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TOM GREEN COUNTY



PURCHASING POLICY

Adopted 4-8-08

April 2008

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INTRODUCTION

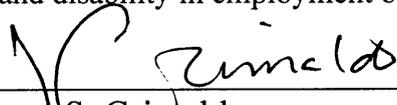
Local Government Code 262.011(o) states that: the purchasing agent shall adopt the rules and procedures necessary to implement the agent's duties under this section subject to approval by the commissioners' court. This manual contains the authorized procedures for purchasing by county officials and employees. The Tom Green County Commissioners' Court promulgates these procedures, and changes in the contents of this manual shall be made only with the approval of the Commissioners' Court.

County purchasing procedures are governed by Texas statutes; and these statutes, including interpretations of them made by Texas courts, are the ultimate authority on the validity of purchasing procedures. Because the procedures described in this manual are based on state law, this manual, in many instances, contains language taken directly from statutes, and paraphrases of and broad generalizations about Texas statutory law have been included where appropriate to assist in applying the law in routine situations. This manual cannot address every situation; and when an unusual situation occurs or a difficult legal or factual problem arises, the exact statutory language must be reviewed and analyzed. In every situation, the final authority for county purchasing procedures is the law itself.

This manual is for the use of Tom Green County employees and officials and is designed to assist them in complying with the laws governing county purchasing procedures. This manual does not create any rights of individuals or entities enforceable against Tom Green County.

EQUAL OPPORTUNITY STATEMENT

The County of Tom Green does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services.



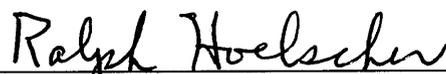
Johnny S. Grimaldo
Purchasing Agent

April 8, 2008

Date

Tom Green County Commissioners' Court

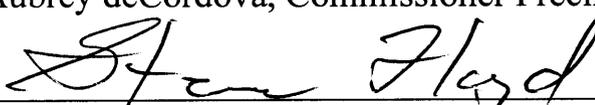

Michael D. Brown, County Judge



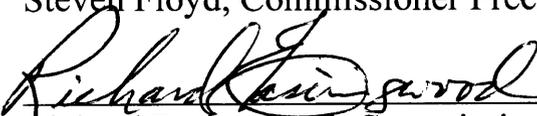
Ralph Hoelscher, Commissioner Precinct 1



Aubrey deCordova, Commissioner Precinct 2



Steven Floyd, Commissioner Precinct 3



Richard Easingwood, Commissioner Precinct 4

I. STATEMENT OF GENERAL POLICY

It is the policy of Tom Green County that all purchasing shall be conducted strictly on the basis of economic and business merit. This policy is intended to promote the interest of the citizens of Tom Green County.

To avoid violation of or the appearance of violation of the policies in this manual, county employees and officials are prohibited from:

Seeking or accepting, directly or indirectly, any loans, services, payments, entertainment, trips or gifts of merchandise or money in any amount from a business or an individual doing or seeking to do business with the county.

It is important to remember that county purchasing operates in full view of the public. In order to assure an open purchasing process and economy in purchasing, the Commissioners Court has determined that competitive bidding will be used as much as possible in the purchase of goods and services for the County.

Tom Green County intends to maintain a cost effective purchasing system conforming to good management practices. To be successful, the system must be backed by proper attitudes and cooperation of not only every department head and official, but also every supervisor and employee of Tom Green County. The establishment and maintenance of a good purchasing system is possible only through cooperative effort.

The responsibility of purchasing ultimately rests with the Commissioners' Court. The Purchasing Agent, as an agent of the Commissioners' Court, aids in the purchasing process but is subject to the Court's direction as to reasonable specifications and maximum prices on items to be purchased.

The purchasing process is not instantaneous. Time is required to complete the steps required by State law. In order to accomplish timely purchasing of products and services at the least cost to Tom Green County, all departments must cooperate fully. Prior planning and the timely submission of requisitions are essential to expedite the purchasing process and to assure that the process is orderly and lawful.

II. PURCHASING AUTHORITY AND GENERAL GUIDELINES

Under LGC §262.011, the authority to make County purchases resides in either the County Purchasing Department or the Commissioners' Court. The Purchasing Department is responsible for making purchases of supplies, materials, equipment, and for making contracts for repairs to County owned property, except in cases where competitive bids are required by law. All competitively bid contracts are made by and through the Commissioners' Court. The Purchasing Agent in accordance with the purchase contract shall supervise purchases made by competitive bids (Code, Chapter 262.011(e).) Competitive bidding is generally required on all purchases or repair contracts for \$25,000 or more.

Quick Reference Terms:

- RFQ-** Request for Quote (for purchases under \$25,000, may be written or verbal, formal or informal)
RFB- Request for Bid (as mandated must be written Formal Competitive bids)
RFP- Request for Proposal (designated for High Tech, Insurance, and Special Services as prescribed by LGC)
RFSQ- Request for Statement of Qualifications (shall be used when Professional Services are required)

General guidelines for purchasing and utilization of this manual are as follows:

- (1) Determine whether the county is required to make the purchase by competitive bidding. Generally, competitive bidding is required on any purchase likely to equal or exceed \$25,000. Unless a bid contract for the goods or services already exists, the items required to be purchased through competitive bidding will be purchased as described in Section V, pg. 11. Questions regarding the necessity of competitive bidding should be answered by the Purchasing Department.
- (2) Items not purchased via the Internet will be purchased through the Purchasing Department, as described in Section IV, p. 8.
- (3) Other Purchases -- Special procedures are available for and applicable to the purchase of particular goods and services, summarized as follows:
 - (a) Unbudgeted Capital Expenditures -- purchases not authorized in a Department's current budget must be authorized through a budget amendment by the Commissioners' Court. (See Section VII, A, p.14).
 - (b) High Technology and Insurance -- as an alternative to competitive bidding, in the case of high technology items and insurance, competitive proposals from vendors may be solicited by the county when, in the judgment of the Commissioners' Court, this procedure is preferable. (See Section VII,B, p.14).
 - (c) Professional and Personal Services -- Professional and Personal Services are exempted from competitive bidding, in which case they are obtained through RFPs or RFSQs as described in Section VII, C, pgs. 14-15.
 - (d) Emergency Purchases -- items otherwise required to be competitively bid may be exempt from the competitive bidding process by the Commissioners' Court if (1) a prompt purchase is required, due to a public calamity, to meet a necessity of the citizens or preserve public property, (2) the purchase is necessary to preserve the public health or safety of a county residents, or (3) the purchase is required due to unforeseen damage to public property. (See Section VII, D, pgs. 15-16)
 - (e) Work in Progress -- this may be exempted by the Commissioners' Court and paid for by the day, after work is performed.

- (f) Land and Right-of Way Acquisition -- this has been exempted by the Commissioners' Court from competitive bidding.
- (g) Sole Source Items -- an item available from only one source may be purchased without competitive bidding, with the approval of the Commissioners' Court, as provided in Section VII, E, p. 16.
- (h) Equipment Maintenance Services Equipment -- Maintenance is arranged through the Purchasing Department as described in Section VII, F, p. 16.
- (i) Request for Proposals- LGC 262.030(d) allows the use of the RFP method for any purchase deemed to be in the best interest of the county.
- (j) Interlocal Cooperation Act – Chapter 791 allows Local Governments to participate in joint purchasing efforts for the purchase of goods and services.
- (k) Cooperative Purchasing- satisfies Texas purchasing requirements of local governments to seek competitive bids for the purchase of such goods and services through Supplier Contracts.

ACQUISITION OF OFFICE SUPPLIES

A. Office supplies purchased from the Internet

- (1) The Purchasing Department will issue a Password and User ID to authorized users. Instructions on how to purchase via the Internet will be given to authorized personnel in each department. A purchase order will be issued by the purchasing department before order is processed.

B. All other Items/ Services not ordered from the Internet

- (1) Any Items not purchased on the Internet will be ordered by electronic requisition and sent to the Purchasing Department to be converted into a purchase order
- (2) In order to submit electronic requisitions, each Department Head shall provide a list of authorized buyers, for their department, to the Purchasing Agent.

IV. PURCHASE OF MATERIALS AND SUPPLIES

A. General

Materials and supplies not available from the current office supply contract via the Internet are acquired through the Purchasing Department. Additionally, contracts for repairs to property used by the county are entered through the Purchasing Department.

Methods and procedures for acquisitions through the Purchasing Department are described below:

B. Electronic Requisitions

Authorized buyers must submit an electronic requisition, which shall be converted into a purchase order, to the purchasing department when requesting a product or service.

C. Purchase Orders

Purchasing Department will require a Purchase Order to be issued for any purchase of goods and services

D. Responsibilities of the Purchasing Department and Requesting Departments

This section of the procedure manual outlines the responsibilities of the county departments when making an acquisition through the Purchasing Department. It should be used as a guide to help departments do their part in purchasing.

(1) The Purchasing Department's responsibilities are to:

- (a) Obtain information about and to know the needs of the departments of the County.
- (b) Secure the product that department needs, at the least cost to the County.
- (c) Know the sources for and availability of needed products.
- (d) Aid and to cooperate with all departments of the County to meet their equipment, service, and supply needs.

(2) Requesting Departments' responsibilities are to:

- (a) Make requests early enough to allow sufficient time for the vendor to make delivery.
- (b) Supply detailed specifications of item requested.
- (c) Supply a written list to the Purchasing Department of any department personnel (besides the Department Head or County Official) who are authorized to enter a requisition.
- (d) Supply a written list to the Purchasing Department of any department personnel (besides the Department Head or County Official) who are authorized to request, pickup, or phone in Purchase Orders.
- (e) Inform the Purchasing Department or Commissioners' Court of all unusual demands.

- (f) Take no actions, which might be viewed as obligating or committing the County, except when authorized in an emergency.
- (g) Make no commitments regarding commodities or services in the name of the County. Such commitments will be VOID unless the Purchasing Agent, the Commissioners' Court, or other agents of the Commissioners' Court make them.
- (h) Place orders only after authority has been granted, and state/local purchasing guidelines have been met.
- (i) Notify Purchasing when employees leave, are terminated, or are transferred from your department. Purchasing must make changes to buyer lists, long distance codes, etc...

E. Phone Authorized Purchase Order

- (1) The Purchasing Department may authorize a purchase by telephone and give a Purchase Order number over the phone. A Purchase Order number will be assigned immediately over the telephone for an employee to use for immediate pick up of the merchandise. Phone Authorized Purchase Order numbers will be given only when repair, maintenance or replacement parts must be obtained immediately.
- (2) The authorized employee will need the following information before the Purchasing Department can issue a Phone Authorized Purchase Order:
- (a) Authorized employee name making purchase
 - (b) Correct Name of Vendor. If new vendor, have vendor information handy (correct name, tel.#, fax#, address, etc.)
 - (c) What you are purchasing, quantity, cost
 - (d) What department and line item the purchase will be charged to. **The purchasing dept is not responsible for knowing the line item(s) the dept needs to utilize.**

F. Computer Related Purchases

Purchases for any/all computer related items must have approval from the Information Technology Department before a requisition for purchase can be made.

V. BIDDING PROCESS AND PROCEDURES

A. Bid Procedures for Budgeted Item -- Purchase over \$25,000

Requesting Department's Responsibilities

- (1) Provide the Purchasing Department with complete specifications to write a complete bid for the requested item and be readily available during the evaluating thru awarding stages.
- (2) Be present at the meeting of the Commissioners' Court during which the bid specifications are discussed and be available at time of award.
- (3) Confirm budgeted funds are available.

Purchasing Department's Responsibilities

- (1) Review bid specifications to determine adequacy in light of general requirements and to insure that they are not unduly restrictive.
- (2) Prepare final bid specifications for Commissioners' Court approval.
- (3) Prepare agenda request and notify the Department of agenda date.
- (4) Following approval by Commissioners' Court, mail bid specifications to vendors.

B. General Bidding Information

The Purchasing Agent will insure publication of the legally required notice. No specifications are to be written with the intent to exclude a possible bidder. Competitive bidding can be let on either a lump sum or a unit price basis. If unit price bids are solicited, the needed quantities of each item are to be estimated in the requisition based on the best available information. The successful bidder's compensation, however, will be based on the actual quantities supplied, furnished or constructed.

C. Bid /Proposal Opening

Following receipt of bids by the Auditor's Office, bids will be publicly opened in the Auditor's Office on a pre-set date/ time. Bid openings are open to the public. All sealed bids will be opened on the assigned day at the designated time. Bids will be read aloud and recorded on a bid tabulation sheet. The Purchasing Department will furnish copies of the bid tabulation sheet to the County Clerk to record and the requesting Department. Competitive Proposals will be handled in the same manner, with the exception that all proposal information will remain confidential until proposal is awarded to vendor.

D. Bid Recommendations

After examining copies of all the bids, the requesting Department will send a written recommendation for bid award to Purchasing at least seven day prior to the deadline for Commissioners' Court agenda. The Purchasing Agent will verify recommendation to the lowest and best bid received. Any recommendation to award to other than the low bidder will be presented to each member of the court prior to submission to court agenda.

After evaluation, Purchasing will arrange an agenda date, notify the Department, and transmit the recommendation to the Commissioners' Court.

A contract may not be awarded to a bidder, who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is notified by the Purchasing Agent of the proposed award and offered an opportunity to appear before the Court and present evidence concerning the lower bidders responsibility.

E. Bid Award

Bids will be awarded to the lowest and best responsible bidder. In addition to the price, the Commissioners' Court will consider:

- (1) The quality of the product;
- (2) The adaptability of the product to the intended use; and
- (3) The ability, experience, efficiency integrity, and financial responsibility of the bidder.
- (4) other factors deemed to be in the best interest of Tom Green County.

When the county receives only one bid, the bid may be accepted if the Commissioners' Court determines the price is fair and reasonable. If the price is not fair and reasonable, the bid is rejected.

If two or more responsible bidders submit identical bids, the bid award will be made by drawing lots or as directed by the County Judge.

F. Bid Bonds

A vendor awarded a contract may be required to post bond. If it is required, the Commissioners' Court will include the requirement in the bid advertisement. A performance bond is required for all contracts in excess of \$100,000 (262.032). The performance bond amount that will be required shall not be less than 5% of the total contract price.

G. Acquisition of Item After Bid Award

Following award of the bid contract by the Commissioners Court, a purchase order will be entered in the system and the successful Vendor will be notified.

- H. A change order may be required when it becomes necessary to make changes after performance of the contract has commenced. The original contract price may not be increased by more than 25%. All change orders requiring increases or decreases to the contract price involving more than \$50,000 must be approved by the Commissioners' Court, unless the Commissioners' Court grants general authority to an employee. All decreases of 18% or more of the original contract price must have the written consent of the contractor. (LGC§ 262.031)

Any major alterations of the plans or specifications must be submitted to the Commissioners' Court for approval.

VI. PURCHASE OF ITEMS UNDER \$25,000.00

A. Purchasing of items under \$25,000.00 and over \$3,000.00

Three (3) written quotes are required and documentation will be submitted to the Purchasing Department.

B. Purchasing of items under \$3,000.00.

Three (3) telephone quotes are all that are required and documentation shall remain with the requesting department.

VII. ACCEPTANCE OF DONATIONS AND BEQUESTS

The Commissioners' Court may accept a gift, grant, donation, bequest, or devise of money or other property on behalf of the county for the purpose of performing a function conferred by law on the county or county officer. (LGC § 81.032)

VII. SPECIAL PURCHASES

A. Unbudgeted Capital Purchases

If the needed capital item was not included as part of the County Budget, the following procedures should be followed in order to obtain budgetary authorization:

- (1) The requesting department must fill out an agenda request form and attach a memo justifying the need for the item.
- (2) The requesting department shall include in the memo a cost estimate justifying the need and a statement of whether there are available departmental funds, which may be used for this purchase. If funds are not available, it will be up to the Commissioners' Court to decide if the item could be bought out of contingency fund.
- (3) The agenda request with the required attachments must be forwarded to the County Judge to be placed on the next Commissioners' Court agenda.
- (4) The department will then present the request to the Court. The Commissioners' Court will approve or decline the request. If approved, normal purchasing procedures apply.

After budget authorization has been granted by the Commissioners' Court, the item will be competitively bid if over \$25,000.

B. Insurance and High Technology Items

Insurance and high technology items valued in excess of \$25,000 will be obtained through a proposal process. (LGC §262.030)

“High Technology Item” means a service, equipment or good of a highly technical nature, including:

- (1) data processing equipment and software and firmware used in conjunction with data processing equipment;
- (2) telecommunications, radio and microwave systems;
- (3) electronic distributed control systems, including building energy management systems; and
- (4) technical services related to the above items.

Purchases for Computer related items must be cleared by Information Services Department.

Quotations for insurance and high technology items must be solicited through requests for proposals.

C. Professional and Personal Services

(1) Definition of Professional Services

Professional services are services provided by or within the scope of services provided by licensed physicians, optometrists, architects, certified public accountants, engineers, and any other profession that has been deemed “professional” by the Attorney General or by State cases.

Professional services are procured through the Request for Statement of Qualifications process. The selection of providers of professional services will be based on the competency of the firm or individuals--not on competitive bidding. Departments requiring professional services must review the experience and capabilities of the prospective service providers through proposals and interviews.

Definition of Personal Services

Personal Services contracted to be performed by a specific person.

(2) Procedure

(a) Solicitation of RFSQs

After approval by the Commissioners Court, Purchasing will send the RFSQ to potential professional service providers. Purchasing Agent will order advertisement of the request. The service providers will submit qualifications to the Purchasing Department. The Purchasing Department shall open qualifications on the date specified in the RFSQ. Confidential and trade secret information, identified as such in the qualifications, shall not be publicly disclosed, but the remainder of the qualifications shall be open for public inspection following award of the contract.

(c) Evaluation

Purchasing Department and submitting Department may conduct further discussions and negotiations with responsible offerers after the opening. All offerers receive fair and equitable treatment with regard to such discussions and negotiations. The Purchasing Department and the requesting Department shall make an evaluation of qualifications. The evaluation of each service provider will cover at least the following:

General quality and responsiveness,

Organization and personnel, past experience with TGC and

any other factors deemed to be in the best interest of the county.

(d) Recommendation

After evaluation, Purchasing will arrange an agenda date, notify the Department, and transmit the recommendation to the Commissioners' Court.

The Commissioners' Court will award the contract. A purchase order will be issued for the services after the contract award has been made.

The Commissioners' Court must approve any exceptions to the procedures outlined above for professional services, in writing. The Comm. Court will determine whether to approve exceptions to these procedures on a case-by-case basis.

D. Emergency Purchases

Emergency purchases are authorized in extremely limited circumstances: (a) in the event of public calamity for the benefit of the county citizens or to protect public property; (b) in order to protect the public health or safety of county residents; or (c) when made necessary by unforeseen damage to public property. Depending upon the time of the emergency and type of purchase necessary, one of the following procedures should be followed:

- (1) After hours emergency -- in such instances the department must take the necessary action to obtain the needed goods or services. If, however, the Department is aware that the purchase involves an expenditure of \$25,000 or more, a reasonable effort should be made to contact the County Judge to notify him or his designated representative that the emergency exists. The next working day the Department should contact Purchasing to obtain a requisition and purchase order; procedures applicable to phone in purchase orders may be followed.
- (2) Emergency during working hours -- (a) If the purchase is for less than \$25,000 and budgeted funds are available, phone-in purchase order procedures may be utilized; (b) if the purchase is less than \$25,000 and funds are not available, approval of the County Judge must be obtained by Purchasing prior to acquiring the item using the phone in purchase order procedure; or (c) if the purchase is in excess of \$25,000, Purchasing must obtain approval of the 3 members of the Court for the purchase and then utilize phone in purchase order procedures.

E. Sole-Source Purchases

An item valued in excess of \$25,000, which would otherwise be purchased by competitive bidding, may be purchased without the necessity of bidding if it is available from only one source. Typical items in this category include patented or copyrighted material, secret processes, natural monopolies, captive replacement parts or components for equipment, and films, manuscripts or books. Such items may be purchased from a sole source without competitive bidding only after the Purchasing Agent, in writing, certifies the existence of only one source to the Commissioners' Court and the Court enters a finding of such in its minutes.

F. Equipment Maintenance

Maintenance service on County owned equipment is arranged through the Purchasing Department. The Department requiring maintenance should contact Purchasing, which will initiate one of the procedures described below.

- (1) Equipment under warranty or existing maintenance contract -- Purchasing will contact the appropriate vendor and arrange for the service. After the equipment is serviced, the Department should notify Purchasing that the equipment has been serviced and forward the service ticket to Purchasing for filing.
- (2) Service of Other Equipment
 - (a) Purchasing will contact vendor(s) and obtain estimate(s) of cost. If estimated cost is not justified (e.g., cost of repair exceeds replacement cost or value of equipment), Purchasing will advise the Department and declare the equipment surplus. If the Department objects to the equipment being declared surplus, the final decision on whether or not to declare the equipment surplus will be made by the Commissioners' Court.
 - (b) If the cost of maintenance is justified, Purchasing will prepare a requisition and purchase order, notify the vendor of the purchase order, and arrange for the service.
 - (c) After the equipment has been serviced, the Department will notify Purchasing and forward the service ticket to Purchasing.
 - (d) Purchasing will execute the receiving copy of the purchase order, and forward the receiving copy to the Treasurer's Office. The service ticket will be filed by Purchasing.

VIII. INSPECTING, TESTING AND RECEIVING

It is the responsibility of each County department to see that all purchased items conform to the quantity, quality and specifications of the order.

Whenever possible, merchandise should be received at the receiving dock before it is sent to the requesting department. After delivery of the merchandise to the requesting department, the department must determine whether the goods are acceptable. If they are not, the Receiving Department must immediately notify the Purchasing Department of the reasons why the merchandise is not acceptable. The Purchasing Department will then compel replacement, cancel the order, or take other appropriate action to obtain correct merchandise.

IX. COUNTY-OWNED SUPPLIES AND EQUIPMENT

All County-owned supplies, equipment and machinery must be used only for County business. Elected Officials and Department Heads are responsible for the proper accounting for, maintenance of and use of County equipment.

A. Receipt of New Property -- Tagging

New property of \$3,000.00 or more will be tagged for inventory purposes by the Purchasing Department. The Purchasing Department will tag all furniture, equipment and other property with a potential useful life of one year or more, except small tools, with a "Red County Tag."

B. Transfer of Property

The transfer or trade of any equipment from one Department to another must be handled through the Purchasing Department. In the event an item is no longer required, the Department will notify the Purchasing Department in writing. The Purchasing Department will direct appropriate action to be taken.

The Purchasing Department and other departments are encouraged to make inquiries as to unused or unneeded equipment in the possession of other departments, but the decision as to whether the property is unneeded ultimately rests with the Commissioners' Court.

Anytime property is transferred and inventory transfer sheet must be completed. A copy of the transfer shall be maintained by the Purchasing Department for inventory control.

C. Missing Property

Lost or stolen property must be reported immediately. Reports of loss or theft must be made by the Department Head to the Purchasing Agent and to the County Auditor. Stolen property must be reported to the proper law enforcement agency, and an official report of the law enforcement agency must be obtained by the Department Head. The Department Head must then report the theft in writing to the Purchasing Department and the County Auditor and attach the official law enforcement report.

If an item cannot be located, the Purchasing Department will request the Commissioners' Court to declare the item lost or stolen. Items declared lost or stolen will be removed from inventory controls.

D. Disposal of Surplus or Salvage Property

The Purchasing Agent may periodically request that the Commissioners' Court declare property "surplus" (in excess of needs, but still useful) or "salvage" (valueless property of no use). The purchasing agent may sell by competitive bid, or auction, or by other means as provided in LGC §263.152, surplus or salvage property.

County employees will be given the same opportunity afforded to other persons to bid on and purchase surplus properties offered at a public sale or auction.

E. Inventory Arrangements - Resignation, Retirement or Removal

When an Elected Official or a Department Head leaves his or her employment with the county, he or she must arrange with the Purchasing Department for an inventory of all equipment assigned to him or her. The Official or Department Head must notify the Purchasing Department far enough in advance to insure that the inventory can be taken before the Official's/ Department Head's termination date. The Purchasing Agent will provide to the Auditor and the Commissioners' Court a full report, noting any discrepancies between property actually located and property listed on the inventory. The County Official or Department Head will be personally accountable for all missing items.

F. Annual Inventory

On July 1 of each year the Purchasing Agent shall file an inventory of all property of the County with the County Auditor and Commissioners' Court. The inventory shall include all property identified in subsection A. (LGC §262.011.i.)

X. LEGAL BASIS FOR PURCHASING

A. Article 664-4* -- Professional Services Procurement Act

Counties may not bid contracts for professional services. These contracts instead must be awarded on the basis of “demonstrated competence and qualification for the type of professional services to be performed.” Fees must be “fair and reasonable,” consistent with and not in excess of published recommended practices and fees of applicable professional organizations, and not in excess of any maximums specified by State law. “Professional services” includes services within the scope of the practice of: accounting, architecture, optometry, medicine of professional engineering; this includes services performed by any licensed architect, optometrist, physician, surgeon, certified public accountant or registered professional engineer in connection with his or her professional employment or practice.

B. Code* Chapter 271, Subch. D -- Purchase Under State Contract

The State Purchasing and General Services Commission may perform purchasing services for local governments (including counties). The county may participate by adopting a resolution. The contents required in the resolution are stated in the statute. A county which purchases under state contract satisfies all competitive bidding laws. (Formerly article 664-7).

C. Code Chapter 171 -- Conflict of Interest

Ownership of certain property or business interests may require that a local public official refrain from participation in votes or decisions and/or refrain from certain acts if the vote, decision or act involves the business interests or property owned by the public official or by a person related to the public official within the second degree of consanguinity or affinity.

“Local public official” includes members of the county governing body or other county officers, whether elected or appointed, paid or unpaid.

A person is deemed to have a substantial interest in a business entity” if”:

- (1) Ownership of ten per cent (10%) or more of voting stock or shares of the business entity, or ownership of \$2,500 or more of the fair market value of the business entity; or
- (2) Proceeds received from the business entity exceed ten per cent (10%) of the person’s gross income for the prior year.

A person is deemed to have a substantial interest in real property if the interest, whether involving equitable or legal ownership, has a fair market value equal to or exceeding \$2,500. A local public official is deemed to have a substantial interest in the business entity or in land if a person related to the official within the second degree by consanguinity or affinity has a substantial interest in said business entity or land as defined above.

If the local public official has a substantial interest in a business which seeks to do business with the county, the official must file with the county clerk an affidavit stating clearly the nature and extent of his interest. The public official must then abstain from participation in any matter involving or between the county and the business in which he has the substantial interest. In particular, this includes abstention from votes or other decisions regarding the business entity, if it is reasonably foreseeable that action taken on the matter would or might confer an economic benefit on the business. The official must not act as surety for the business if it has work, business or contracts with the county. An official may not

knowingly act as a surety on any official bond required of an officer of the county. A violation of any of these is a crime (CLASS A misdemeanor).

The County Commissioners' Court may, however, contract for services or personal property with a business entity in which a member of the court has a substantial interest if the business entity (1) is the only business entity which can provide the needed service or property within the jurisdiction of the Commissioners' Court, and (2) bids on the contract.

The Commissioners' Court must take a separate vote on any budget item which is specifically concerned with a contract involving a business entity in which a member of the Court has a substantial interest. The Commissioner having the substantial interest may not participate in that separate vote; he may, however, vote on the final budget if: (1) he has otherwise complied with the requirements of Chapter 171, some of which are indicated above, and (2) the matter regarding the business entity with which the member is concerned by virtue of his substantial interest has been resolved. (Formerly article 988b)

D. Code Chapter 262, Subch. A -- County Contracting Agent

The Commissioners' Court may at its discretion appoint an agent with authority to contract on behalf of the county for (1) erecting or repairing county buildings; (2) supervising same; or (3) any other purpose authorized by law. Any contract or other act of such an agent which is properly executed on behalf of the county and is within the agent's authority is binding on the county for all purposes. (Formerly article 1580)

E. Code Chapter 262, Subch. B -- County Purchasing Agent

The county purchasing agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used, by the county or a subdivision, officer, or employee of the county, except purchases and contracts required by law to be made on competitive bid/proposal. A person other than the purchasing agent not make the purchase of the supplies, materials, or equipment or make the contract for repairs. A person, including an officer, agent, or employee of a county or subdivision or department of a county, commits an offense if the person violates this section. Section 262.011(d),(m). The county auditor may not draw or approve and the county treasurer may not honor a warrant for any purchase unless that purchase has been made by the County Purchasing Agent or by competitive bid/proposal as required by law. Section 262.011(g)

The agent has a number of other duties, which are specifically set out in Chapter 262, Subchapter. B. e.g., the County Purchasing Agent may cooperate with a purchasing agent from a municipality to purchase items in volume. The County Purchasing Agent is responsible for filing with the County Auditor, the Commissioners' Court on each July 1st and inventory of all county property on hand and belonging to the county.

In order to prevent unnecessary purchases, the County Purchasing Agent shall transfer any county supplies, materials and equipment from any department not needing them to another department requiring them. Upon so doing, the agent shall furnish the departments with a form to sign to transfer such item.

The County Purchasing Agent may have assistants to aid in the performance of the agent's duties. A person who is authorized by the county purchasing agent to use a purchasing card, while making a county purchase is considered an assistant of the Purchasing Agent to the extent the person complies with the rules and procedures prescribed for the use of county purchasing cards as adopted by the county purchasing agent.

The authority of the County Purchasing Agent applies to all purchases of supplies, materials and equipment for the use of the county and its officers, including purchases made by officers paid out of fees of the office or otherwise, regardless of whether the purchase contract is made by officers paid out of fees of the office or otherwise, regardless of whether the purchase contract is made by the commissioners' court or any other officer authorized to bind the county by contract.

F. Code Chapter 263, Sub-chapter. D -- Disposition of Salvage or Surplus Property

Surplus property is property in excess of needs, but property that still has some usefulness. Salvage property is defined as property having no value for the purpose for which it was originally purchased.

Surplus or salvage property may be sold by competitive bid or may be auctioned. It also may be offered as a trade-in on new property of the same general type, and by a manner prescribed by LGC. If the Commissioners' Court cannot sell or trade in the property, the property can be destroyed. (Formerly Act. 664-7)

G. Code Chapter 262, Subch. C -- County Purchasing Act (Competitive Bidding)

The legislative scheme contained in the newly codified Local Government Code continues the substance of (no repealed) Article 2368a-5, and became effective September 1, 1987. It is a comprehensive county purchasing statute. The statute includes:

1. Competitive bidding requirements, procedures and exemptions;
2. An alternative competitive request scheme and proposal procedure for insurance or high technology items (see section 262.030); and
3. Bond requirements for bidders.

The competitive bidding procedures must be strictly complied with except for certain specific exemptions enumerated in the statute. These include certain emergencies and cases involving sole suppliers. Failure to follow the bidding requirements of the act may subject the contract to injunction to prohibit its performance. See section 262.033.

All separate, sequential or component purchases of items ordered or purchased by the same officer or department from the same supplier in any attempt to avoid the bidding requirements are treated as parts of a single purchase or contract. 262.023(c). Any county officer or employee who knowingly or intentionally makes or authorizes separate, sequential or component purchases in avoidance of the competitive bidding requirements is guilty of a CLASS B misdemeanor. Automatic and immediate removal of the officer or employee from his county office or position results upon final conviction. 262.034(a).

Intentional or knowing violation of the subchapter is a CLASS C misdemeanor. (Formerly article 2368a-5).

H. Code Chapter 113 -- Approval of Claims by County Auditor

Each "claim, bill and account" *against the county* must be filed with the county auditor, allowing sufficient time for the auditor to "examine and approve" the claim before the meeting of the Commissioners' Court at which it is to be approved. Such claim, bill or account may not be paid or allowed until it has been "examined and approved" by the county auditor. Section 113.064(a). The auditor may not audit or approve a claim unless the claim was "incurred as provided by law."

The auditor may not audit or approve and account (i.e., claim) for the purchase of supplies or materials for the county unless a requisition properly signed by the officer ordering the supplies or materials and approved by the county judge is attached to the account (claim). Section 113.901(a). The county judge may, by written order, waive the requirement that he approve requisitions. If this approval requirement is waived, the Commissioners' Court in open court must approve all claims. (Formerly article 1 1661 (1), (2))