

PURCHASING LAW - LEGAL BASIS FOR PURCHASING

1. Article 664-4*--Professional Services Procurement Act (* Citation to "articles" are to Tex. Rev. Civ. Stat. Ann.; citations to "Code" or "section" are to the newly codified Local Government Code.)

Counties may not bid contracts for professional services. Instead, these contracts 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.

2. Code* Chapter 271, Subch. D -- Purchase Under State Contract (* Citation to "articles" are to Tex. Rev. Civ. Stat. Ann.; citations to "Code" or "section" are to the newly codified Local Government Code.)

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 that purchases under state contract satisfies all competitive bidding laws. [Formerly Article 664-7.]

3. 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's 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:

- (a) Ownership of ten percent (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
- (b) Proceeds received from the business entity exceed ten percent (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 who 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/her interest. The public official must then abstain from participation in any matter involving or between the county and the business in which he/she 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 that 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 that 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/she may, however, vote on the final budget if: (1) he/she has otherwise complied with the requirements of Chapter 171, some of which are indicated previously, and (2) the matter regarding the business entity with which the member is concerned by virtue of his/her substantial interest has been resolved. [Formerly Article 988b]

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

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]

5. Code Chapter 263, Subch. 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 may also be offered as a trade-in on new property of the same general type. If Commissioners' Court cannot sell or trade in the property, the property can be destroyed. [Formerly Art. 664-7]

6. 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 (now repealed) Article 2368a-5, and became effective September 1, 1987. It is a comprehensive county purchasing statute. The state includes:

- a. competitive bidding requirements, procedures and exemptions;

- b. an alternative competitive request scheme and proposal procedure for insurance or high technology items (see Section 262.030); and
- c. 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. [Id. 262.023(c)]. Any county officer or employee who intentionally, knowingly, recklessly or with criminal negligence makes or authorizes separate, sequential or component purchases in avoidance of the competitive bidding requirements of Section 262.023 is guilty of a CLASS B misdemeanor. Automatic and immediate removal of the officer or employee from his/her county office or position results upon final conviction. [Id. 262.034(a), (b), (c)].

Intentional or knowing violation of the subchapter is a CLASS C misdemeanor. [Id. (b)]. [Formerly Article 2368a-5].

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

Each "claim, bill and account" (* the term "account", as employed in Code section 113.064(a), appears to comprehend something more in the nature of a claim under an open account, rather than anything having to do with "accounting entries" per se, i.e., as might be characteristic of booking requisitions or purchase orders) 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 an 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/she approve requisitions. If this approval requirement is waived, all claims must be approved by the Commissioners' Court in open court. [Id. (c)]. [Formerly Art. 1 1661(1), (2)].

STATE OF TEXAS STATUTES – LOCAL GOVERNMENT CODE CHAPTER 262

<http://www.capitol.state.tx.us/statutes/lg/lg0026200toc.html>

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