or professional services exemption from bids.
MW-439	02/03/82	Competitive bidding requirements. Affirmed by JM-967 (1988).
MW-469	05/14/82	Requirement for competitive bids in sheriff's expenditures for narcotics investigation.
MW-516	09/14/82	Whether assets purchased for one department may be transferred to another.
MW-530	12/23/82	Personal or professional services exemption from bids.
MW-535	12/22/82	Procedure when statutes apparently conflict.
JM-186	08/06/84	Affidavit required under V.T.C.S. Art. 2367. (Outdated)
JM-208	10/12/84	County purchasing agent rewriting specifications approved by the commissioners court.
JM-385	12/02/85	Competitive bid exemption for products under Chapter 122, Human Resources Code.
JM-444	02/21/86	Competitive bid exemption for products under Chapter 122, Human Resources Code.
JM-449	03/13/86	County leasing courthouse space.
JM-486	04/25/86	Personal or professional services exemption from bids.
JM-524	07/17/86	Whether purchases by county health district must be made by the county purchasing agent.
JM-616	01/08/87	Constitutionality of bidding preferences against out-of-state bidders under V.T.C.S. Art. 601g.
JM-696	05/14/87	Definition of "principal place of business" for purposes of V.T.C.S. Art. 601g.
JM-697	05/14/87	County using lease-purchase to construct jail.
JM-702	05/19/87	County auditor's authority to audit jail commissary fund.
JM-712	05/28/87	Bidding preferences against out-of-state bidders under V.T.C.S. Art. 601g; applicability to Arkansas statute.

Appendix 1: Index of Attorney General's Opinions Listed by Date

AG OP. No.	Date	Subject
JM-725	06/24/87	County departments purchasing their own supplies.
JM-726	06/24/87	Competitive bidding on property obtained through the Texas Surplus Property Agency.
JM-753	07/20/87	County furnishing rent-free space to chamber of commerce.
JM-783	09/08/87	Authority of sheriff to purchase for jail operations.
JM-800	09/29/87	Construction of a jail as "personal property" using lease purchases.
JM-841	01/11/88	Whether peace officers of an institute of higher education must deliver abandoned and unclaimed property to the county purchasing agent.
JM-846	01/19/88	Conflict of interest — whether a city council member who has a substantial interest in the entity may vote on questions of payment of bills.
LO-88-23	02/24/88	Competitive Bids — Whether competitive bids are required on purchase of rock for \$3,017.98.
JM-881	04/01/88	Whether a county can require a contractor's employees to perform a percentage of work on a contract.
JM-890	04/11/88	Whether contract for microfilming is subject to competitive bidding.
LO-88-48	05/02/88	Competitive Bids: Whether competitive bidding under section 252.021 of the Local Government Code applies to the payment of service and handling charges assessed by the Texas Property Disposal Agency.
JM-891	04/12/88	Whether a 911 district may contract to provide 911 services to another jurisdiction.
JM-899	05/10/88	Disposition of vehicles forfeited under the Controlled Substances Act.
JM-908	05/23/88	Whether a county may contract for solid waste disposal services with a privately owned incinerator.
JM-940	08/17/88	Personal or professional services: contracting with a construction management consultant. Superseded by JC-0224(2000).
LO-88-112	09/30/88	Interpretation of law: Whether the provisions of the County Purchasing Act apply to purchases made with funds generated by forfeitures under §5.08 of Art. 4476-15 V.T.C.S. Modified by DM-246 (1993).
JM-967	10/20/88	Competitive bidding requirements on purchases from the "hot check fund." Affirmed MW-439.
JM-974	10/28/88	Competitive bidding in counties with a purchasing agent.
LO 88-126	12/01/88	Conflict of interest: whether the Karnes County auditor may sell road materials to Karnes County.
LO-89-05	01/23/89	Interpretation of law: whether the county may use its equipment, materials and labor to construct a driveway on the commissioner's property to facilitate the storage of county equipment and machinery on the commissioner's property.
LO-89-11	02/03/89	Conflict of interest: whether the Karnes County auditor may sell road materials to Karnes County. (Revised)
JM-1027	03/16/89	Whether certain county road contracts must be competitively bid under the court/engineer system.
LO-89-30	03/23/89	Whether Local Government Code Chapter 262 applies to purchases made with funds generated by forfeitures under §5.08, Art. 4476-15 V.T.C.S. (now Chapter 59, C.C.P.); and whether the funds are to be deposited in the county treasury. Modified by DM-246 (1993).
JM-1038	04/07/89	Personal or professional services: whether a third-party administrator of an insurance contract is a "professional" for purposes of exemption from competitive bidding.
JM-1043	05/01/89	Whether a commissioners court may enter into a lease with option to extend.

AG OP. No.	Date	Subject
JM-1044	05/12/89	Authority of commissioners court to designate a new area of the county courthouse for sales of real property.
LO-89-68	08/30/89	Competitive bids: whether a county must comply with the competitive bidding statute to purchase used machinery or equipment.
LO-89-75	10/02/89	Who is authorized to appoint the purchasing agent.
JM-1121	12/20/89	Authority of a sheriff to contract regarding the jail commissary without consulting the county purchasing agent. (Counties under 200,000 population)
JM-1136	01/29/90	Whether the county attorney comes under a provision of Local Government Code Chap. 140 relating to county purchasing statutes: skilled carpenters come under the provisions of the "professional services" exemption of the purchasing statutes?
JM-1194	07/09/90	Disposition of vehicles forfeited under the Controlled Substances Act. When vehicles are no longer useful, they are to be sold at public auction at the direction of the county sheriff. Modified by DM-899.
JM-1189	07/24/90	Authority of a commissioners court to award "design/build" contracts for construction of public buildings on the basis of competitive bids and related questions.
JM-1218	09/10/90	Interpretation of law: authority of a local government to pay for an item purchased under a contract executed prior to the effective date of §140.003 of the Local Government Code.
JM-1220	09/13/90	Competitive bids: competitive bidding for a county vehicle maintenance building.
JM-1229	10/04/90	Interpretation of law: whether goods may be provided to patron of county prior to payment, if it accomplishes a public purpose.
JM-1232	10/09/90	Interpretation of law: whether a county may conduct a private resale of property under §34.05 of the Tax Code.
JM-1243	11/12/90	Bonds: whether performance or payment bonds are required for certain county unit price contracts.
JM-1248	11/15/90	Interpretation of law: validity of bid that does not comply with bid advertising requirements.
JM-1254	12/10/90	Competitive bids: whether awarding a contract precludes the county from making a spot purchase from another supplier.
JM-1262	12/18/90	Interpretation of law: whether a county may pay a "finder's fee" to a real estate agent for locating a purchaser for county property.
DM-4	02/22/91	Competitive Bids: whether a county may make a purchase in excess of \$10,000 without competitive bids if, after advertising, no bids are received.
DM-14	03/28/91	Competitive bids: whether competitive bidding is required to select a contractor to operate food services in a public school.
DM-70	12/18/91	Competitive bids: whether competitive bids are required for municipal purchases of excess or surplus insurance.
DM-76	01/17/92	Nepotism: whether the nepotism law applies to individuals hired as independent contractors.
DM-86	02/06/92	Contracting: responsibility of a sheriff concerning a private detention facility operated under contract with a county.
DM-88	02/06/92	Prompt payment: whether Art. 601f, V.T.C.S., pertaining to payments for goods and services contracted for by state agencies or political subdivisions, applies to construction contracts.

Appendix 1: Index of Attorney General's Opinions Listed by Date

AG OP. No.	Date	Subject
DM-106	04/20/92	Personal or professional services: whether the services of auctioneers are “professional services” for purposes of laws governing the awarding of contracts by cities and counties, and related questions.
DM-111	04/20/92	Personal or professional services: whether the county sheriff or county commissioners court has the authority to choose and schedule a physician to provide medical services to inmates incarcerated in the county jails.
DM-113	05/04/92	Competitive bids: whether the Dallas Independent School District may give favored treatment to bidders based on the bidder's residence and ownership of taxable improvements to real property in the district, and related questions.
DM-132	06/29/92	Nepotism: interpretation of the prior continuous employment provision of the nepotism statute, V.T.C.S. Art. 5996a, §1(b) (now V.T.C.S. Government Code Chapter 552), and related questions.
DM-162	09/08/92	Lost, abandoned or forfeited property: whether the provisions of article 59.06(c) of the Code of Criminal Procedure, directing that certain forfeited property be deposited in “special funds in the county treasury,” require that such funds be deposited with the county treasurer for placement in the county depository. Affirmed by DM-247.
DM-165	09/21/92	Bonds: whether a school district can require a corporate surety to be sufficiently solvent to issue bid, performance or payment bonds without reinsurance, and related questions.
LO-92-52	09/23/92	Nepotism: application of nepotism law to a contract for insurance coverage between the Central Texas College District and a corporation for which a member of the board of trustees serves as an officer and director.
LO-92-60	10/06/92	Whether a contractor on a building or construction project for a political subdivision of this state is required by article 8308-3.23 of the Workers' Compensation Act to obtain workers' compensation insurance coverage for its employees employed on the project.
LO-92-61	10/06/92	Whether a political subdivision may prevent sureties licensed under the Insurance Code from making construction bonds under Art. 5160, V.T.C.S., unless such sureties are listed on the U.S. Department of the Treasury's List of Approved Sureties.
DM-226	06/09/93	Competitive bids: whether §381.004 of the Local Government Code creates an exemption to competitive bidding requirements and related questions.
DM-234	07/12/93	Interpretation of law: construction of recent amendments to §106.001(c)(2) of the Civil Practice and Remedies Code regarding a municipality's program to increase participation by minority business enterprises in public contract awards and related questions.
DM-240	07/26/93	Conflict of interest: construction of S. B. 1342, 73rd Legislature, chapter. 964, which prohibits a school district from contracting with a business entity in which a trustee or his spouse has a “significant interest.”
DM-242	08/12/93	Competitive bids: whether an independent school district may, without violating the competitive bidding statutes, act as its own “general contractor” in letting bids for renovation and remodeling projects.
DM-246	09/03/93	Interpretation of law: whether the County Purchasing Act, §262.021-.035 of the Local Government Code applies to purchases made with funds generated by forfeitures under Chapter 59 of the Code of Criminal Procedure. Modified LO-88-112.
DM-247	10/03/93	Reaffirms the holding of AG Opinion DM-162 (1992) that the special fund created for the attorney representing the state by article 59.06 (c) (1) of the Code of Criminal Procedure must be deposited with the county treasurer for placement in the county depository.
DM-268	10/25/93	Surplus or salvage property: whether H. B. 2087, which amends Local Government Code 263.152 to authorize a county commissioners court to donate to civic or charitable organizations salvage or surplus property, violates article III, §52 of the Texas Constitution.

AG OP. No.	Date	Subject
DM-279	12/31/93	Conflict of interest: whether a concrete material company owned by a county commissioner may provide services and materials to the county or to another contractor under contract with the county.
LO-94-005	01/21/94	Whether the composition of a board established pursuant to §262.011 of the Local Government Code for the purpose of appointing a county purchasing agent must change in accordance with that section if the county's population moves above or below 150,000.
LO-94-039	04/26/94	Whether the term "child" in Government Code §573.024, which defines relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent.
LO-94-040	04/26/94	Whether the County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds pursuant to Chapter 59 of the Code of Criminal Procedure; clarification of Attorney General Opinion DM-246 (1993).
LO 94-053	06/15/94	Whether, pursuant to V.T.C.S. Art. 6702-1, §2.002(e), title to a public road that the elected members of the county commissioners court unanimously have voted to abandon automatically vests in the abutting property owners, and related questions. Overruled by GA-047(2006).
DM-331	03/10/95	Whether a city's expenditures of community development block grant funds are subject to state competitive bidding laws.
LO-95-008	03/17/95	Disposition of a municipal health authority's assets upon dissolution.
DM-347	05/04/95	Whether the Texas Education Code requires a school district to competitively bid a contract for the purchase of insurance. Superseded by DM-418 (1996).
DM-350	06/06/95	Whether purchases made by a local government through the state catalogue purchasing procedure must be competitively bid.
LO-95-066	10/30/95	Whether a sale or lease of county airport real property is subject to the public auction requirements or the sealed bid or sealed proposal requirements of Chapter 263 of the Local Government Code.
LO-96-053	05/23/96	Whether a lease-purchase agreement between a county and an appraisal district falls under §292.001 or Chapter 263 and §272.001 of the Local Government Code.
DM-418	09/23/96	Whether §44.031 of the Education Code changes the conclusion reached in Attorney General Opinion DM-347.
LO-97-091	10/10/97	Whether Code of Criminal Procedure Art. 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles by sheriff's auction or whether such property must be disposed as surplus county property pursuant to Local Government Code §263.152.
LO-97-109	12/10/97	Whether a constable may purchase a police-equipped vehicle for both personal use and official duties from a dealer that has contracted with the state to sell vehicles under the State Purchasing and General Services Act
LO-98-082	09/28/98	The meaning of the phrase "fair market value of the land" in Local Government Code §272.001(h), and related questions.
LO-98-115	12/02/98	Whether the provisions of Local Government Code §262.011 apply to a county that has employed a purchasing agent under §262.0115.
JC-0005	02/26/99	Purchase of vehicles by Laredo Police Department with forfeiture funds received pursuant to Art. 59.06(c) of the Code of Criminal Procedure.
JC-0075	07/06/99	Permissible methods of disposing of property forfeited to the state under Chapter 59 of the Code of Criminal Procedure.
JC-0104	09/01/99	Whether a county may exchange surplus property for non-monetary consideration.

Appendix 1: Index of Attorney General's Opinions Listed by Date

AG OP. No.	Date	Subject
JC-0136	11/03/99	Whether a contract for ambulance service may be exempt from competitive purchasing requirements in the County Purchasing Act.
JC-0205	04/04/00	Whether a junior college district may procure insurance using a designated broker of record.
JC-0206	04/12/00	Whether the County Purchasing Act, Local Government Code Ann. §§262.021-.035 (Vernon 1999 & Supp. 2000), applies to the purchases of a local government corporation created by a county under subchapter D, chapter 431 of the Transportation Code.
JC-0224	05/22/00	A school district may not under the Professional Services Procurement Act contract for "guaranteed program services" that include both construction manager-at-risk and architect and engineering services to be rendered by a single "program manager."
JC-0264	08/07/00	Whether the Parker County Commissioners Court is authorized to hire an employee to perform purchasing duties in the absence of a purchasing agent appointed pursuant to §262.011 of the Local Government Code, and related questions.
JC-0266	08/07/00	Responsibility for enforcement of the Professional Services Procurement Act.
JC-0281	08/07/00	Whether a municipality must competitively bid a contract with a temporary day labor agency.
JC-0319	12/22/00	Whether a county commissioners court may condition the acceptance of bids for county public works project on attendance at a mandatory pre-bid conference.
JC-0335	01/22/01	Applicability of various state statutes to local government corporations created under chapter 431 of the Transportation Code.
GA-047	10/23/06	To the extent that Letter Opinion 94-053 suggests that Local Government Code section 263.002 applies only to roads labeled as highways, not to county public roads generally, it is incorrect. See Tex. Attorney Gen. LO-94-053, at 4 n.4.

Appendix 2: Index of Attorney General's Opinions by Topic

ACCEPTING/AWARDING BIDS

AG OP. No.	Date	Subject
MW-296	03/05/81	Negotiating contract terms prior to accepting bid.
MW-299	03/09/81	County taking bid, escalation clause for price increases not in specifications.
DM-350	06/06/95	Whether purchases made by a local government through the state catalogue purchasing procedure must be competitively bid.
JC-0136	11/03/99	Whether a contract for ambulance service may be exempt from competitive purchasing requirements in the County Purchasing Act.
JC-0319	12/22/00	Whether a county commissioners court may condition the acceptance of bids for county public works project on attendance at a mandatory prebid conference.

AUDITING

AG OP. No.	Date	Subject
JM-702	05/19/87	County auditor's authority to audit jail commissary fund.

BID PREFERENCES

AG OP. No.	Date	Subject
H-1086	11/07/77	Rejecting low bid because bidder was non-resident.
H-1219	07/28/78	Restricting award to unionized company.
MW-139	02/06/80	County prohibiting purchase of foreign made items.
MW-439	02/13/82	Competitive bidding requirements. Affirmed by JM-967.
JM-616	01/08/87	Constitutionality of bidding preferences against out-of-state bidders under V.T.C.S. Art. 601g.
JM-696	05/14/87	Definition of "principal place of business" for purposes of V.T.C.S. Art. 601g.
JM-712	05/28/87	Bidding preferences against out-of-state bidders under V.T.C.S. Art. 601g; applicability to Arkansas statute.

BONDS

AG OP. No.	Date	Subject
JM-1243	11/12/90	Whether performance or payment bonds are required for certain county unit price contracts.
DM-165	09/21/92	Whether a school district can require a corporate surety to be sufficiently solvent to issue bid, performance or payment bonds without reinsurance, and related questions.
LO-92-61	10/06/92	Whether a political subdivision may prevent sureties licensed under the Insurance Code from making construction bonds under Art. 5160, V.T.C.S., unless such sureties are listed on the U.S. Department of Treasury's List of Approved Sureties.

COMPETITIVE BIDS

AG OP. No.	Date	Subject
MW-91	11/29/79	City contracting with developer without competitive bids.
JM-208	10/12/84	County purchasing agent rewriting specifications approved by the commissioners court.
JM-726	06/24/87	Competitive bidding on property obtained through the Texas Surplus Property Agency.
LO-88-23	02/24/88	Whether competitive bids are required on the purchase of rock for \$3,017.98.
JM-881	04/01/88	Whether a county can require that a contractor's employees perform a percentage of work on a contract.
JM-890	04/11/88	Whether contract for microfilming is subject to competitive bidding.
LO-88-48	05/02/88	Whether competitive bidding under §252.021 of the Local Government Code applies to the payment of service and handling charges assessed by the Texas Property Disposal Agency.
JM-967	10/20/88	Competitive bidding requirements on purchases from the "hot check fund."
JM-974	10/28/88	Competitive bidding in counties with a purchasing agent.
JM-1027	03/16/89	Whether certain county road contracts must be competitively bid under the court/engineer system.
LO-89-68	08/30/89	Whether a county must comply with the competitive bidding statute to purchase used machinery or equipment.
JM-1121	12/20/89	Authority of a sheriff to contract regarding the jail commissary without consulting the county purchasing agent. (Counties under 200,000 population)
JM-1189	07/24/90	Whether "design/build" contracts for construction of public buildings are subject to, or prohibited from competitive bids by the Professional Services Procurement Act (V.T.C.S. Art. 664-4).
JM-1220	09/13/90	Competitive bidding for a county vehicle maintenance building.
JM-1254	12/10/90	Whether awarding a contract precludes the county from making a spot purchase from another supplier.
DM-4	02/22/91	Whether a county may make a purchase in excess of \$10,000 without competitive bids if, after advertising, no bids are received.
DM-14	03/28/91	Whether competitive bidding is required for a contractor selected to operate food services in a public school.
DM-70	12/18/91	Whether competitive bids are required for municipal purchases of excess or surplus insurance.
DM-113	05/04/92	Whether the Dallas Independent School District may give favored treatment to bidders based on the bidder's residence and ownership of taxable improvements to real property in the district, and related questions.
DM-226	06/09/93	Whether §381.004 of the Local Government Code creates an exemption to competitive bidding requirements and related questions.
DM-242	08/12/93	Whether an independent school district may, without violating the competitive bidding statutes, act as its own general contractor in letting bids for renovation and remodeling projects.
DM-331	03/10/95	Whether a city's expenditures of community development block grant funds are subject to state competitive bidding laws.
DM-347	05/04/95	Whether the Education Code requires a school district to competitively bid a contract for the purchase of insurance. Superseded by DM-418 (1996).
DM-418	09/23/96	Whether §44.031 of the Education Code changes the conclusion reached in Attorney General Opinion DM-347.
JC-0281	08/07/00	Whether a municipality must competitively bid a contract with a temporary day labor agency.

CONFLICT OF INTEREST

AG OP. No.	Date	Subject
JM-846	01/19/88	Whether a city council member with substantial interest in a business can participate in votes on bids affecting that business.
LO-88-126	12/01/88	Whether the Karnes County auditor may sell road materials to Karnes County.
LO-89-11	02/03/89	Whether the Karnes County auditor may sell road materials to Karnes County. (Revised)
DM-240	07/26/93	Construction of S. B. 1342, 73rd Legislature, Chapter 964, which prohibits a school district from contracting with a business entity in which a trustee or his or her spouse has a "significant interest."
DM-279	12/31/93	Whether a concrete material company owned by a county commissioner may provide services and materials to the county or to another contractor under contract with the county.

EXEMPTION FROM BIDS

AG OP. No.	Date	Subject
MW-344	05/29/81	Personal or professional services.
MW-439	02/03/82	Competitive bidding requirements.
MW-530	12/23/82	Competitive bid exemption for personal or professional services.
JM-385	12/02/85	Competitive bid exemption for products under Chapter 122, Human Resources Code.
JM-444	02/21/86	Competitive bid exemption for products under Chapter 122, Human Resources Code.
JM-486	04/25/86	Competitive bid exemption for personal or professional services.
JM-940	08/17/88	Competitive bid exemption for personal or professional services: contracting with a construction management consultant.
JM-1038	04/07/89	Competitive bid exemption for whether a third-party administrator of an insurance contract is a "professional" for purposes of exemption from competitive bidding.
JC-0206	04/12/00	Whether the County Purchasing Act, Local Government Code Ann. §§262.021-.035 (Vernon 1999 & Supp. 2000), applies to the purchases of a local government corporation created by a county under subchapter D, chapter 431 of the Transportation Code.

INTERLOCAL CONTRACTING

AG OP. No.	Date	Subject
H-1019	06/23/77	County contracting with a city to pave parking lot.
H-1262	11/15/78	County purchasing through a council of governments.
JM-753	07/20/87	County furnishing rent-free space to a chamber of commerce.
JM-891	04/12/88	Whether a 911 district may contract to provide 911 services to another jurisdiction.
JM-908	05/23/88	Whether a county may contract for solid waste disposal services with a privately owned incinerator.

INTERPRETATION OF LAW

AG OP. No.	Date	Subject
M-955	09/17/71	County auditor has no authority to require auditor's approval on requisitions or purchase orders.
H-977	04/08/77	County purchases requiring requisitions.
MW-516	09/14/82	Whether assets purchased for one department may be transferred to another.
MW-535	12/22/82	Procedure when statutes apparently conflict.
LO-88-112	09/30/88	Whether the provisions of the County Purchasing Act apply to purchases made with funds generated by forfeitures under §5.08 of article 4476-15 V.T.C.S.
LO-89-05	01/23/89	Whether the county may use its equipment, materials and labor to construct a driveway on the commissioner's property to facilitate the storage of county equipment and machinery on the commissioner's property.
LO-89-75	10/02/89	Who has authority to appoint the purchasing agent?
JM-1136	01/29/90	Whether the county attorney comes under a provision of Local Government Code Chap. 140 relating to county purchasing statutes: do skilled carpenters come under the provisions of the "professional services" exemption of the purchasing statutes?
JM-1218	09/10/90	Authority of a local government to pay for an item purchased under a contract executed prior to the effective date of §140.003 of the Local Government Code.
JM-1229	10/04/90	Whether goods may be provided to patron of a county prior to payment, if it accomplishes a public purpose.
JM-1232	10/09/90	Whether a county may conduct a private resale of property under §34.05 of the Tax Code.
JM-1248	11/15/90	Validity of bid that does not comply with bid advertising requirements.
JM-1262	12/18/90	Whether a county may pay a "finders fee" to a real estate agent for locating a purchaser for county property.
LO-92-60	10/06/92	Whether a contractor on a building or construction project with a political subdivision of this state is required by article 8308-3.23 of the Workers' Compensation Act to obtain workers' compensation insurance coverage for its employees employed on the project.
DM-234	07/12/93	Construction of recent amendments to §106.001(c)(2) of the Civil Practice and Remedies Code regarding a municipality's program to increase participation by minority business enterprises in public contract awards, and related questions.
DM-246	09/03/93	Whether the County Purchasing Act, §262.021-.035 of the Local Government Code, applies to purchases made with funds generated by forfeitures under chapter 59 of the Code of Criminal Procedure.
DM-247	10/03/93	Reaffirms the holding of AG Opinion DM-162 (1992) that the special fund created for the attorney representing the state by article 59.06 (c) (1) of the Code of Criminal Procedure must be deposited with the county treasurer for placement in the county depository.
LO-94-005	01/21/94	Whether the composition of a board established pursuant to §262.011 of the Local Government Code for the purpose of appointing a county purchasing agent must change in accordance with that section if the county's population moves above or below 150,000.
LO-97-109	12/10/97	Whether a constable may purchase a police-equipped vehicle for both personal use and official duties from a dealer that has contracted with the state to sell vehicles under the State Purchasing and General Services Act.
LO-98-082	9/28/98	The meaning of the phrase "fair market value of the land" under Local Government Code §272.001(h), and related question.
LO-95-066	10/30/95	Whether a sale or lease of county airport real property is subject to the public auction requirements or sealed bid or sealed proposal requirements of chapter 263 of the Local Government Code.
GA-047	10/23/06	To the extent that Letter Opinion 94-053 suggests that Local Government Code section 263.002 applies only to roads labeled as highways, not to county public roads generally, it is incorrect. See Tex. Att'y Gen. LO-94-053, at 4 n.4.

LEASING

AG OP. No.	Date	Subject
JM-449	03/13/86	County leasing courthouse space.
JM-697	05/14/87	County using lease-purchase to construct jail.
JM-800	09/29/87	Construction of a jail as "personal property" using lease-purchase.
JM-1043	05/01/89	Whether a commissioners court may enter into a lease with option to extend.
LO-96-053	5/23/96	Whether a lease-purchase agreement between an appraisal district is governed by section 292.001 or chapter 263 and §272.001 of the Local Government Code.

LOST, ABANDONED OR FORFEITED PROPERTY

AG OP. No.	Date	Subject
JM-841	01/11/88	Whether peace officers of an institute of higher education must deliver abandoned and unclaimed property to the county purchasing agent.
M-899	05/10/88	Disposition of vehicles forfeited under the Controlled Substances Act.
LO-89-30	03/23/89	Whether provisions of the County Purchasing Act apply to funds derived from forfeitures under the Controlled Substances Act. (Letter Opinion)
JM-1194	07/09/90	Modified by DM-899. Disposition of vehicles forfeited under the Controlled Substances Act. When vehicles are no longer useful, they are to be sold at public auction at the direction of the county sheriff.
DM-162	09/08/92	Whether the provisions of article 59.06(c) of the Code of Criminal Procedure, directing that certain forfeited property be deposited in "special funds in the county treasury," require that such funds be deposited with the county treasurer for placement in the county depository.
LO-94-040	04/26/94	Whether the County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds pursuant to chapter 59 of the Code of Criminal Procedure; clarification of Attorney General Opinion DM-246 (1993).
LO-94-053	6/15/94	Whether title to a public road that the county commissioners court unanimously have voted to abandon automatically vests in the abutting property owners.
LO-97-091	10/10/97	Whether Code of Criminal Procedure Art. 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles by sheriff's auction or whether such property must be disposed as surplus county property pursuant to Local Government Code §263.152.
JC-0005	02/26/99	Purchase of vehicles by Laredo Police Department with forfeiture funds received pursuant to Art. 59.06(c) of the Code of Criminal Procedure.
JC-0075	07/06/99	Permissible methods of disposing of property forfeited to the state under chapter 59 of the Code of Criminal Procedure.

NEPOTISM

AG OP. No.	Date	Subject
DM-76	01/17/92	Whether nepotism law applies to individuals hired as independent contractors.
DM-132	06/29/92	Interpretation of the prior continuous employment provision of the nepotism statute, V.T.C.S. Art. 5996a, §1(b) (now VTCA Government Code Chapter 552), and related questions.
LO-92-52	09/23/92	Application of nepotism law to a contract for insurance coverage between the Central Texas College District and a corporation that a member of the board of trustees serves as an officer and director.
LO-94-039	04/26/94	Whether the term "child" in Government Code §573.024, which defines relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent.

PAYING CLAIMS

AG OP. No.	Date	Subject
V-285	07/30/47	Whether a county auditor may pay claim for purchases when they were not properly bid.
H-1237	09/05/78	Whether a county may pay a claim on a purchase without a purchase order.
JM-1218	09/10/90	Authority of local government to pay for an item purchased under a contract executed prior to the effective date of §140.003 of the Local Government Code.
DM-88	02/06/92	Whether Art. 601f, V.T.C.S., pertaining to payments for goods and services contracted for by state agencies or political subdivisions, applies to construction contracts.

PERSONAL OR PROFESSIONAL SERVICES

AG OP. No.	Date	Subject
JM-940	08/17/88	Personal or professional services: contracting with a construction management consultant. Superseded by JC-0224(2000).
DM-106	04/20/92	Whether auctioneer services are "professional services" for purposes of laws governing the awarding of contracts by cities and counties, and related questions.
DM-111	04/20/92	Whether the county sheriff or the county commissioners court has the authority to choose and schedule the physician to provide medical services to inmates incarcerated in the county jails.
JC-0224	05/22/00	A school district may not, under the Professional Services Procurement Act, contract for "guaranteed program services" that include both construction manager-at-risk and architect and engineering services to be rendered by a single "program manager."
JC-0205	04/04/00	Whether a junior college district may procure insurance using a designated broker of record.
JC-0266	08/07/00	Responsibility for enforcement of the Professional Services Procurement Act.
JC-0335	01/22/01	Applicability of various state statutes to local government corporations created under Chapter 431 of the Transportation Code.

PURCHASING AUTHORITY

AG OP. No.	Date	Subject
MW-469	05/14/82	Requirement for competitive bids in sheriff's expenditures for narcotic's investigation.
JM-524	07/17/86	Whether purchases by a county health district must be made by the county purchasing agent.
JM-725	06/24/87	Whether county departments may purchase their own supplies.
JM-783	09/08/87	Authority of sheriff to purchase for jail operations.
LO-88-112	09/30/88	Interpretation of law: Whether the provisions of the County Purchasing Act apply to purchases made with funds generated by forfeitures under §5.08 of Art. 4476-15 V.T.C.S. Modified by DM-246 (1993).
LO-89-30	03/23/89	Whether Local Government Code Chapter 262 applies to purchases made with funds generated by forfeitures under §5.08, Art. 4476-15 V.T.C.S. (now Chapter 59, C.C.P.); and whether the funds are to be deposited in the county treasury. Modified by DM-246 (1993).
JM-1121	12/20/89	Authority of a sheriff to contract regarding the jail commissary without consulting the county purchasing agent. (Counties under 200,000 population)
DM-86	02/06/92	Responsibility of a sheriff concerning a private detention facility operated under contract with a county.

SURPLUS OR SALVAGE PROPERTY

AG OP. No.	Date	Subject
DM-246	09/03/93	Interpretation of law: whether the County Purchasing Act, §262.021-.035 of the Local Government Code applies to purchases made with funds generated by forfeitures under Chapter 59 of the Code of Criminal Procedure. Modified LO-88-112.
DM-268	10/25/93	Whether H.B. 2087, which amends Local Government Code §263.152 to authorize a county commissioners court to donate to civic or charitable organizations salvage or surplus property, violates article III, §52 of the Texas Constitution.
LO-95-008	03/17/95	Disposition of a municipal health authority's assets upon dissolution.
JC-0104	09/01/99	Whether a county may exchange surplus property for non-monetary consideration.

Appendix 3: Index of Open Records Decisions

ORD No.	Date	Subject
ORD-170	07/26/77	Release of bids under the Open Records Act: information for insurance company bids for Employees Group Insurance Program was included in bids, and negotiations evaluation conferences were still under way.
ORD-171	07/28/77	Whether comparative evaluation of hospital beds and related furnishings are public under the Open Records Act. Information was used in formulating the specifications and bidding requirements.
ORD-184	01/09/78	Whether a transportation company's plan of operations filed with a bid for a transportation contract is public information.
ORD-232	12/27/79	Whether construction contract bids is public information after the contract is awarded; definitions of "Trade Secrets."
ORD-306	02/01/82	Whether a winning telecommunications consulting firm proposal is public information. Contained lists of personnel, resumes and an operational systems concept statement.
ORD-453	12/31/86	Whether the identities of persons who receive bid packets is public information. The bid was for a sale of tracts of land that were not sold and upon which bidders might bid at a later sale.
ORD-509	10/25/88	Whether the Texas Open Records Act, Art. 6252-17a, V.T.C.S., applies to the Austin-Travis County Private Industry Council, and, if so, whether the act excepts from disclosure certain information (bid proposal) held by the council.
ORD-541	02/15/90	Whether a railroad coal transportation agreement among a city, a river authority and several railroad companies and subject to federal regulations under the Staggers Act is public under the Open Records Act.

Appendix 4: Texas County and Municipal Procurement Laws

Catalog Purchase Procedures

Government Code, Chapter 2157

This section provides that a vendor who sells or leases automated information systems to state agencies covered by the Information Resources Management Act [Government Code, Chapter 2054] shall apply to the Texas Comptroller for designation as a “qualified information systems vendor.”

The application requires certain information about the vendor, including a catalogue containing all products and services eligible for purchase by state agencies, a price list, the price to a state agency, a maintenance, repair and support plan for each eligible product or service, proof of the applicant’s financial resources and ability to perform and a guarantee that the vendor will make available equivalent replacement parts for a product sold to the state until at least the third anniversary of the date the product is discontinued.

Upon acceptance as a qualified information systems vendor, the vendor’s products may be sold direct to the state agencies from the catalogue listings.

State agencies may purchase products or services directly from the vendors under the catalogue’s terms and may negotiate additional contract terms and conditions so long as the purchase or lease is based on the best value available and is in the state’s best interests. Best value determinations include the following factors:

- the purchase price;
- the ability to easily exchange data already on hand;
- the capacity for expanding and upgrading to more advanced levels of technology;
- quantitative reliability factors;
- the level of training required to bring persons using the system to a stated level of proficiency;
- the technical support requirements for maintaining data across a network platform and for managing the network’s hardware and software;
- the compliance with applicable Department of Information Resources statewide standards validated by criteria adopted by the department; and
- applicable factors listed in Texas Local Government Code §2155.074 and §2155.075.

A vendor designated as a qualified information systems vendor by the Texas Comptroller of Public Accounts shall publish and maintain a catalogue in the manner required by the Comptroller.

The Comptroller shall make the catalogue information available on the Internet and shall require each qualified information systems vendor to maintain its approved catalogue on the Internet. The Comptroller shall maintain the necessary databases and indexing functions through which a state agency or the public may efficiently search for and find each qualified information systems vendor's catalogue information on the Internet or on a suitable successor.

The Comptroller shall phase in the requirement that all catalogue information must be available on the Internet and shall allow or require qualified information systems vendors to publish catalogues on paper until Comptroller determines that the automated information capabilities of the state, of political subdivisions and of vendors are sufficient for the Comptroller to require that all catalogues be made available electronically. The Comptroller shall prescribe its requirements and the timing of its requirements under this section by rule.

The commission will make the catalogue purchasing procedure available to local governments that qualify for cooperative purchasing under Local Government Code, §271.082 and §271.083.

Construction of Public Works – Wage Rates

Government Code, Chapter 2258 – Prevailing Wage Rates

This statute requires paying the prevailing wage rates to laborers and mechanics employed by or on behalf of the state of Texas or any political subdivision of the state engaged in the construction of any public works. This applies both to contractors and subcontractors, but it does not apply to maintenance work.

The wage rate for these jobs shall be not less than the general prevailing rate of per diem wages for similar work in the area the work is performed and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The public body awarding the contract must ascertain the prevailing wage rates for each type of workman or craftsman in the contract and must specify the wage rates in the bid specifications and in the contract itself.

To determine the prevailing wage rate, the public body shall either conduct a survey of prevailing wages, in a manner complying with the Information Resources Management Act, or shall adopt the prevailing wage rate as determined by the U.S. Department of Labor in accordance with the Davis Bacon Act, if the survey by the U.S. Department of Labor was conducted within the last three years.

There is a penalty of \$60 per worker per day or portion of a day that the prevailing wage rate is not paid by the contractor or any subcontractor. This provision must be included

in the contract. A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract. The penalty is paid to the state, county, city with a population more than 10,000, district or other political subdivision that awarded the contract. The awarding body collecting money under this provision shall keep it to offset the costs of administering this Act.

The public body awarding the contract must investigate any complaints that the Act is not being complied with and must determine within 30 days whether good cause exists that a violation of this Act has taken place. The public body must then notify the contractor or subcontractor and the affected worker of the determination.

When paying the contractor, the public body must withhold any amounts due under the contract, pending final determination of the violation. The public body may not withhold money from anything other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated this act. The contractor has authority to withhold any penalty amounts under this section because the subcontractors did not comply with the Act.

If the contractor or subcontractor and the worker fail to resolve the alleged violation within 14 days of the determination, the matter shall be submitted to binding arbitration under the provisions of the Texas General Arbitration Act. If the parties fail to agree on an arbitrator within 10 days, an arbitrator shall be appointed by the district court on petition by either party. The arbitrator's decision shall be final.

A public body shall use any amounts retained to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the contractor or subcontractor and the amount the worker would have received at the general prevailing wage rate as provided in the arbitrator's award. If the amounts retained by a public body are not sufficient for the public body to pay the worker the full amount owed, the worker has a right of action against the contractor or subcontractor and the surety of the contractor or subcontractor to recover the amount owed, reasonable attorney's fees and court costs.

An officer, agent or representative of the state or of a political subdivision of the state commits an offense if the person willfully violates or does not comply with a provision of Government Code §2258. An offense under this section is punishable by a fine not to exceed \$500, confinement in jail for a term not to exceed six months, or both a fine and confinement.

An officer, agent or employee of a public body is not liable in a civil action for any act or omission implementing or enforcing these provisions unless the action was made in bad faith.

State Highways – Awarding Certain Contracts

Transportation Code, §223.047 – Preference for Rubberized Asphalt Paving Made From Scrap Tires

This section of the Transportation Code relates to provisions giving purchasing preferences to the use of rubberized asphalt for paving use on state facilities. It also places requirements on counties and municipalities using rubberized asphalt and gives a purchasing preference.

If the state highway department, a county or a municipality uses rubberized asphalt paving, the department, county or municipality shall use scrap tires converted to rubberized asphalt paving by a facility in this state if available.

In comparing bids submitted for road construction that require paving, the department, a county or a municipality may give preference to a bid that provides for using, as a part of the paving material, rubberized asphalt paving if the cost of that paving material does not exceed by more than 15 percent the bid cost of alternative paving materials for the same job. The materials' cost must be determined by a life-cycle cost benefit analysis.

County Road Department System – Competitive Procurement

Transportation Code, §252.312

The commissioners court shall purchase the equipment, materials and supplies for the county road department through competitive procurement conforming to estimates and specifications prepared by the county road engineer. Except that, if the county road engineer recommends and the commissioners court considers it to be in the county's best interest, a purchase in an amount of \$50,000 or less may be made through negotiation by the commissioners court or the court's authorized representative on a requisition to be approved by the commissioners court or the county auditor without advertising for competitive bids.

A purchase may not be divided or reduced to avoid the competitive procurement requirement on a purchase that would otherwise cost more than \$50,000.

Local Government Code

Chapter 140 – Miscellaneous Financial Provisions Affecting Municipalities, Counties and Other Local Governments

The 76th Legislature enacted controls on purchasing and financial reporting by "specialized local entities," which are defined as district attorneys, juvenile boards and probation departments. LGC §140.003 requires these entities to:

- abide by county purchasing statutes under Subchapter C, Chapter 262. (Such entities are given specific authority to contract with the county to perform their purchasing function.);
- prepare and file a financial statement for the previous year with the commissioners court, within 30 days after the beginning of the entity's fiscal year. This financial statement must contain "any information considered appropriate by the

specialized local entity, and any information required by the commissioners court of any county in which the entity has jurisdiction;”

- prepare and file a budget for the current year with the commissioners court, within 30 days after the beginning of the entity’s fiscal year. If the entity regularly prepares its budget at a time other than its fiscal year end, then it must file the budget with the commissioners court within 10 days of the date it is adopted; and
- deposit their funds with the county treasury of the county in which the entity has jurisdiction. If the entity has jurisdiction in more than one county, the district judges having jurisdiction in those counties shall, by majority vote, designate the county responsible for managing the entity’s funds.

The auditor of the county that manages the entity’s funds has the same responsibility to audit the entity’s funds as the auditor has with respect to other county offices.

Least Cost Review Program. To assist counties, the state auditor may develop forms, promulgate and widely distribute easily used forms, with instructions, for cost accounting for public works. The state auditor will consult with the Texas Comptroller of Public Accounts in developing the forms and instructions. Prior to the public distribution of the forms, the state auditor and the Comptroller will seek input from large and small governmental entities and the construction industry.

The forms shall provide a simple comparison of the costs of public improvements constructed by the county’s personnel, equipment or facilities, compared with a competitive bid submitted by the private sector.

The forms shall be useful for all governmental entities, including counties, municipalities, special districts and any other entities that construct public improvements in-house.

Chapter 171 – Regulation of Conflicts of Interest of Officers of Municipalities, Counties and Certain Other Local Governments

This statute defines and regulates conflicts of interest by local government officials. It defines a conflict of interest and details how local government officials can carry on government activities when they have some commercial interest in the entities doing business with the government.

Some citizens are naturally concerned that government officials act in the best interests of the governmental entity, not in their own best interests. So rules of law define what government officials cannot do in government dealings when they stand to possibly gain from the transaction.

On the other hand, sometimes it is advantageous to citizens for their governments to deal with businesses with which the officials have some affiliation. And sometimes, especially in smaller jurisdictions, the local government officials are primary businesspersons in the community, and it would be very difficult to avoid doing business with them. So this statute attempts to separate the do’s from the don’ts and what’s proper from what’s improper.

Local Government Code, §171.001. A Local Government Official refers to a member of the governing body or another elected or appointed officer, paid or unpaid, of any district, county, municipality, precinct, central appraisal district, transit authority or district or other local government who exercises responsibilities beyond those that are merely advisory in nature. For the purposes of this manual, it includes all city and county officials, either elected or appointed, but not ordinary employees. To be affected, the official must have a “sovereign authority largely independent of others.”

A business entity includes all the commonly accepted business entities, such as a corporation, partnership, sole proprietorship, trust or any other entity recognized by law. In the case of an official dealing with the government as an individual, as in the sale of real estate privately owned by the official, the dealing would likely be considered the same as if that official were a business entity.

Local Government Code, §171.002. A substantial interest in a business entity occurs if the official has:

- 10 percent or greater ownership of the voting stock or shares of the business entity or owns 10 percent or more or \$15,000 or more of the fair market value of the entity; or
- 10 percent of the official’s gross income from the business entity.

An official has a substantial interest in real property if the interest (equitable or legal) exceeds a fair market value of \$2,500 or more.

The official is considered to have a substantial interest if a person related to the official in the first degree of consanguinity or affinity has a substantial interest under this section. (See Appendix 7 for a diagram of consanguinity and affinity.)

Local Government Code, §171.003. An official as defined in LGC §171.001 is prohibited from:

- violating §171.004;
- acting as a surety on any official bond required for any official of the government; or
- acting as a surety for any business employed by the government.

A violation of this section is a Class A misdemeanor.

Local Government Code, §171.004. If an official has a substantial interest in a business entity or in real property, the official must file an affidavit stating the nature and extent of the interest before any vote involving the business or real property. The affidavit must be filed with the government’s record-keeper (for example, the city or county clerk). The official must also abstain from any further participation in the matter if:

- for a business entity, the vote will have a special economic effect on the business different from the general effect on the public; or

- for real property, it is reasonable to believe that the vote will benefit the property's value over any benefit to the general public.

If a majority of the members of the governmental entity are also required to file an affidavit of similar interest in the same matter, then the official is not required to abstain in the matter.

Local Government Code, §171.005. When voting on the budget, the governing body shall take a separate vote on any budget item specifically devoted to a contract with a business where the official has a substantial interest, and the official shall abstain from voting (except as provided in §171.004). The official may vote on the final budget provided that:

- the member has complied with this chapter; and
- the matter concerned has been resolved.

Local Government Code, §171.006. The finding of a court that a violation of this chapter occurred does not void that action of the governing body unless the vote of the member violating the chapter was the deciding vote on the matter.

Local Government Code, §171.007. This chapter preempts common law on conflicts of interest and is cumulative of municipal charter provisions and municipal ordinances.

Purchasing and Contracting Authority of Municipalities

Local Government Code, Chapter 252 – Purchasing and Contracting Authority of Municipalities

This chapter is divided into four subchapters and comprises what was formerly known as the Bond and Warrant Act of 1931. It contains most of the exclusively municipal law on public purchasing in Texas. The subchapters are:

- Subchapter A – General Provisions
- Subchapter B – Competitive Procurement or Competitive Proposals Required
- Subchapter C – Procedures
- Subchapter D – Enforcement

This chapter includes the competitive procurement requirements and the exceptions to competitive bidding. It also provides that certain municipal charter provisions prevail over the statute. It covers areas such as awarding bids, changes to plans and specifications, the alternative competitive proposal for high-technology items and criminal penalties for violation of the chapter.

Subchapter A – General Provisions

This subchapter contains definitions of terms used in the statute. Terms defined include bond funds, current funds, high technology procurement and time warrant, as well as separate purchases, sequential purchases and component purchases.

This subchapter also states unequivocally that, in conflicts between this chapter and provisions of the charter of a home-rule municipality that relate to notice of contracts,

advertising of the notice, requirements for accepting sealed bids based on specifications for public improvements or purchases, or the manner of publicly opening bids or reading them aloud, the municipal charter provisions will prevail unless the municipality's governing body elects to have this chapter supersede the charter.

A municipality must apply the provisions of VTCA Health and Safety Code §361.426 relating to a purchasing preference for purchased items manufactured using recyclable materials.

Subchapter B – Competitive Bidding or Competitive Proposals Required

This subchapter details the requirements for competitive bidding for municipalities. For those municipalities to whom it applies, it is one of the most, if not the most, important purchasing statutes. Portions of the chapter are applicable even for home-rule cities that have some charter provisions that override this chapter.

Competitive Bid or Proposal Requirements. Local Government Code §252.021 requires that municipalities use competitive sealed bids or proposals for all expenditures of more than \$50,000, except for a contract for insurance. In a municipality with a population of less than 75,000, insurance contracts of more than \$5,000 from one or more municipal funds must be competitively bid.

When spending more than \$3,000 but less than \$50,000, a municipality, under Local Government Code §252.0215, must contact at least two disadvantaged businesses on a rotating basis from a list provided by the Office of Small Business Assistance of the Comptroller. If the list fails to identify a disadvantaged business in the county in which the city is located, the city is exempted from this provision.

All bids or proposals must be sealed. Competitive proposals may be used only for high-technology procurements as defined in Subchapter A.

Alternative Competitive Proposals for High-Technology Items. Requests for proposals offer an alternative method of competitive purchasing for high-technology items. A request for proposals must include the conditions to be satisfied and the relative importance of price and other evaluation criteria.

High technology procurements include data processing equipment and software, telecommunications equipment, radio and microwave systems, electronic control systems, including building energy management systems and services related to these items.

This subchapter's provisions apply to contracts for which payment will be by current funds, bond funds or time warrants. (If payment is to be made by certificates of obligation, then the provisions of Subchapter C, Chapter 271 may apply, and the bid limit would be \$50,000 for all cities. Subchapter C allows the municipality to use the provisions of either Subchapter C or Chapter 252, and it is not required to specify which is being used.)

In applying any requirements established by this subchapter, all separate, sequential or component purchases (as defined in the definitions section) ordered or purchased with the intent of avoiding the competitive procurement requirements are treated like a single purchase.

Exemptions. The competitive procurement or proposal requirements do not apply to items exempted from the competitive procurement provisions. The items exempted are:

- items purchased in case of public calamity to relieve the needs of the citizens or to preserve city property;
- items to preserve or protect the public health or safety of the city's residents;
- items necessary because of unforeseen damage to public property;
- personal or professional services;
- work paid for on a daily basis (day labor);
- lands or right-of-way;
- items available from only one source, such as patented, copyrighted natural monopoly or secret process items, films, manuscripts or books, electric power, gas or other utilities, books, papers, other library materials subject to exclusive distribution rights and management services provided by a non-profit organization to a municipal museum, park, zoo or other facility which the organization has financially or otherwise supported;
- rare books, papers and other library materials for a public library;
- paving, street widening and other public improvements where at least one-third of the costs are paid by special assessments;
- a public improvement project which has been authorized but for which there is a deficiency of funds to complete in accordance with the plans as authorized;
- a payment under a contract by which a developer participates in the construction of a public improvement under Subchapter C, Chapter 212;
- personal property sold at a public auction by a licensed auctioneer, or sold at a going out of business sale, or sold by another political subdivision of the state, a state agency or the federal government; and
- services performed by blind or severely disabled persons.

This chapter does not apply to bonds and warrants issued under Local Government Code, Chapter 421, Seawalls and Levees in Coastal Municipalities and Counties.

Exemption from Referendum Provisions. The provisions for referendums on issuance of time warrants in Subchapter C do not apply to expenditures from:

- current funds;
- bond funds; or
- time warrants, if they are less than amounts set according to the city's population.

Insurance Broker. The city may select an insurance broker on a fee basis as the city's broker of record to obtain insurance proposals and coverage for all the city's liabilities, provided that the broker of record may not be remunerated by any other source. This should bar the broker from any commissions on insurance purchased by the city or from placement fees from any insurance company insuring the city.

Subchapter C – Procedures

Notice of Competitive Procurement. All contracts requiring competitive bids or proposals must be advertised and must contain notice of the date and time at which the bids will be publicly opened and read aloud. The advertising must be in a newspaper published in the city, and:

- must be published therein at least once a week for two consecutive weeks before the bid opening; and
- the first publication must be on or before the 14th day before the date the bids are publicly opened and read aloud.

If no newspaper is published in the city, the notice must be posted at the city hall for 14 days before the date the bids are publicly opened and read aloud. (If posted inside the city hall, and the city hall is not opened for some days during the period, those days will not count toward the 14-day period.)

If the contract is for the purchase of road maintenance or construction machinery, the notice must contain general specifications for the machinery.

If any part of the payment is by time warrants, certain information on the time warrants is required.

Opening of Bids. Bids must be publicly opened by the city on the specified date, time and place. Bids must be read aloud and then kept on file and available for public inspection. For bids or proposals that contain trade secrets or confidential information, the portion with the secrets and confidential information will not be available, but the remainder of the bid or proposal must be available for public inspection.

Awarding of the Contract. The bids are presented to the governing body, and it must either award the contract to the lowest responsible bidder or reject all bids and rebid the contract. (If identical bids are received, the provisions in Local Government Code §271.901 for determining to whom the bid will be awarded apply.)

For proposals, the contract is awarded to the responsible bidder whose proposal is determined to be the lowest evaluated offer resulting from negotiation, considering the relative importance of all the criteria stated in the request for proposals.

Proposals that contain trade or confidential information that is identified by the bidder will be opened in such a way as to avoid disclosure of this information. All other information in proposals shall be open to the public.

All proposals reasonably susceptible to being selected must be given fair and equal consideration and discussions must be conducted with all these bidders. For the purpose of obtaining best final offers, the proposals may be revised before awarding the contract, in order to give maximum satisfaction to all bidders and the city.

Safety Record. In determining a responsible bidder, the governing body, under Local Government Code §271.0275, may consider the bidder's safety record so long as the

city has adopted a written definition and criteria for determining the safety record, the criteria are not arbitrary and capricious and the city has given notice in the specifications that the safety record shall be considered.

Contractors Performance Bond. On contracts for public works, the city must require a performance bond in the full amount of the contract. Any performance bond must be by a surety company authorized to do business in Texas in accordance with Government Code §2253.

Referendum on Time Warrants. If time warrants are to be used to pay for a purchase, and if a proper written petition is filed with the municipal secretary before the deadline for awarding the contract, then the city must order a referendum on the question of using the time warrants. A proper petition must contain at least 10 percent of the city's registered voters whose names appear on the city's latest role of property taxpayers. The governing body may order a referendum without a petition. (See Local Government Code, Chapter 252 for requirements for issuance of municipal bonds.)

If the warrants are payable from current funds, then the municipality must set aside an amount sufficient to pay principal and interest from its current funds.

If the contract is for the construction of public works, or for the purchase of materials, equipment and supplies, the municipality may use lump sum or unit prices in the bid, but the contract must give approximate quantities of the items needed. Payment will be on the basis of actual quantities purchased.

Change Orders. After awarding the contract, the governing body may make changes to plans, specifications or quantities if necessary. But the total contract amount may not be increased unless the increase will be paid from current funds, or is provided for by issuing time warrants. If a change order of \$50,000 or less is involved, the governing body may grant authority to an employee to approve the change order. No increase of more than 25 percent may be made, and the contractor must agree to any decrease of 25 percent or more.

Subchapter D – Enforcement

Injunction. If the contract is made without complying with this chapter, it is void. Performance of the contract, including payments on the contract, may be enjoined by any property tax-paying resident of the municipality.

Criminal Penalties. Any municipal official or employee commits a Class B Misdemeanor if they intentionally or knowingly make or authorize separate, sequential or component purchases to avoid the competitive bidding requirements of §252.062. Any other intentional or knowing violation of §252.062 is also a Class B Misdemeanor. Any intentional or knowing violation of any provisions of this subchapter other than §252.062 is a Class C misdemeanor.

Removal, Ineligibility. The final conviction for violations of §252.062, which are Class B Misdemeanors, results in immediate removal from office or employment of that person. Also, for four years following the date of final conviction, the person is ineligible to:

- be a candidate for or to be elected or appointed to a public office in this state;
- be employed by the city; or
- receive compensation through a contract with the city.

However, the removed official or employee does not lose any retirement or workers compensation benefit rights.

Local Government Code, Chapter 253 – Sale or Lease of Property by Municipalities

This chapter is devoted mostly to the sale or lease of real properties. Since most purchasing officials are not involved to any great extent with its provisions, the coverage here is brief. Any purchasing official needing detailed knowledge should consult the text of the Local Government Code. The final provision deals with sale or lease of computer software developed by the municipality.

Sale of Park Land, Municipal Building Site or Abandoned Roadway

This section covers sales of these properties and gives the governing body the right to make such sales. A sale of parkland must be submitted to a vote of the citizens. The proceeds of these sales must go to the same purpose as the sold property.

Transactions Concerning an Island, Flat or Submerged Land

The city may sell or otherwise convey this type of land if it was titled to the municipality by the state or Republic of Texas before April 23, 1953. A home-rule city must hold a referendum unless the time for petitioning for a referendum has passed before selling or conveying the land. The section does not grant any mineral rights, and prevails over a home-rule city's charter provisions.

Purchase and Sale of Federal Property

Cities with populations of less than 10,000 may purchase federal real property for their use. If the purpose for purchasing the property ceases to exist, the city may sell or convey the property.

Grant or Lease of Property for Juvenile Board

A home-rule city may donate property to the county for use by the juvenile board.

Lease of Oil, Gas or Mineral Land

This property right may be leased as the governing body determines for the benefit of the city, except:

- it may not lease a street, alley or public square; and
- a well may not be drilled in the thickly settled part of the city or within 200 feet of a private residence.

Lease of Municipal Hospital or Swimming Pool

The governing body of a city with a population of 65,000 or less may lease a municipal hospital to be operated by the lessee as a public hospital. They may also lease a municipal swimming pool to be operated by the lessee as a public swimming pool. The leases may not be for a period of greater than 50 years.

Sale of Real Property by Public Auction

The municipality may sell real property owned by the municipality by sealed bid under Local Government Code §272.001 or by public auction under this section.

To sell real property by public auction, the municipality must publish notice of the auction. According to Local Government Code, §253.008, the notice must be published once a week for at least three consecutive weeks, with the first publication at least 20 days before the date the auction is held, in a newspaper of general circulation in both the county in which the municipality is located and the county in which the property is located. The notice must contain a description of the property, including location, and the date, time and location at which the auction is to be held.

Sale or Lease of Computer Software by Certain Municipalities

This section applies to municipalities with a population of more than 5,000. A municipality that independently or in conjunction with any person develops automated information systems software may contract with a person for the sale, lease, marketing or other distribution of the software.

Any release of municipally developed automated information systems software must be under a contract that provides that the municipality will receive a royalty, license right or other appropriate compensation for developing the software. The provisions of the open records law, Chapter 552, Government Code VTCA, relating to the cost of making copies of public records do not apply to automated information systems software subject to a contract under this section.

Local Government Code, Chapter 262 – Purchasing and Contracting Authority of Counties

This chapter contains the bulk of the purchasing law concerning Texas counties. While purchasing officers may become familiar with other areas of purchasing law and know where to look when encountering a problem, they should study and learn this chapter in some depth. The more officials deal with purchasing, the more they should know about this chapter.

This chapter contains the competitive bidding requirements and the exceptions to competitive bidding. It also contains the provisions for appointing the county purchasing agent and lists the purchasing agents' duties. Other areas of interest are awarding bids, use of time warrants, changes to plans and specifications, the alternative competitive proposal for high tech items or insurance and criminal penalties for violation of the chapter.

Subchapter A – General Provisions

This subchapter contains the general authority for the commissioners court to appoint an agent to contract for the county for most purposes and specifies that the agent, once appointed, may bind the county to a contract that is properly executed and within his or her authority. It is generally considered specific event authority and not general authority to appoint a purchasing agent. This subchapter also contains other provisions for the county to purchase road equipment and tires through the State Purchasing and Comptroller. It also specifically exempts from competitive bidding procedures under any statute, purchases of \$50,000 or less available from only one supplier.

A county must apply the provisions of VTCA Health and Safety Code §361.426 relating to a purchasing preference for purchased items manufactured using recyclable materials.

Subchapter B – Purchasing Agents

This subchapter defines the authority of a board to appoint a purchasing agent for the county and sets out the duties of the purchasing agent. It describes the only methods under which an individual can be authorized to act as a county purchasing agent.

If the board decides to appoint the purchasing agent, it is done by majority vote.

For a county with a population of 150,000 or less, the county judge and the district judges make up the board. For counties larger than 150,000, the board is composed of three judges of the county's district courts and two members of the commissioners court. The two members of the commissioners court are selected by majority vote of the commissioners court. If there are fewer than three district court judges, then the board is composed of one district judge and the county judge. In either case, the judge(s) for the board are selected by majority vote of the district judges.

The purchasing agent's term is two years, and the board that appoints the agent has the power to remove the agent.

The purchasing agent's duties include making all purchases not subject to competitive bidding, supervising the competitive bidding process and the delivery of materials purchased in accordance with contracts awarded by bids, and many other aspects of running the purchasing office. Some specific duties are:

- executing a bond in the amount of \$5,000;
- conducting an annual inventory of the property on hand and belonging to the county, and filing it by July 1 with the county auditor for his or her examination and accounting and with each of the members of the board;
- adopting the rules and procedures to implement the agent's duties;
- adopting procedures to provide for competitive bidding of all purchases of items not requiring competitive bidding under Local Government Code §262.023; and
- with the approval of the commissioners court, transferring materials and supplies from a department where they are not needed to a department or area needing the material or supplies, and accounting for which materials are transferred.

The board that appoints the purchasing agent may also approve the hiring of assistants, and the provision of supplies, equipment and traveling expenses considered necessary. The board also sets the purchasing agent's and assistants' salaries.

The county purchasing agent is not required to make purchases for a municipal or county hospital or other joint undertaking of the municipality and county.

In a county with a purchasing agent, no person other than the purchasing agent may make a purchase for the county. The county auditor may not approve, and the county treasurer may not honor a warrant for a purchase unless the purchase is made by the purchasing agent or on competitive bids as provided by law. A person, including an officer, agent or employee of the county, commits a Class C offense if he violates the section creating the position and duties of the purchasing agent. In a county with a population of more than 125,000, the commissioners court may employ a person to act as the purchasing agent. This provision only applies when the board of judges mentioned above has not appointed a purchasing agent. An agent appointed under this provision will carry out the duties of the purchasing agent as detailed above.

The purchasing agent employed by the commissioners court serves at the pleasure of the commissioners court. The commissioners court may employ other persons to assist the purchasing agent to perform the purchasing agent's duties.

If, under this provision, the position of county purchasing agent is abolished, the county auditor assumes the county purchasing agent's duties.

In the two instances listed below, the auditor acts as purchasing agent unless a purchasing agent has been appointed. A county's commissioners court that employs a county auditor jointly with one or more counties under Local Government Code §84.008 may require the auditor to act as the county's purchasing agent.

Subchapter C – Competitive Bidding

This subchapter contains definitions used in the County Purchasing Act and details the requirements for competitive bidding for counties. As such, it is one of the most, if not the most, important statutes as far as purchasing officials for counties are concerned. Among the terms defined in the act are high technology item, separate purchases, sequential purchases and component purchases.

For all counties, Local Government Code §262.023 requires competitive bids or proposals for a contract for an expenditure of more than \$50,000, unless the expenditure is specifically exempted.

All bids or proposals must be sealed. This subchapter's provisions apply to contracts for which payment will be by current funds or bond funds or time warrants. If payment is to be made by certificates of obligation, then the provisions of Local Government Code Subchapter C, Chapter 271 apply. Also, see Transportation Code §252.312, which details the requirement for bids on road and bridge equipment, materials and supplies

at amounts exceeding \$50,000 for counties on the Court/Engineer system (unit road system).

In applying any requirements established by this subchapter, all separate, sequential or component purchases (as defined in the definitions section) ordered or purchased with the intent of avoiding the competitive bidding requirements are treated like a single purchase. (Separate purchases of office supplies, when not intended to avoid competitive bids, are not considered to be a single purchase.)

Exemptions. Items exempted from the competitive bidding provisions only when the commissioners court, by order, grants the exemption, include:

- items purchased in case of public calamity to relieve the citizens' needs or to preserve county property;
- items to preserve or protect the public health or safety of the residents of the county;
- items necessary because of unforeseen damage to public property;
- personal or professional services;
- works paid for on a daily basis;
- lands or rights-of-way;
- sole source items, such as patented or copyrighted items, films or manuscripts, electric power, gas or other utilities and replacement parts or components of equipment;
- food items;
- personal property sold at a public auction by a licensed auctioneer, sold at a going out of business sale or sold by another political subdivision of the state, a state agency or the federal government; and
- any work performed under a contract for community and economic development made by a county under Local Government Code §381.004.

The renewal or extension of a lease or equipment maintenance agreement is not required to be bid if:

- the lease or agreement has been bid within the preceding fiscal year;
- the renewal or extension does not exceed one year; and
- the lease or agreement has not been previously renewed or extended.

If an item is purchased under the sole sources exemption, the county's purchasing official must sign a statement to the commissioners court as to the existence of only one source, and the court must enter in its minutes a statement to that effect.

In case foods are exempted from formal competitive bidding, the county must obtain three quotations for food purchases either by telephone or by written solicitation at intervals set by the commissioners court and must accept the lowest and best bid, or to reject all bids and repeat the process. The purchasing officer must maintain records of the bids for at least one year or until audited by the county auditor, whichever is later.

A county purchasing agent shall adopt procedures to provide for competitive bidding, to the extent practical, of all purchases of items not requiring competitive bidding under Local Government Code §262.023.

Notice of Competitive Procurement. All contracts to be let by competitive bids or proposals must be advertised. The advertising must be in a newspaper of general circulation in the county, and:

- must be published therein at least once a week until the bid opening; and
- the first publication must be on or before the 14th day before the date of the bid opening.

If no newspaper of general circulation exists, the notice may be posted in a prominent place in the courthouse that is accessible to the public for the 14 days before the bid opening. (If posted inside the courthouse, and the courthouse is not opened for some days during the period, those days will not count toward the 14-day period.)

The notice must contain:

- the specifications or where the specifications may be obtained;
- the time and place for receiving the bids;
- the time and place for opening the bids;
- the name of the county official or employee to whom bids are to be sent;
- whether to use lump-sum or unit prices in the bid;
- the method of payment and the type of bond, if any, required by the bidder; and
- if any part of the payment is by time warrants, certain information on the time warrants is required.

Additional Notice for Heavy Equipment Bids. If the proposed purchase is for earth-moving, material-handling, road maintenance or construction equipment, the notice may require a request for information about the equipment's operation costs, maintenance and resale value. If the commissioners court desires, they may require the successful bidder to provide a bond to cover the amount of any repurchase agreement.

Opening of Bids. The county commissioners should open bids on the date specified in the notice. The date specified for the bid opening may be extended if the commissioners court determines that it is in the best interest of the county. All bids must be opened at the same time. Opened bids must be kept on file and made available for public inspection.

Awarding of the Contract. The county's purchasing official presents the bids to the commissioners court, and the court must either award the contract to the responsible bidder who submits the lowest and best bid or reject all bids and re-bid the contract. One and only one bid may be awarded for each bid invitation, except for road construction material. If two or more responsible bidders submit identical lowest and best bids, the commissioners court must decide between those bidders by drawing lots. (Note: If too many identical bids begin to appear, especially from the same bidders, bid rigging or collusion may be a factor.)

In determining the lowest and best bid for a contract for the purchase of earth-moving or road maintenance or construction equipment, the commissioners court may consider any information requested in Local Government Code §262.0255 about costs of repair or maintenance, and the resale value of the equipment in awarding the contract.

The commissioners court may award a contract to more than one bidder if each bidder selected submits the lowest and best bid for road material for a particular location and type of material. In determining the lowest and best bid, 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.

Before a bid is awarded to other than the low dollar bidder, all lower bidders meeting the specifications must be notified of the proposed award and given an opportunity to appear before the commissioners court to present evidence of their responsibility.

In determining a responsible bidder, the commissioners court may consider the bidder's safety record so long as the commissioners court has adopted a written definition and criteria for determining the safety record, and has given notice in the specifications that the safety record must be considered.

In the specifications for the bid or proposal, the county must state whether lump sum or unit prices will be used. Lump sum means one price must be stated for the entire contract, while unit prices means that a price per unit must be stated, and the county will pay that price for all units purchased. In using unit pricing, the county must give approximate quantities to be purchased, but the compensation to the bidder will be based on actual quantities purchased.

Time Warrants. If a petition of at least 5 percent of the county's registered voters is filed before the time warrants are authorized, the county must hold an election on the issue of using the time warrants.

Alternative Multi-step Competitive Proposal. In a county with a population of 125,000 or more, if the county purchasing official determines that it is impractical to prepare a detailed specification for a purchase, then the official may inform the commissioners court. If the court agrees, the purchase may be made by a multi-step competitive proposal. In this case, the county gives a general description of the item desired instead of detailed specifications and requests unpriced proposals.

Within seven days after the proposals are opened, the county official must request priced bids from the qualifying bidders using the criteria in the request for proposals. Within 30 days after the date of opening, the priced proposals must be presented to the commissioners court, and the award will go to the bidder whose bid is determined to be the lowest evaluated offer. During this time, discussions may be held with acceptable bidders, and revisions are permitted after submission to determine the best and final offer. All qualified responsible bidders must be accorded fair and equal treatment.

Alternative Competitive Proposals for Insurance and High Technology Items.

Proposals offer an alternative method of competitive purchasing. A request for proposals must include the conditions to be met and the relative importance of price and other evaluation criteria. The same public notice requirements as for competitive bids apply. The contract is awarded to the responsible bidder whose proposal is determined to be the lowest evaluated offer resulting from negotiation.

Proposals that contain trade or confidential information as identified by the bidder will be opened in such a way as to avoid disclosure of this information. All other information in proposals must be open to the public.

All proposals must be given fair and equal consideration, and discussions may be conducted with all responsible offers. The proposals may be revised to give maximum satisfaction to all parties before award of the contract for the purpose of obtaining best and final offers.

Modifications and Changes. After awarding a contract, but before it is signed, the county purchasing official may negotiate a modification in the county's best interests, so long as the modification does not substantially change the scope of the contract nor cause the contract to exceed the amount of the next lowest bid. The commissioners court must approve the modification.

After the contract is awarded, the commissioners court may make changes to plans, specifications or quantities. The total contract amount may not be increased unless the increase can be paid from current funds. The court may grant authority to an employee to approve a change order of \$50,000 or less. No increase of more than 25 percent may be made unless the change order is necessary to comply with a federal or state statute, rule, regulation or judicial decision that was enacted after the contract was made. Any decrease of 18 percent or more must have the contractor's consent.

Bid or Performance Bonds. On contracts for public works or for contract amounts exceeding \$100,000, the county may require a bid bond for 5 percent of the bid amount. Within 30 days after the signing of a contract, and prior to beginning the actual work, the bidder or bidder shall provide a performance bond on contracts that exceed \$50,000. This subsection does not apply to a performance bond required under Chapter 2253 of the Government Code. (Note: See Government Code, Chapter 2253, Public Works Contracts Performance and Payment Bonds. Contracts exceeding the specified amount must have a performance bond and a payment bond.) For contracts of \$50,000 or less, the county may provide that no payment will be made until after completion and acceptance of the work, or fulfillment of the purchase contract. No performance or bid bond may be required of a bidder whose rates are subject to regulation by a state agency.

Criminal Penalties. Any county official or employee commits a Class B Misdemeanor if they intentionally or knowingly make or authorize separate, sequential or component purchases to avoid the competitive bidding requirements of Local Government Code §262.023. Any other intentional or knowing violation of Local Government Code

§262.023 is also a Class B Misdemeanor. Any intentional or knowing violation of any provisions in this subchapter other than Local Government Code §262.023 is a Class C misdemeanor.

The final conviction of violations of Local Government Code §262.023, which are Class B Misdemeanors, result in immediate removal from office or employment. Also, for four years from the date of final conviction, the person is ineligible to:

- be a candidate for or to be elected or appointed to a public office in this state;
- be employed by the county; or
- receive compensation through a contract with the county.

However, the removed official or employee does not lose any retirement or workers compensation benefit rights.

Local Government Code, Chapter 263: Sale or Lease of Property by Counties

This chapter concerns statutes covering the sale or lease of property owned by counties. Although most county officials will find some aspects of this chapter relating to real property interesting, the purchasing official will be primarily concerned with Subchapter D – Disposition of Salvage or Surplus Property. This manual will not cover any of the other subchapters in detail other than Subchapter D. The remaining subchapters are:

Subchapter A – General Provisions for Real Property

This covers the sale or lease of real property by the commissioners court. It now allows the use of sealed bids or public auctions to sell or lease real property owned by the county. There are provisions pertaining to abandoned seawall or highway property and school lands and also restrictions, conditions and limitations on the conveyance of real property.

The commissioners court may contract with a licensed real estate agent to sell a tract of county-owned real property, and may pay a fee if the real estate agent produces a ready, willing and able buyer.

Subchapter B – Disposition of Certain Real or Personal Property

This subchapter covers airport land and certain land and facilities acquired from the federal government. It also covers relinquishment of abandoned land.

Subchapter C – Lease or Sale of Real Property for Privately Owned Hotel

This subchapter concerns the leasing or sale of county property (in a county with a population of more than 1.3 million) to a privately owned company for the purpose of constructing a hotel.

Subchapter D – Disposition of Salvage or Surplus Property

This subchapter contains definitions of salvage or surplus property. A county's commissioners court may sell the surplus or salvage material at auction or by competitive bid,

offer the material as a trade-in for new property or order the property to be destroyed as worthless if the property cannot be sold by bids or auction.

If the property to be disposed of is earth-moving, material-handling, road maintenance or construction equipment, the commissioners may consider a repurchase agreement provision in the contract to sell the equipment to the county as a bid in an auction or competitive bid for the sale of the equipment.

If the county has failed to sell property and the property has been found to be worthless, the county may contribute the property to a civic or charitable organization located in the county.

The county must publish notice of a sale of surplus or salvage property in a newspaper in the county on or after the 30th day but before the 10th day preceding the sale. The commissioners court or its representative may reject any offer or bid. The commissioners court must keep records of the sale or destruction of the property for one year.

Proceeds of the sale of surplus or salvage property goes to the credit of the general fund or to the fund from which the property was purchased, except that property used for maintenance or construction of county roads will be credited to the road and bridge fund.

Subchapter E – Conveyance of Real Property from County to United States

This subchapter concerns the conveyance to the federal government of land owned by the county for the purpose of water projects, military installations or federal buildings.

Local Government Code, Chapter 271: Purchasing and Contracting Authority of Municipalities, Counties and Certain Other Local Governments

This chapter contains miscellaneous provisions on purchasing and contracting that affect various types of local governments. The types of local government affected are listed in the definitions of each subchapter. Since these provisions affect municipalities and counties, they will be of interest to all users of this manual.

Some of the subchapters contained in this chapter are:

- Subchapter A – Public Property Finance Act
- Subchapter B – Competitive Bidding on Certain Public Works Contracts
- Subchapter C – Certificate of Obligation Act
- Subchapter D – State Cooperation in Local Purchasing Programs
- Subchapter H – Alternative Project Delivery Methods for Certain Projects
- Subchapter Z – Miscellaneous Provisions

Subchapter A – Public Property Finance Act

The first sections give definitions of terms, and include the types of local government covered by the Act. This Act does not apply to real property, but only to personal property, except for real property and improvements for school districts.

A governmental agency under this chapter must apply the provisions of Health and Safety Code §361.426 relating to a purchasing preference for purchased items manufactured using recyclable materials.

Real Property and Improvements for School Districts. A school district's board of directors may enter into a contract under this Act for the use, purchase or other acquisition of real property or an improvement to real property. The board must give notice of intent to enter into a contract in a newspaper in the district at least 60 days before the date set to approve execution of the contract. The notice must summarize the major provisions of the proposed contract. The board must wait until the 60 days has expired to publish notice for bids for the contract.

The Act provides for a referendum on the question of whether the contract should be approved if 5 percent of the registered voters sign a petition requesting the referendum.

The Act has other provisions under this section, including;

- if ad valorem taxes are not pledged, the contract is a special obligation of the school district;
- if the contract payments are from maintenance taxes previously approved by the voters of the district, or are paid from other than ad valorem taxes, then they are not considered a payment under Tax Code §26.04(c);
- a lease purchase contract under this section shall be submitted to the attorney general for examination of its validity;
- if the attorney general finds that the contract has been authorized as provided by law, then the attorney general shall approve them and the Texas Comptroller of Public Accounts shall register the contract; and
- following approval and registration, the contract is incontestable and is a binding obligation according to its terms.

Authority to Contract for Personal Property. This section defines the authority of the governing body to contract for the purchase or lease of personal property, or for the financing of an acquisition of personal property. It states that the contract is an obligation of the government. Contracts may be:

- on terms acceptable to the governing body;
- a lease, or a lease with option(s) to purchase, or an installment purchase or other type of financing purchase including financing by issuance of bonds, notes, certificates of obligation or certificates of participation (but the bonds, notes, certificates of obligation or certificates of participation must be approved in accordance with Government Code Chapter 1202);
- for a term approved by the governing body, and contain an option to extend; and
- payable from any revenues or funds available for public purposes.

The contract may call for the payment of interest at stated rates, not in excess of the net effective interest rate allowed under Government Code Chapter 1204.

Compliance with Other Requirements. Under this subchapter, contracts for cities must comply with the purchasing requirements in Local Government Code Chapter 252, and contracts for counties must comply with the purchasing requirements in Local Government Code Chapter 262. However, the awarding of these contracts is not subject to a referendum.

Approved and Registered Contract. A contract that is of an aggregate amount of \$100,000 or more, after approval by the governing body, may be submitted to the attorney general to determine its constitutionality, under Local Government Code, §271.007. If the attorney general approves the contract, it must be registered with the Comptroller's office. Once these steps have been taken, the contract is valid and incontestable for any cause.

Authorized Investments. Under Local Government Code §271.008, these contracts are legal investments for banks and thrifts, insurance companies, fiduciaries and trustees, and for the sinking fund of any political subdivision or corporation of the state.

Term of Contract. A contract under Local Government Code §271.009 may have a term not to exceed 25 years.

Subchapter B – Competitive Bidding on Certain Public Works Contracts

Local Government Code §271.024 applies to all contracts for construction, repair or renovation of structures, roads or highways, or real property improvements or additions that require an expenditure of more than \$15,000. All provisions in this subchapter must be followed, even if exempted or not required by other statutes. The first section of this subchapter contains a listing of the local governments covered. Included are municipalities, counties, common or independent school districts, hospital districts or authorities, housing authorities and agencies or instrumentalities of these political subdivisions.

Exempt Contracts. The subchapter does not cover contracts awarded under the provisions of Government Code, Chapter 2254, Professional and Consulting Services.

If a home-rule city has charter provisions that conflict with this subchapter, the charter provisions prevail over this subchapter.

If another statute requires a governmental entity as defined by this act to use competitive bidding to award a contract of more than \$50,000, then the bidding must be accomplished in accordance with this subchapter.

Requirements for Competitive Bidding under this Subchapter. In awarding a contract bid under this subchapter, the governing body must comply with specific legal requirements, including:

- the bid must be advertised as required by the statute concerned. If no requirements are stated in the statute, then the bid must be published at least twice in one or more newspapers of general circulation in the county or counties in which the work is to be performed. The second publication must be at least 10 days before the first date bids may be submitted.

The advertisement for bids must contain:

- a description of the work;
- the location where bidding documents, plans, specifications or other data may be examined by all bidders; and
- the date and place for submitting bids and the date and place for opening bids;
- if an organization requests in advance to receive notice of competitive bids to be awarded; agrees to pay for mailing costs and certifies in writing that it circulates such notices to the construction trade, then the governmental entity must mail the organization such notice. The notice must be mailed on or before the date the first newspaper advertisement is published;
- either the governing body or an officer or employee of the governmental entity may open bids in a public session;
- bids may not be changed to correct an error in the bid price. A bid with such an error may be withdrawn under common law; and
- the bids are presented to the governing body that either awards the contract to the lowest responsible bidder or rejects all bids and re-bids the contract. However, before the governing body can award the contract to other than the lowest bidder, each lower bidder must be given the opportunity to appear before the governing body and present evidence of its responsibility.

In determining a responsible bidder, the governing body may consider the safety record of the bidder. The governing body must have adopted a written definition and criteria for determining the safety record and have given notice in the specifications that the safety record shall be considered. A contract awarded in violation of this subchapter is void.

Subchapter C – Certificate of Obligation Act

Local Government Code §271.041 and §271.042 contain the Certificate of Obligation Act. The Act applies to cities and counties.

Certificates of obligation are an alternative form of financing to bonds or time warrants and do not require the same formalities to issue. If the provisions of these sections conflict, the issuer may use the provisions of either one, and does not have to designate under which law the action is taken. A city may use the provisions of Local Government Code §271.044 if it is a home-rule city, or a general or special law city with the authority to levy a property tax of not less than \$1.50. The home-rule city may use these provisions **regardless of any contrary provisions in its charter.**

Purpose for Which Certificates may be Authorized. Under Local Government Code §271.045, certificates of obligation may be issued to pay a contractual obligation for:

- construction of public works, jails or improvements to jails;
- purchase of materials, supplies, equipment, machinery, buildings, land and rights of way for any authorized needs and purposes; or
- payment of contractual obligations for professional services.

If change orders cause a public works project to require more money, additional certificates of obligation may be authorized for up to 25 percent of the original contractual

obligation. However, certificates may be issued for only the amount actually needed to satisfy the obligation.

Authorization of Certificates. The governing body may authorize certificates of obligation by order or ordinance. Counties must have a quorum present.

The governing body shall specify times and places where certificates are payable, and the form or denominations of the certificates. The certificates may have options for early redemption, and may contain other provisions as determined by the governing body.

According to Government Code §1207.006, the maturity period may not exceed 40 years. The governing body of an issuer may authorize the maximum rate of interest to be borne by the bonds (Government Code §1207.007).

Claims and Accounts; Funding Projects or Exchanging Certificates for Claims. A governing body may authorize Certificates of Obligation to be exchanged for claims, or to fund projects. The authorization of certificates may be done before a contract is executed to complete the project. This section does not exempt any contract from competitive bidding otherwise required by this subchapter.

Notice of Intention to Issue Certificates: Petition and Election. Certificates may not be issued until the issuer publishes notice of its intentions to issue Certificates of Obligation. Notice must be published once a week for two consecutive weeks in a newspaper of general circulation in the area, with first publication at least 14 days prior to the date set for issuance. The publication must contain the time and place for passing the order or ordinance authorizing the issuance, as well as the maximum amount to be issued, and the method of payment, whether by taxes, revenues or both. The purpose of the certificates must also be included. These notice requirements do not apply to contracts or purchases made in case of emergency as defined in Local Government Code §271.056 of this subchapter.

Sale of Certificates. In case of emergency as defined in Local Government Code §271.056, the governing body may sell certificates for cash, and use the proceeds for the purpose authorized. No proceeds may be used for work done by the government's employees and paid for as the work progresses. Any interest earned on proceeds must be deposited in the interest and sinking fund established for the payment of the certificates.

A certified copy of the order or ordinance authorizing the issuance must be submitted to the attorney general for approval, as to having been authorized in accordance with this subchapter. If the attorney general approves it, then it must be registered with the Comptroller of Public Accounts. Once the certificates are duly registered, they become incontestable for any reason.

Certificates as Investments or as Security for Deposits. Certificates approved by the attorney general are legal and authorized investments and security for deposits in the same way as most local government bonds are acceptable.

Certificates Payable from and Secured by Other Revenues. Instead of, or in addition to, methods of payment set out in this section, the certificates may be paid by or secured by other revenues if the issuer is authorized by law to use those revenues to pay general or special obligations. Under Local Government Code §271.052, certificates secured under this section may be used in the same way as other certificates or sold for cash.

Certificates as Debt or Security. Under Local Government Code §271.053, certificates issued under this section are debt under the Texas constitution, and are general obligations of the issuer and “security” within the meaning of Texas law.

Competitive Bidding Requirement. Before an issuer may enter into a contract requiring an expenditure exceeding \$50,000, it must submit the contract to competitive bidding.

Notice to Bidders. Notice to bidders of the time, date and place where the issuer will publicly open the bids and read them aloud must be in accordance with the statutes pertaining to that type of government. If there are no statutory requirements, the notice for bidding is given in the same time and manner as the notice for issuing the certificates with first publication at least 14 days prior to the date set for publicly opening and reading the bids aloud, and the notice must state that plans or specifications are on file with a designated official of the issuer and may be examined without charge.

The notice must also state that the successful bidder must accept the certificates in full payment for the contract, or that the governing body has made provisions for the contractor to sell the certificates. The bidders must state whether they will accept the certificates in full or partial payment or assign them to a buyer.

Exemptions from Notice. Notice is not required in cases of emergency as defined in this section. The definitions are fairly close to the definitions in Chapters 252 and 262 of the Local Government Code. In addition, no notice is required if:

- expenditures are for street, sewer and like improvements and at least one-third of the costs are paid by special assessments;
- the project was to have been paid by bonds or current funds, but those funds were not adequate to permit the awarding of the contract, and the certificates are to provide for the deficiency; and
- the contract is for a municipal procurement not required to be competitively bid under Chapter 252 or a county contract not required to be competitively bid under Chapter 262.

In addition, the notice provisions of this subchapter do not apply to the sale of a public security as defined in Government Code §1204.001.

Awarding the Contract. Any contract let under this subchapter that must be competitively bid must be awarded to the lowest responsible bidder, and may be on either the lump sum or unit-price basis. The governing body may reject any and all competitive bids submitted.

If the contract is for construction of public works, and is required to be competitively bid, the successful bidder must execute both a payment and performance bond in the amount of the contract, and in accordance with Government Code, Chapter 2253.

Change orders are allowable to make changes in the specifications or quantities. The contract's total price may not be increased unless provisions have been made to pay the increased amount. No increase or decrease of more than 25 percent may be made without the contractor's consent.

If the contract is on the unit price basis, payment must be on the basis of actual quantities of items constructed or supplied.

Criminal Penalties. The same criminal sanctions as apply to violations of the component, separate or sequential purchasing provisions of Chapters 252 and 262 apply to those violations under this subchapter, and the offense is a Class B Misdemeanor. Other violations of the competitive bidding requirements of this subchapter are also Class B Misdemeanors, and all other violations of the subchapter are Class C Misdemeanors.

Subchapter D – State Cooperation in Local Purchasing Programs

The Comptroller is required by this subchapter to establish a program to perform purchasing services for local governments. If feasible, the GSC will extend state contract prices to local governments, solicit bids on items for them and provide information and technical services on the program. The commission is allowed to charge an amount not exceeding the costs of services performed, and is allowed to adopt rules and procedures to administer the program. Under this subchapter, a local government is defined to include cities, counties, school districts, special districts, junior college districts and other legally constituted political subdivisions of the state.

Local Government Participation. In order for a local government to participate in the program, it must:

- adopt a resolution (one time) that the government is allowed to participate in the program on a voluntary basis, and to the extent the commission deems feasible;
- designate an official, under the direction of the governing body, to act for the local government in all matters relating to the program, including the purchase of items from any contracts under this program;
- submit requisitions for purchases directly to the commission;
- be responsible for payment directly to the vendor; and
- monitor the vendor's compliance with all conditions of the contract.

Government Code, Chapter 2157 allows a special catalogue purchase procedure for automated information systems. The section covers all computers, printers, communications equipment and all associated software and services available for purchase by state agencies. It states that if the companies meet certain qualifying standards, they may sell directly to the agencies through a catalogue. This speeds up the process and bypasses bidding or proposals. Government Code §2157.067 says that the Comptroller's Texas COOP Program shall make the procedure available to local governments that qualify for

cooperative purchasing under Local Government Code §271.082 and 271.083. Local governments that are qualified under this subchapter may purchase automated information systems through the catalogues that will be available.

Subchapter H – Alternative Project Delivery Methods for Certain Projects

Added by the 77th Legislature in 2001, this subchapter provides authority for utilizing competitive bidding, competitive sealed proposals or a design build contract for facility construction. In determining the award, the governmental entity may consider price, vendor reputation, quality, extent to which the goods or services meet governmental needs, past relationships, impact on ability to comply with rules relating to HUB vendors, total long term cost and any other relevant factor specifically listed in the request for bids and proposals.

Subchapter Z – Miscellaneous Provisions

This subchapter, Local Government Code §271.901, provides a method to select a bidder when two or more responsible bidders have submitted lowest and best bids that are identical in both amount and substance. In this case, the governing body must select only one of the bidders and award the contract to that bidder or reject all bids.

Procedure for Awarding Contract if Municipality or District Receives Identical Bids.

If only one of the low responsible bidders is a resident of the city or district, the bid shall be awarded to that bidder. If two or more of the low, responsible bidders are residents, then one of them shall be selected by drawing lots.

In all other cases, the contract shall be awarded to one of the low, responsible bidders by drawing lots. Drawing lots shall be done as directed by the mayor or the governing body in public session.

Prohibition of Conflict of Interest in Purchases. This section prohibits the local government from purchasing from a cooperative association if any member of the governing body will receive a pecuniary benefit from the purchase other than as reflected in an increase in dividends available to all members of the association.

Commitment of Current Revenues. If a contract for the acquisition, including lease, of real or personal property retains to the governing body the continuing right to terminate at the expiration of each budget period during the term of the contract, or is conditioned on a best efforts attempt to obtain and appropriate funds for payment of the contract, or both, then the contract is a commitment of current revenues only. This provision applies to all contracts made by a municipality, county, school district, special purpose district or authority, or other political subdivision of the state.

Local Government Code, Chapter 325: Sports Facility District Established by County

A county's commissioners court may create a sports facility district to finance the acquisition, construction or operation of a sports facility.

The county commissioners will appoint a board of directors as directed by the statute, and the board will govern the district. This includes the power to contract, including the authority to contract for the sports facility's construction and improvement.

Especially relating to purchasing or contracting are the requirements that construction contracts exceeding \$15,000 must be submitted to competitive bidding in accordance with Local Government Code, Chapter 271.

Under provisions of Local Government Code §325.040, change orders may not increase the total cost of the contracts by more than 25 percent. All contracts under this section must have a performance bond, not to exceed the amount of the contract, executed by the contractor and payable to the district. The bond is conditioned on the faithful performance of the contract.

If the district purchases equipment, vehicles or supplies in amounts exceeding \$15,000, the board shall ask for competitive bids in accordance with Local Government Code, Chapter 262. The board shall award the contract. Purchases from public agencies or contracts for personal or professional services are exempt from competitive bids.

County Public Safety

This chapter concerns county jails and law enforcement procedures. Certain subsections contain purchasing requirements. This section briefly outlines those requirements.

Local Government Code §351.103 provides that if a contract by a private company to construct, lease, operate, purchase, maintain or manage a jail for the county includes construction of the facility, the private vendor must post a performance bond approved by the commissioners court that is adequate for the construction contract. If the prime vendor should become bankrupt, the commissioners court must provide a plan to purchase the facility and operate it.

Local Government Code §351.1035 requires the county to develop guidelines to inform disadvantaged businesses as defined by the section of the county's procurement processes, including specific opportunities to submit bids or proposals. The county must require prime contractors to make a showing of how they intend to use disadvantaged businesses as subcontractors. The county must also identify such disadvantaged businesses for this purpose and identify barriers to participation by such disadvantaged businesses.

Local Government Code §351.137 concerns construction contracts for jail districts. These must be made in accordance with Subchapter B, Chapter 271. The primary requirements are the same as for contracts in other areas of the Local Government Code, that is, contracts exceeding \$15,000 must be submitted to competitive bidding. An order to authorize additional work or modifications may not exceed 25 percent of the original contract. The contract must have attached to it plans, specifications and details for completion of the work in the contract. The contractor must submit a performance bond to the district, in the amount of the contract. The bond must provide that if the contractor defaults on the bond, the contractor shall be liable for damages to the district caused by the default.

The district must submit any purchase of vehicles, equipment or supplies exceeding \$15,000 to competitive bidding. Purchases from public agencies or purchases of professional services are exempted.

Municipal Management Districts

Municipal Management Districts are political subdivisions by the definition in Local Government Code, Chapter 375. This includes all the rights to contract that typically accrue to a political subdivision of Texas, except these districts have no power of eminent domain.

Competitive bidding is required for a contract, other than a contract for services, exceeding \$15,000 for the construction of improvements or purchase of equipment, materials or supplies, except real property. Notice of the contract must be published in a newspaper with general circulation in the district once a week for two weeks with the first publication at least 15 days prior to the date for receiving of the bids.

A board may adopt rules governing the receipt of bids and the award of the contract and may exempt a contract from competitive bids if:

- there is an emergency;
- the materials are available from only one source;
- in a procurement requiring the supplier's design, competitive bidding would not be appropriate, and competitive negotiations, with proposals solicited from a reasonable number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or
- after solicitation, it is ascertained that there will only be one bidder.

If a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials or supplies is for more than \$15,000 but less than \$50,000, or the duration of the contract is more than two years, then competitive bids shall be requested from at least three vendors.

The district shall attempt to encourage disadvantaged businesses to participate in all phases of the district's procurement activities, and to afford them a full and fair opportunity to compete for the district's contracts.

To this end, the district shall establish programs to increase participation by disadvantaged businesses and must review the goals and accomplishments of the program annually to determine if they are effective. Programs must attempt to remedy statistically significant disparities between the disadvantaged businesses that exist in the district and the contracts that are awarded to disadvantaged businesses. Such programs should only continue until their purposes and objectives are met.

Human Resources Code, Chapter 122: Texas Council on Purchasing from People With Disabilities

This chapter sets out the state policy of assisting disabled persons to achieve personal independence by holding useful and productive jobs, while providing state agencies,

departments and institutions and political subdivisions with useful products and services at a fair and reasonable price.

While the chapter mandates that state agencies use products and services produced by the blind and severely disabled under this program, it does not make any mandatory requirements on the state's political subdivisions. Cities and counties are encouraged to purchase products from the committee but are not required to do so. (Human Resources Code, §122.017 - Procurement for Political Subdivisions) If they do choose to purchase such products or services, they may do so without competitive bids.

Code of Criminal Procedures, Article 18.17: Disposition of Abandoned or Unclaimed Property

All abandoned or unclaimed property, except contraband subject to seizure under Code of Criminal Procedures, Chapter 59, and alcoholic beverages seized by a peace officer of the state and not held for evidence, destroyed or returned to the person entitled to receive it, and which is unclaimed for a period of 30 days, must be delivered for disposition to the person designated by the municipality or the purchasing agent of the county in which the property was seized.

If a municipal peace officer seized the property, the property is delivered to the municipality. If any other peace officer seized the property, the property shall be delivered to the purchasing agent of the county. If the county has no purchasing agent, the sheriff will dispose of the property.

Upon receiving the property, the person responsible for the disposition must mail a notice to the owner's last known address by certified mail. The notice must give a general description of the property, the name of the owner if known, the name and address of the officer holding the property and a statement that if the property is unclaimed within 90 days it will be disposed of, and the proceeds, less costs of storage and disposition, deposited in the county or municipal treasury.

If the property has a fair market value of \$500 or more and the owner is unknown, or if the address is unknown, then the notice is published in a newspaper of general circulation in the city or county. This notice must contain the same information as if the notice was mailed.

If the property has a fair market value of less than \$500 and the owner or address of the owner is unknown, the property may be sold or donated without a notice being published. After the costs of keeping and disposing of the property are deducted, the sale's proceeds shall be deposited in the treasury of the municipality or county selling the property.

After 90 days, the property may be disposed of. The sale of any property with a fair market value of \$500 or more must be preceded by a notice published once at least 14 days prior to the sale in a newspaper of general circulation in the city or county where the sale will take place, stating the general description of the property, the name of the owner if known, and the date and place where the sale will take place. The person designated to

sell the property may refuse any bid considered insufficient. This article does not require disposition by sale.

The owner of any such property may file a claim, not later than the 30th day after the date of disposition, for the proceeds of such disposition with the governing body. If the claim is allowed, the proceeds, less cost of disposition and storage, shall be paid to the owner from the treasury of the city or county. If the claim is denied, the claimant may file suit to recover the proceeds of the sale.

If the act's provisions are met, and the property is scheduled for disposition, the municipal or county law enforcement agency that originally seized the property may request that the property be converted to the agency's use. The agency must return the property for disposition to the person designated by the municipality, county purchasing agent or sheriff, as the case may be, upon completion of its intended use of the property.

If the abandoned or unclaimed property is money, then the person designated by the municipality, county purchasing agent or sheriff, as the case may be, may deposit the money in the treasury of the municipality or county after giving the required notices.

Code of Criminal Procedures Article 59.06: Disposition of Forfeited Property

The article does not impose any direct purchasing requirements, but does imply a duty to purchase in a certain way. The only concern will be with money, securities, negotiable instruments or other financial instruments that will be used to fund expenditures for the law enforcement agency. The article requires that any funds distributed to a county or municipal law enforcement agency (county sheriff or municipal police department) must be used solely for law enforcement activities. It also requires that the agency submit a budget detailing the proposed expenditures. The statute does not give any additional authority to the head of the agency to control expenditure or contract with vendors that is not contained in the Local Government Code or elsewhere in the statutes. So any purchases should generally be in accordance with the other provisions of Texas law as contained in this manual. This should be tempered with some consideration for the unique purchasing requirements of covert police work, such as undercover vehicles.

Government Code – Agencies and Political Subdivisions

Government Code, §497.024 – Duties to Purchase.

If the Institutional Division of Texas Department of Corrections produces an article or product under this subchapter, then the state or a political subdivision (county or city included) may only purchase the article from the division.

The Comptroller may determine that an article does not meet the requirements of a political subdivision.

The political subdivision may purchase articles under this Act through the Comptroller, or directly from the division. The purchase of any items under this Act satisfies any competitive bidding requirements under another statute.

Government Code, Chapter 573: Degrees of Relationship; Nepotism Prohibitions

The nepotism statutes are intended to define degrees of relationship, both relationships by consanguinity (blood) or by affinity (marriage), for purposes of determining allowable or prohibited transactions between persons.

For example, a public official may not appoint, confirm the appointment or vote for the appointment of a person related to the public official within the prohibited degree by either consanguinity or affinity. Likewise, the public official may not agree with another public official to trade appointments, (appoint someone related to the other public official in a prohibited degree in exchange for the other public official appointing someone related to the public official in a prohibited degree).

A person is related to another by consanguinity if one is a descendent of the other or if they share a common ancestor. If one person is descended from another, the degree of relationship by consanguinity is determined by the number of generations that separate them. So a parent and child are related in the first degree, while a grandparent and child are related in the second degree, and so on.

If two persons share a common ancestor, the degree of relationship is found by adding the number of generations between the individual and the nearest common ancestor, and the number of generations between the relative and the nearest common ancestor.

For example, to determine the degree of relationship between a person and a cousin who is the son of the person's father's brother (the person's uncle), first determine the nearest common ancestor. In this case, it is the person's grandparent, who is also the cousin's grandparent. There are two generations between the person and the grandparent (second degree of consanguinity), and two generations between the cousin and the grandparent (second degree of consanguinity). Adding the number of degrees, we find the person and the cousin are related in the fourth degree of consanguinity.

A person is related to another by affinity if:

- they are married to one another; or
- the spouse of one of the individuals is related by consanguinity to another individual.

A husband or wife is related to each other in the first degree of affinity. The degree of relationship by affinity with another individual related by consanguinity to the husband or wife is the same as the underlying relationship by consanguinity. So if two individuals are related to one another in the second degree by consanguinity, the spouse of one of the individuals is related to the other in the second degree by affinity.

Government Code, Chapter 791: Interlocal Cooperation Act

The Interlocal Cooperation Act allows local governments to contract with one another, and with an agency of this state, or a similar agency of another state to perform “governmental functions and services.”

An agency of this state is defined as including departments, boards, bureaus, commissions, courts, offices, authorities, councils, institutions, universities, colleges, any services or parts of a state institution of higher education, and any statewide job or employment-training program for disadvantaged youth that is substantially funded by federal funds and created by executive order.

Local governments are defined as counties, home rule cities or general law cities, towns or villages, special districts, school districts, junior college districts, any other legally constituted district of this state or of another state or a combination of political subdivisions.

Governmental functions and services are defined as any of the following:

- police protection and detention services;
- fire protection;
- streets, roads and drainage;
- public health and welfare;
- parks and recreation;
- library services;
- museum services;
- waste disposal;
- planning;
- engineering;
- administrative functions*; and
- other governmental functions that are of mutual concern to the contracting parties.

* Administrative functions are defined as functions normally associated with routine operations of government, such as tax assessment and collection, personnel services, purchasing, data processing, warehousing, equipment repair and printing.

A local government may make contracts and agreements with one or more other local governments to perform governmental functions or services. The contracts may be for the performance of any governmental function or service that they are legally entitled to perform themselves. This definitely includes cooperative purchasing. The agreements must include provisions for payments in amounts that fairly compensate the performing party for the services performed.

It also allows the parties to name one of them to perform the functions or services or they may create an administrative agency to perform the functions. (This opens the way to purchase goods or services through a Regional Planning Council or Council of Governments.)

The Interlocal Cooperation Act specifically allows for contracting parties to:

- contract with Texas Department of Criminal Justice (TDCJ) to construct, operate and maintain a regional correctional facility. Special provisions are:
 - the title to the land on which the facility is constructed must be deeded to TDCJ; and

- the contract must include an agreement about payment for the housing, maintenance and rehabilitation of prisoners held in (county) jails who cannot be transferred to TDCJ.
- contract with other political subdivisions to provide a regional jail, and to set out procedures to operate the facility. Special provisions are:
 - the regional jail would have to be within the geographical boundaries of one of the agreeing political subdivisions, but not necessarily a county seat;
 - secure bonds for the acquisition and construction of the jail facility must be issued by agreeing governments prior to acquisition and construction;
 - participating governments may either name the police chief or sheriff of the political subdivision in which the facility is located as the jailer of the facility, or a jailer may be appointed by committee of all police chiefs and sheriffs concerned, or each sheriff and police chief can maintain control and supervision of his own prisoners. Either way, additional personnel may be employed to operate and maintain the jail facility. A jailer, if named or appointed, shall have supervision and control of all prisoners incarcerated in the jail until transferred back to the originating subdivision;
 - the sheriff or police chief not assigned as the jailer of the regional jail facility is not responsible for the escape of, or injury or damage caused by a prisoner, unless the escape is directly caused by that officer; and
 - the jailer in charge of the regional jail facility and any assistant jailers employed by the jail must be commissioned peace officers.
 - agree to cooperative purchasing arrangements, either between and among themselves, or with the state, including cooperative agreements with the Comptroller.

When engaged in cooperative agreements with other types of political subdivisions, the agreement may specify which government's rules, regulations or ordinances will apply. This does not allow for the easing of state statutes. For example, a city with a population of more than 50,000 agreeing to cooperatively purchase certain commodities with a city with a population of 50,000 or less would have to bid all such purchases based on the smaller city's bid limit.

If a county makes an interlocal contract in which the county agrees to undertake projects to construct, improve or repair buildings, roads, streets or other facilities, the commissioners court must give specific written approval to each individual project prior to beginning the project in a document separate from the contract. The county is barred from accepting payment for such a project without the required approval, and another government may not offer such payment. This section provides for any city, town, district or river authority created under the laws and constitution of this state to contract with any of these same political subdivisions to obtain or provide a water supply or waste water treatment facilities, or any interest in such facilities. The contracts may also be to lease or operate such supply or treatment facilities.

The contract may contain any terms or extend for any period that the entities can legally agree to, and may state that the contract is in effect until any bonds or refunding bonds issued in lieu of those bonds are repaid.

No tax revenues may be pledged to the payments of any amounts for a contract under this section.

A local government may provide emergency assistance to another local government regardless of whether they have in place any interlocal agreement to do so, provided that:

- the presiding officer of the local government requesting the assistance believes that a civil emergency exists; and
- before the assistance is rendered, the local government providing the assistance has, by resolution or other official act, authorized the assistance.

This section allows a local government to contract with another local government, a state agency or a transportation corporation to jointly enter into a highway project, including the costs of an easement or interest in land needed for or beneficial to the project. If the project lasts over a period of years, the local government may levy ad valorem taxes to make payments on the project.

Government Code, Chapter 2251: Payment for Goods and Services

This statute sets out:

- required deadlines for payment of a government's obligations to its vendors;
- requirements for vendors' payments to their subcontractors;
- penalties for failure to comply with the Act; and
- exceptions to the Act.

This Act applies to all state agencies and political subdivisions, including counties and cities. It requires that they pay all payments owed not later than 30 days after the goods or services are received, or the date that the invoice is received, whichever is later. However, a payment under this subsection owed by a political subdivision whose governing body meets only once a month is due no later than 45 days after the goods or services are received, or the date that the invoice is received, whichever is later.

The Act also requires that political subdivisions not meeting the required payment date automatically add interest to the payment at the rate of 1 percent per month.

This Act also requires that vendors follow the same rules for payments to their subcontractors, including the automatic calculation and payment of interest at the rate of 1 percent per month. Subcontractors must then pay their suppliers, material men or servicemen within 10 days of receipt of their payment. If they fail to do so, they also become liable for automatic calculation and payment of interest at the same rate.

When the governmental entity believes there is an error on an invoice received from a vendor, it has until the 21st day after receipt to notify the vendor of the dispute. Then,

if the dispute is resolved in favor of the government, the vendor must submit a new invoice and the government has 30 days from receipt of the new invoice in which to pay. If the dispute is resolved in favor of the vendor, interest is due from the original date the invoice became overdue.

Other times when the Act provides exceptions are:

- when there is a bona fide dispute between the political subdivision and a vendor, contractor, subcontractor or a supplier concerning the supplies, materials or equipment delivered or the services performed which causes the payment to be late;
- when there is a bona fide dispute between the vendor and a subcontractor, or between a subcontractor and its supplier concerning the supplies, materials or equipment delivered or the services performed that causes the payment to be late;
- when the terms of a federal contract, grant, regulation or statute prevent the government from making a timely payment with federal funds; or
- when the invoice is not mailed to the proper office, if an office address is specified in the instructions on the purchase order.

This Act is intended to encourage the governments who are purchasing to take all available discounts. However, it is not intended that a government use partial payments to claim discounts. The Act provides that if a government does not make full payment within the discount period, it shall not take the discount. If a discount is claimed by only making partial payment within the discount period, interest accrues on the unpaid balance on the day the discount offer expired, not after the 30th day, as usually occurs.

The Texas Comptroller is the rule-making agency for implementation of this Act.

This Act also specifies that in a formal administrative or judicial action to collect an invoice payment or interest due under this act, the party that loses the action is responsible to the prevailing party for reasonable attorney's fees.

Government Code, Chapter 2252: Contracts with Government Entities

Subchapter A – Non-resident Bidders

This Act is intended to encourage equal competition among bidders from Texas and those from other states. In Texas, we currently have no general bid preferences for Texas bidders. Other states impose bid penalties against Texas bidders and other out-of-state bidders. This Act places reciprocal penalties on only those states that have penalties in place against Texas bidders. The penalty is to the same extent and on the same type bids as are imposed on Texas bidders.

The law requires that an included governmental agency may not award a contract to a non-resident bidder (one whose principal place of business is not in Texas) if the bidder's state imposes a penalty on Texans bidding in that state on that same type of contract, unless the non-resident's bid is lower than the lowest Texas resident's bid by the same amount that the Texas bidder would have to underbid the non-resident bidder in their

home state. For example, a Texas bidder, bidding on a commodities contract in Arkansas, must underbid an Arkansas bidder by at least 5 percent in order to be awarded the bid. Thus, an Arkansas bidder will face the same 5 percent penalty in bidding on a Texas commodities contract.

This Act applies to incorporated cities and towns, counties, public school districts, special purpose districts or authorities, or district, county and justice courts. It also applies to all boards, commissions, departments, offices and agencies of the state and to all legislative agencies, and all state courts and the State Bar of Texas.

The Texas Comptroller is charged with publishing annually a list of all states that have laws or regulations penalizing Texas bidders. The list is published in the Texas Register. The information may be used and relied upon when evaluating bids under this Act.

Subchapter B – Interest on Retained Public Works Contract Payments

If a political subdivision of the state or a state agency retains a portion of a contract payment that exceeds 5 percent to secure performance of the contract, the government entity shall deposit the money into an interest bearing account and pay the earnings to the contractor upon completion of the contract.

This does not apply to:

- a contract made before Aug. 31, 1981;
- a public works contract in which the total contract price estimate at the time of execution of the contract is less than \$400,000; or
- a public works contract made by the Texas Department of Transportation under VTCS Transportation Code, Chapter 223.

Government Code, Chapter 2253: Public Work Performance and Payment Bonds

This Act requires bonds for payment and performance of contracts on certain public works projects and sets the standards for when the bonds are required and the amount of the bond.

The Act affects prime contractors that do business with the state, with its political subdivisions or with any other government or quasi-governmental authority, whether specifically named in the Act or not, that is authorized by the state to enter into contractual agreements for construction, alteration or repair of public buildings or public works. The prime contractor must execute a bond for performance and a bond for payment of materials or labor, on any public works contract in an amount set by the Act.

The performance bond is to ensure the faithful performance of the contract as required by the plans and specifications and contract documents. For a contract in excess of \$100,000, a performance bond shall be executed in the amount of the contract.

The payment bond protects the vendors supplying materials or labor for the contract. For a contract in excess of \$50,000, a payment bond shall be executed in the contract's amount.

If a vendor is not paid within 60 days of filing a claim, it has the right to sue the principal or the sureties on the payment bond. The claim may include the unpaid amount plus reasonable attorney's fees. The Act sets forth requirements for making a claim and for giving notice of claims to the contractors and subcontractors.

Claimants may be suppliers of materials or labor, or mechanics and laborers. They may be those having a direct contractual relationship with the prime contractor, or only with a subcontractor. But if the contract is with a subcontractor, additional notices are required.

If a contract covered by this Act has a provision for a retainer to be withheld, and the retainer is being claimed, then the claimant must give notice in writing 90 days before the contract's completion date. But no notice is required if the retainer has been part of a prior claim under this Act.

The Act defines such terms as claimant, material, labor, subcontractor and other applicable terms.

Government Code, Chapter 2254, Subchapter A: Professional and Consulting Services

This Act states that contracts for the procurement of defined professional services may not be awarded on the basis of bids. Instead, they must be awarded on the basis of demonstrated competence and qualifications, so long as the professional fees are consistent with, and not higher than, the published recommended practices and fees of the various professional associations and do not exceed any maximums provided by state law.

Professional services are defined as those performed by a certified public accountant, licensed architect, physician, optometrist, surgeon, registered surveyor, engineer or any group or association thereof.

When procuring architectural or engineering services, the entity shall use a two-step selection process. First, the entity shall select an individual or firm capable of performing the service on the basis of demonstrated competence and qualifications. The entity shall then enter into negotiations on a contract at a fair and reasonable price.

If the entity is unable to negotiate a satisfactory contract with the most highly qualified individual or firm, it shall formally end negotiations with that person or firm and then proceed to the next most highly qualified person or firm and repeat the process. Negotiations are carried on in this sequence until a contract is made.

If any agreement or contract is entered into with one of the above-mentioned professionals on the basis of a competitive bid, it is contrary to public policy and is void.

The Texas Cooperative Purchasing Program (CO-OP) takes the volume purchasing power of Texas — more than \$13 billion in purchased commodities and services in fiscal 2007 — and brings it to more than 1,700 local government members. CO-OP purchasing means buyers have access to state contracts with no bidding required — just

order from more than 200 state contracts. Member governments can purchase copiers, vehicles, road and highway materials and many other products for the same price as state agencies. The Comptroller's office also offers members on-site training as well as training sessions at various statewide events, conference calls, an online CO-OP manual, online Webinars and more.

Endnotes

- ¹ American Bar Association, *The 2000 Model Procurement Code for State and Local Governments* (Chicago, Illinois, 2000), §12-201.
- ² Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ³ Tex. Loc. Gov't. Code Ann. §113.901.
- ⁴ Op. Tex. Atty. Gen. No. WW-980 (1961).
- ⁵ Tex. Loc. Gov't. Code Ann. §113.901(c).
- ⁶ Op. Tex. Atty. Gen. No. M-955 (1971).
- ⁷ Op. Tex. Atty. Gen. No. H-977 (1977).
- ⁸ Letter Op. Tex. Atty. Gen. No.93-91 (1993).
- ⁹ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ¹⁰ Tex. Loc. Gov't. Code Ann. §262.011(d).
- ¹¹ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ¹² Tex. Loc. Gov't Code Ann. §272.001 (Vernon 2005).
- ¹³ Tex. Gov't Code §2254.001 et seq. (Vernon 2008 Professional Services Procurement Act).
- ¹⁴ Tex. Loc. Gov't Code Ann. §252.021(a)(2) (Vernon Supp. 2009).
- ¹⁵ Tex. Loc. Gov't Code Ann. §504.051(a), 505.052, 501.007, 501.064, 501.401 (Vernon Suppl. 2009).
- ¹⁶ *2010 Texas Municipal Procurement Laws Made Easy*, Office of the Attorney General, State of Texas, http://www.oag.state.tx.us/AG_Publications/pdfs/procurement_easy.pdf.
- ¹⁷ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ¹⁸ Tex. Loc. Gov't Code Ann. §252.041 (Vernon 2005).
- ¹⁹ Tex. Loc. Gov't. Code Ann. §262.027.
- ²⁰ Tex. Loc. Gov't. Code Ann. §262.030.
- ²¹ Department of Information Resources, <http://www2.dir.state.tx.us/ict/overview/Pages/overview.aspx> (Last visited June 9, 2010.)
- ²² *2010 Texas Municipal Procurement Laws Made Easy*, OAG, p. 11.
- ²³ Tex. Loc. Gov't. Code Ann. §262.030.
- ²⁴ Tex. Loc. Gov't. Code Ann. §262.022(5).
- ²⁵ Tex. Gov't. Code §2254.003.
- ²⁶ Tex. Loc. Gov't. Code Ann. §252.041 for cities and §262.025 for counties.
- ²⁷ Tex. Loc. Gov't. Code Ann. §252.043 (Vernon 2009).
- ²⁸ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ²⁹ *2010 Texas Municipal Procurement Laws Made Easy*, OAG, p. 17.
- ³⁰ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ³¹ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ³² Tex. Loc. Gov't. Code ANN. §262.024(d).
- ³³ Tex. Loc. Gov't. Code ANN. §§262.027 and 271.027.
- ³⁴ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ³⁵ Tex Loc. Gov't. Code ANN. §252.043.
- ³⁶ Interview with Cyd Grimes, Purchasing Agent, Travis County, Austin, Texas, October 29, 2009.
- ³⁷ Tex. Loc. Gov't Code §252.0215 (Vernon Supp. 2007).
- ³⁸ *2010 Texas Municipal Procurement Laws Made Easy*, OAG, p. 32.
- ³⁹ Tex. Loc. Gov't Code §252.022;262.024; and 271.056.
- ⁴⁰ *Hoffman v. City of Mt. Pleasant*, 89 S.W.2d 193.
- ⁴¹ 1999 Atty. Gen. Op. JC-0136.
- ⁴² Gov't Code Tex. Ann. Chapter 2254, Professional and Consulting Services.
- ⁴³ 1988 Atty. Gen. Op. JM-940.
- ⁴⁴ 1992 Tex. Atty.Gen.Op. DM-106.
- ⁴⁵ 1986 Tex. Atty.Gen.Op. JM-486.

- ⁴⁶ “Uniform Chart of Accounts for Texas,” October 2002, Texas Comptroller of Public Accounts, <http://www.texasahead.org/lga/chart/ch01.html> (last visited June 9, 2010).
- ⁴⁷ Interview with Billy Cannon, Internal Audit, Senior Auditor, Texas Comptroller of Public Accounts, October 29, 2009, Austin, Texas.
- ⁴⁸ Interview with Lara Bell, Texas Purchasing Support System Special Projects Director, Texas Comptroller of Public Accounts, June 2, 2010.
- ⁴⁹ Interview with Lara Bell, Texas Purchasing Support System Special Projects Director, Texas Comptroller of Public Accounts, June 2, 2010.
- ⁵⁰ Tex. Loc. Gov’t Code §252.021 (as amended by Texas House Bill 3517 and Senate Bill 1765, 80th Legislature, Regular Session (2007)).
- ⁵¹ Tex. Educ. Code Ann. §44.031(a)(8) (Vernon 2006).
- ⁵² *2010 Texas Municipal Procurement Laws Made Easy*, OAG, p.1.
- ⁵³ E-mail to Comptroller of Public Accounts from Ty Elliott, City Internal Auditor, College Station, Texas, November 11, 2009.