

# County Purchasing Basics

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# Competitive Procurement Requirements

**Chapter 262**, Local Government Code (the County Purchasing Act), sets out the procurement requirements for counties.

**It establishes:**

- The requirements and exemptions for competitive procurement.
- Criminal penalties for failure to comply.
- Bid and proposal methods for goods and services other than construction projects.

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# Competitive Methods Procurement Requirements

Before a county may purchase one or more items that cost more than \$50,000, the Commissioners Court must:

1. Comply with the procedures for competitive sealed bids or competitive sealed proposals set out in Chapter 262; **or**
2. Use the reverse auction procedure set out in Section 2155.062(d) of the Government Code; **or**
3. Comply with an alternative construction delivery method under Ch. 2269; **or**
4. Purchase through a cooperative purchasing program.

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### Competitive Methods Procurement Requirements, Cont'd.

**Unless** the transaction is exempt from competitive procurement requirements by statute.

For Example:

For counties with the County Road Department system, all purchases for the county road department in excess of \$25,000 must be competitively bid in conformity with estimates and specifications prepared by the county road engineer.

- Chapter 252 Transportation Code

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### Exemptions

A county **does not** have to go through one of these competitive procurement methods if:

1. Contract amount is \$50,000 or less; or
2. Purchase falls within an exemption under Ch. 262 **and** the commissioners court approves the exemption.

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### Exemptions, Cont'd.

Frequently Used Exemptions:

1. Item needed for an emergency.
2. Item needed to preserve or protect public health and safety of county residents (doesn't have to be an emergency).
3. Land or right of way.
4. A professional service (e.g., architect, engineer, attorney).
5. Item available from only one source (includes electric power, gas, water, and other utility services).

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**Exemptions, Cont'd.**

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- ◆ For exempt purchases, the County Purchasing Agent or Commissioners Court must adopt policies and procedures for competition (e.g., contact three vendors for price quotes).

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**Separate, Sequential, or Component Purchases**

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- ◆ County cannot use separate, sequential, or component purchases to avoid competitive procurement requirements (e.g., breaking up a purchase to come in under \$50,000).
- ◆ Purchases from the same supplier by the same county officer, department, or institution are treated as purchases under a single contract (the amounts are aggregated).

**Exception:** Separate purchases of office supplies if there is no intent to avoid requirements.

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**Chapter 262 Procurement Methods**

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Under 262, a county can use competitive sealed proposals for the purchase of:

- ◆ Insurance
- ◆ High technology items
- ◆ Landscape maintenance
- ◆ Travel management
- ◆ Recycling
- ◆ Other items when the County Purchasing Agent determines, with the consent of Commissioners Court, that it is in the best interest of the county to use this method.

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**Chapter 262 Procurement Methods, Cont'd.**

- ◆ Notice of the Request for Proposal (RFP) must be given in the same manner as for competitive bids.
- ◆ The RFP must list the selection criteria and specify their relative importance.
- ◆ The award is to the responsible party whose proposal is determined to be the lowest offer resulting from negotiation.

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**Cooperative Purchasing Programs CH. 271 LGC**

- ◆ Counties may purchase items by participating in a cooperative purchasing program with another governmental entity or with a local cooperative organization, instead of going through a competitive procurement process.
- ◆ A local cooperative organization is "an organization of governments established to provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment".
- ◆ The county must enter into an agreement with the government or local cooperative organization regarding the participation requirements.

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**Alternative Construction Delivery Methods**

Government Code Chapter 2269 establishes six alternative construction delivery methods for construction projects:

1. Competitive Bid
2. Competitive Sealed Proposals
3. Construction Manager Agent
4. Construction Manager at Risk
5. Design Build
  - There are two separate Design Build methods, one for architectural projects and one for civil engineering projects.
6. Job Order Contract
  - The job order method cannot be used for civil engineering projects.

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## Competitive Sealed Bid

This is the traditional method of competitive bid.

**Steps:**

1. The county selects an architect or engineer using the Professional Services Procurement Act (Chapter 2254 Texas Government Code) to design the project and develop the plans and specifications for the project.
2. The county issues a Request for Bids in which the county provides the plans, the estimated construction budget, the project scope and schedule, and other relevant information.
3. The county selects the lowest bidder.

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## Competitive Sealed Proposals

**This is similar to the sealed bid procedure described above. However, in this option:**

- Proposals are used instead of bids;
- The award can be made based on criteria other than price; and
- The county may negotiate a proposal with the proposer.

**Steps:**

1. County selects the A/E to design the project and develop the plans.
2. County issues an RFP based on the plans and other solicitation documents.
3. The proposals are publicly opened, and the names of the proposers and the dollar amount of their proposals are read aloud.
5. County ranks each proposal and selects the "best value" based on the selection criteria.
6. County negotiates with the first-ranked proposer. If negotiations are not successful, the county moves to the next-ranked proposer until a contract is selected or all proposers are rejected.

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## Construction Manager at Risk

The Construction Manager provides pre-construction services during the design of the project and serves as the general contractor during construction.

**Steps:**

1. County selects A/E to design project and prepare plans.
2. At the same time, the county selects the Construction Manager at Risk (CMR) through either a one-step or two-step process:
  - In the one-step process, the county uses a Request for Proposals (RFP);
  - In the two-step process, the county first sends out a Request for Qualifications (RFQ), then selects five or fewer candidates to receive the RFP.
3. The county evaluates and ranks each contractor and makes its selection of "best value" based on the selection criteria.
4. The county begins negotiation with the first ranked contractor, and if negotiations are not successful, moves down the rank until a selection is made or all proposers have been rejected.

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## Construction Manager as Agent

The county acts as its own general contractor and contracts directly with the sub-contractors.

The Construction Manager as Agent (CMA) serves as a "project manager" and does not have any responsibility for construction. They administer the contracts and coordinate performance.

**Steps:**

1. County selects A/E to design project and prepare plans and contractors to perform construction using one of the other construction delivery methods.
2. County selects CMA through an RFP based on demonstrated competence and qualifications in the same manner as under the Professional Services Procurement Act.
3. The CMA serves as a consultant to the county and oversees and coordinates work under the construction contract.

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## Design/Build for Architectural Projects

**A single entity designs and builds the project.**

**Steps:**

1. County selects its own A/E to develop a design-criteria package for the project.
2. Selection of the "design/build team" (consisting of A/E and the contractor) is made in two phases:
  - Phase 1: County prepares an RFQ for a design/build team that includes general information on the project, selection criteria, project scope, budget, and the design-criteria package, and evaluates each respondent based on experience, competence, and other qualifications.
  - Phase 2: County selects five or fewer respondents to receive an RFP. The County ranks the teams and makes its selection based on the selection criteria.
3. If the county cannot negotiate a contract with the first ranked team, it moves down the rank until a design builder is selected or all respondents are rejected.
4. The design/build team designs the plans and constructs the project.

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## Important Statutes

Texas Occupations Code Sec. 1001.407 requires:

1. The engineering plans, specifications, and estimates have been prepared by an engineer; **and**
2. The engineering construction is performed under the direct supervision of an engineer.

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**Important Statutes, Cont'd.**

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Texas Occupations Code Sec. 1051.703 requires an **architect** for:

1. A new building or modification of an existing building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietor or operator of the building (e.g., the county jail).
2. A new building having construction costs exceeding \$100,000 that is:
  - (A) constructed and owned by the government; and
  - (B) used for education, assembly, or office occupancy.
3. An alteration that costs over \$50,000 to an existing building owned by the county and will be used for education, assembly, or office and requires the removal, relocation, or addition of a wall or an exit.

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**Important Statutes, Cont'd.**

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Texas Labor Code Sec. 406.096 requires:

1. The contractor and all subs provide workers comp insurance for all government construction contracts.

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**Failure to Comply - Enforcement of Provisions**

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- ◆ If the county fails to comply with the County Purchasing Act, the contract is **voidable** by a court.
  - Any property tax paying citizen of the county can enjoin performance.
- ◆ A county officer or employee who intentionally or knowingly makes or authorizes sequential purchases to avoid purchasing requirements commits a **Class B misdemeanor**.
- ◆ County officer or employee who intentionally or knowingly violates any other competitive procurement requirement commits a **Class C misdemeanor**.

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### Can You...

- ◆ Specify the products be "Made in America?"
- ◆ Require the bidder be local?
- ◆ Require a brand name product?
- ◆ Use health insurance as a factor?
- ◆ Use past performance as a factor?
- ◆ Use recycling as a factor?
- ◆ Enter into a multi-year contract?

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### Conflict of Interest Form

- ◆ Local Government Code Chapter 176 requires a Conflict of Interest Questionnaire (Form CIQ) if the vendor has a business relationship with the county, a county officer, or a family member of the county officer.
- ◆ Best practice is to attach a Texas Ethics Commission Form CIQ with the solicitation.

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