



Welcome to County Procurement

Agenda:

**County Purchasing Act
Other Procurement Laws
Basic Public Purchasing**

Presented by:

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BACKGROUND

- El Paso County is the westernmost county in the state of Texas and was established in March 1850, with San Elizario as the first county seat. Today, the County is made up of El Paso, Socorro, San Elizario, Horizon City, Canutillo, Fabens, Clint, Tornillo, and Vinton.

It is centered in a tri-state area surrounded by New Mexico, Chihuahua, and Texas. As of the 2020 Census, the population was 865,657, making it the sixth-most populous county in the State. The county is surrounded by the Franklin Mountains in the north and the Hueco mountains in the east making El Paso a premiere location for outdoor sports such as hiking and biking. In fact, Hueco Tanks, the areas first National Historic Landmark, is one of the world's premier rock-climbing destinations. El Paso County's nearly year-round sunny weather makes El Paso the perfect place to work and raise a family. El Paso County has a high quality of life and attractive residential and commercial areas. Our strategic location offers exceptional opportunities for a variety of development and road trips!

- Our goal is to provide quality service, timely delivery of supplies, and cost-effective contracts to our internal County departments, while actively engaging suppliers during solicitations for these services, by using currently recognized best-practice purchasing techniques. The County is committed to an open and transparent procurement process and all interested suppliers are invited to participate.





Mission

The mission of the El Paso County Purchasing Office is to:

- Ensure compliance with the County Purchasing Act as well as other state and federal laws applying to county purchasing;
- Provide equal access to all vendors participating through competitive acquisition of goods and services;
- Provide an ongoing supply of quality goods and services to all County offices
- Account for all County assets through an effective fixed asset management system; and
- Protect the interests of El Paso County taxpayers without regard to any undue influence or political pressures.



Why is Purchasing Important?

Purchasing is an essential county government business function form by LGC

Effects budget and county's bond rating

Integrity and efficiency is a crucial component of its credibility

Perception of misuse threatens the public confidence



An aerial photograph of a city at dusk or dawn. The city is densely packed with buildings, and the lights are beginning to glow. In the background, a large, prominent mountain with a flat top (a mesa) rises against a clear blue sky. The overall scene is a mix of urban development and natural landscape.

Why Centralized Procurement?

- Major Advantage of this organizational structure is it provides the greatest control over taxpayers dollars.
- Provides the greatest cost savings by consolidating purchases.
- Provides a streamlined, consistent administrative function
- Provides businesses with a Single Point of Contact at the County.



State law requires that public entities:

Engage in competitive bidding

Have specific legal authority to make the purchase (Cannot spend unless budgeted)

Meet the requirements of specialized purchasing statutes (Cannot pay if purchase was not according to law)

Meet certain budget & finance restrictions (Auditor must verify availability of funds via a requisition (pre-encumber) for contract to be enforceable)

What the Law Requires

County Purchasing Agents

- Only the Commissioners Court and County Purchasing Agent (with few exceptions) has the authority to contract for the county.
- In El Paso County the Purchasing Agent is appointed by a Purchasing Board (3 District Judges, 2 County Commissioners) as authorized in LGC 262.011.
- The Board has authority to set the Purchasing Agents budget and salary.
- Court appointed agent LGC 262.0115
- Counties sharing an agent LGC 262.012

Basic Purchasing Law

Local Government Code (Chapter 262 - County Purchasing Act) Chapter. 262.011 - Purchasing Agent

- (d) County Purchasing Agent shall purchase all supplies, materials, and equipment required or used, by the county or a subdivision, officer, or employee of the county...a person other than the county purchasing agent may not make the purchase of the supplies, material ,or equipment or make the contract for repairs.
- (e) The county purchasing agent shall supervise all purchases make on competitive bid.
- (i) On July 1 of each year, the county purchasing agent shall file with the county auditor and each member of the Board...an inventory of all the property on hand and belonging to the county...
- (j) To prevent unnecessary purchases, the county purchasing agent, with court approval, shall transfer county supplies, material....not needed or used to another county office..
- (l) A person who is authorized by the county purchasing agent to use a county purchasing card while making a county purchase is considered an assistant of the county purchasing agent to the extent the person complies with the rules...
- (m) Violations are a misdemeanor punishable by a fine and jail time.
- (o) The county purchasing agent shall adopt the rules and procedures necessary to implement the agent's duties under this section subject to approval by commissioner's court. Must include rules and procedures for county purchasing cards supervised by the county purchasing agent
- (p) Purchasing Agent must complete at least 25 hours of CE in each two-year term.

Competitive Procedures

Chapter 262.0225 - Competitive Procedures

All bidders shall have the opportunity to:

- 1) bid on the same items
- 2) on equal terms
- 3) have bids judged by the same standards as set forth in the specifications
- 4) bids and proposals will be received in a fair and confidential manner
- 5) bids or proposals may be submitted in hard-copy format or through electronic transmission



Basic Purchasing Law

Chapter 262.023 – Competitive Requirements for Certain Purchases

- Before a county may purchase one or more items under a contract that exceeds \$50,000 the Court must:
 - comply with competitive bidding or competitive proposal procedures
 - Use the reverse auction procedures (GC 2155.062(d))
 - Comply with a method in Subchapter H, Chapter 271
- (c) Separate, sequential, or component purchases to avoid the law not allowed

Chapter 262.0235 Procedures for Electronic Bids or Proposal

- Before receiving electronic bids or proposals, the Purchasing Agent shall adopt rules to ensure the security and confidentiality of them.

Chapter 262.024 – Discretionary Exemptions

- (a) Specific items may be exempt from competitive bidding if the Commissioners' Court by order grants exemption



Exemptions to Competitive Bidding

Chapter 262.024

- 1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;
- 2) An item necessary to preserve or protect the public health or safety of the residents of the county;
- 3) An item necessary because of unforeseen damage to public property;
- 4) A personal or professional service;
- 5) An item that can be obtained from only one source, including: adding equipment to existing system or OEM equipment to ensure warranty



Basic Purchasing Law

Chapter 262.024

(c) Sole source items must have a signed statement to that effect entered into the minutes of the Commissioners Court

(d) Special procedures are set for bids for the purchase of food items

(b) Renewal or extension of a lease or equipment maintenance contract IF certain conditions are met and Court grants exemption



Basic Purchasing Law

Chapter 262.0245 – Competitive Bidding Procedures Adopted by

County Purchasing Agents

- Agent must adopt procedures that provide competitive bidding for items under \$50,000.
- Chapter 262.025 - Legal Notice
 - Notice must be published at least once a week with the first day of publication before the 14th day before the date of bid opening
 - If no newspaper of general circulation in the county, post in the courthouse for 14 days before the date of opening
 - If payment by time warrants, terms of the warrants must be disclosed



Basic Purchasing Law

Legal Notice (Cont'd) – Chapter. 262.025

Notice must include:

- 1) Where to get specifications
- 2) Time and Place for receiving and opening bids and where to be sent
- 3) Whether bidder should use lump-sum or unit pricing
- 4) Method of payment by the county
- 5) Type of bond required by the bidder

Basic Purchasing Law

Chapter 262.0255 - Certain Equipment

- Bids of certain heavy equipment may include a request for information about costs of repair, maintenance, or repurchase of the equipment
- A bond to cover repurchase costs of the equipment may be required
- Chapter 262.0256 – Pre-Bid Conferences
- Can require mandatory attendance from firms wanting to bid.



Basic Purchasing Law

Chapter 262.026 - Opening Bids

- Bids are opened on the date specified in the notice.
- Bids can be extended if in the best interest of county.
- Court can delegate bid extension authority to Purchasing Agent.
- Opened Bids shall be kept on file and available for inspection



Basic Purchasing Law

Chapter 262.027 - Awarding of Contract

- Opened bids shall be presented to Court in session
- Court shall award the contract to the responsible bidder who submits the lowest and best bid or reject all bids and publish a new notice
- Court shall draw lots to determine a tie bid award
- If recommended to award to other than lowest dollar bidder meeting specifications - each lower bidder must be given notice of the proposed award and give an opportunity to appear before the Court



A construction site at sunset. A large crane is silhouetted against the bright orange and yellow sky. In the foreground, there is a complex structure of scaffolding and rebar, with several workers visible on different levels. The scene is backlit by the setting sun, creating a dramatic silhouette effect.

Basic Purchasing Law

Awarding of Contract (Cont'd)

- When awarding bids for heavy equipment, Court may consider 262.0255
- When awarding bids for road construction materials, Court may award to more than one bidder for particular location or type of material
- Award can be subject to compliance with any mandatory pre-bid conference attendance.

Basic Purchasing Law

Chapter 262.030 - Competitive Proposals for Certain Goods and Services:

- Landscape maintenance
- Travel management; or
- Recycling.
- Used for purchase of specific items allowed in the law
- Use Request for Proposals and Public Notice
- Specifications must include the relative importance of price and other evaluation factors
- Offerors must be accorded fair and equal treatment
- (d) In addition, the RFP method may be used for any item if in the best the interest of county and Commissioner Court gives consent



Basic Purchasing Law

Competitive Proposals (Cont'd):

- (c) Proposals shall be opened to avoid disclosure of contents. All proposals are available for public inspection after award, except for confidential information
- (e) Revisions may be permitted after submission and before award to obtain the best and final offers



Gov't Code: Chapter 2254

Professional & Consulting Services Act

In LGC Professional services are exempt from bidding. GC 2254 prohibits certain professional services from competitive bid.

Professional services are defined as: predominately mental or intellectual, rather than physical or manual.

Statute sets the procedures for soliciting professional services.

Disposition of Salvage and Surplus Property

LGC - Chapter 263.151 – 263.158

Court may:

- (1) Sell by competitive bid or auction (not necessary if purchaser is another county or a political subdivision within the county that is selling).
- (2) Offer as trade-in for new property of same general type
- (3) Order destroyed or otherwise disposed as worthless if tried to sell and did not receive bids
- (4) Dispose by donating to a civic or charitable organization in the county (certain conditions apply).
- (5) Transfer gambling equipment to Texas Building and Procurement Commission under GC Section 2175.904
- (6) If property is earth-moving, material-handling, road maintenance or construction equipment, the Court may exercise a repurchase option made at time of purchase

The background of the slide features a photograph of a grand, classical building. In the foreground, a wide set of light-colored stone steps leads up to a row of tall, fluted columns. The columns are supported by a series of rectangular pedestals. The overall scene is brightly lit, suggesting a sunny day. A large, semi-transparent white circle is overlaid on the right side of the image, containing the text.

Other Disposition of Property Rules

Code of Criminal Procedure

- Art. 1817 - Disposition of abandoned or unclaimed property
- Art. 59.06 - Disposition of forfeited property

Other Laws Important to Purchasing



- **Nepotism and Conflict of Interest –LGC Ch. 171**
- **Business Relationship Disclosure-LGC Ch. 176**
- **Preference for Recycled Products H&SC 361.426**
- **Non-resident bidders-GC 2252**
- **Retainage and Bonds-GC 2252 & GC 2253**
- **Cooperative Purchasing-LGC Ch. 271**
- **Prison-made Products-GC Ch. 497**

Other Purchasing Laws



Texas Government Code

- Chapter 497 - Prison-Made Products
- Chapter 791 - Interlocal Cooperation Act
- Chapter 2251 - Payment for Goods and Services (Prompt Payment Act)
- Chapter 2252 - Bids by Non-resident Bidders
- Chapter 2251 - Bond for Labor and Material; Performance Bond
- Chapter 2254 - Professional Services

Cooperative Purchasing

Interlocal Cooperation Act

Saves tax dollars by pooling purchases

Satisfies county's bid requirements

Requires contract between entities

Requires language in specifications allowing cooperative purchasing

Fees usually involved - % of purchase or annual fee

Specifications

- Department shall determine requirements and prepare scope of work or product specifications
- Specifications cannot be restrictive
- Specifications can define quality
- Specifications must be competitive
- Single vendor prepared specifications is prohibited
- **Don't re-invent the wheel – utilize available resources**



The DONT'S of Bidding and Purchasing



DONT

Don't Violate the State bid laws.

- Make a purchase over \$50,000 without taking
- sealed bids or proposals.
- Make separate, sequential or component purchases
- in order to avoid competitive bidding.
- Grant an exemption from bidding when it doesn't
- comply with the law.
- Pass a sole source resolution just because the
- vendor is the department's favorite.

The DONT'S of Bidding and Purchasing



DONT

- Have a closed mind to new ways of purchasing.
- Establish local purchasing policies but waive them frequently.
- Act in an unethical manner or a manner which gives the appearance of impropriety.
- Write specifications which are biased in such a way that competition is eliminated.
- Violate the laws and AG opinions which govern whether and how you may consider the location of vendor's business in award of a bid.

The DONT'S of Bidding and Purchasing



DONT

- Ignore the requirement to have vendors obtain Worker's Compensation insurance.
- Appoint more than two members of the Commissioners' Court to proposal evaluation committees.
- Appoint potential vendors or agents of record to committees to write specifications or evaluate proposals.

Criminal Penalties



- **Class B & C Misdemeanor**
- **Immediate removal from office**
- **Four years – Ineligible:**
 - **for an elected or appointed position**
 - **to be employed in county**
 - **to receive any compensation through contracts with the county**



Cooperative Purchasing Opportunities

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- www.uscommunities.org – NACO
 - www.tasb.org/buyboard - BuyBoard
 - www.Omnipartners.com – Omni Partners
 - www.hgac.cog.tx.us – Houston-Galveston Area Council of Governments
 - www.tcpn.org – The Cooperative Purchasing Network

Resources

Texas Comptroller's Model Purchasing Manual
1-800-531-5441

Web resource cites:

Texas Association of Counties - www.county.org

State Agencies Index - www.state.tx.us/agency/agencies.html

Worker's Comp. Rules –
www.twcc.state.tx.us/rules/chapter100-119/110.html#/110.110

Texas Procurement and Support Services (TPASS)
<http://www.window.state.tx.us/procurement/>

General Services Admin. - www.gsa.gov

Attorney General Opinions www.oag.state.tx.us

www.nolo.com/index.cfm

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Questions?

