


**What Purchasing Laws?**

And who is TxPPA?

An independent multi-agency organization for Public Purchasing Professionals across the great state of Texas.

2013 marks 31<sup>st</sup> anniversary of TxPPA



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**This presentation is based on**



**2012 Texas Municipal Procurement Laws  
MADE EASY**

Answers to the most frequently asked questions about the Texas Municipal Procurement Laws

[https://www.oag.state.tx.us/AG\\_Publications/pdfs/procurement\\_easy](https://www.oag.state.tx.us/AG_Publications/pdfs/procurement_easy)

Featuring the following statutes, and more!  
Local Government Code Chapters; 171, 176, 252, 253, 271, 302  
Government Code Chapters; 2155, 2253, 2254, 2267, 2269 Health and Safety Code  
361.426 Transportation Code Chapter 431



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**Procurement Law Overview**

- Multiple Statutes
- Multiple Requirements for Multiple Dollar Levels
- Multiple Requirements for Multiple Types of Solicitations
- Cooperative/Interlocal Advantages
- Professional Services
- Penalties



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## What Else is Important?

- Ethics
- General Rule vs. Home Rule
- Preference Statutes



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## Acronyms

- RFB – RFQ – RFP – CSP – RFQ – IFB - SOQ
- TxPPA – NPI – NIGP – ISM
- C.P.M. – CPPB – CPPO - CPSM
- JOC – SOW – CMA - CMR
- TxDot – DIR – CPO (comptroller)
- HUB – DBE – MWBE – WBE
- PO – DPO – FPO (field) – BPO - SPO



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## Local Government Code Chapter 252

- Municipalities are subject to the Texas LGC Chapter 252, 271 and GC 2267, 2269 for purchases of goods and services
- Purchases of \$3,000 to \$50,000 must use quotations and contact at least two HUB vendors if available
- Purchases of more than \$50,000 requires a formal competitive process



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## Quotations

- Quotes are informal solicitations used for purchases of \$50,000 or less



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## Formal Bids

- Called CSB, RFB, IFB, ITB, and other acronyms
- Detailed specifications are written
- Advertised two consecutive weeks in the local paper
- Responses are received in sealed envelopes and time stamped by the City
- Specific information from the responding vendors is read aloud
- Award goes to the lowest responsible bid or respondent offering best value as detailed in solicitation
- Above processes can be used for informal bids



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## Proposals

- Called CSP, RFP, IFP, and other acronyms
- Detailed specifications may be written or performance specifications may be used
- Detailed, weighted evaluation criteria must be included and used to evaluate the responses. Criterion not specifically published in the proposal cannot be considered. Criteria generally considered include:
- (1) the purchase price;



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## Proposals (Cont.)

- (2) the reputation of the bidder and of the bidder's goods or services;
- (3) the quality of the bidder's goods or services;
- (4) the extent to which the goods or services meet the municipality's needs;
- (5) the bidder's past relationship with the municipality;
- (6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- (7) the total long-term cost to the municipality to acquire the bidder's goods or services; and
- (8) any relevant criteria specifically listed in the request for bids or proposals.



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## Proposals (Cont.)

- Advertised for two consecutive weeks in the local paper
- At the opening only the name of the responding vendor is read aloud
- A confidential tabulation is created based upon the criteria and weights published in the proposal document
- Negotiation is permitted with the highest scoring vendors
- A Best and Final Offer (BAFO) may be requested after negotiations are concluded
- Award is recommended for the Vendor offering "best value" to the City



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## Reverse Auctions

- Reverse auctions are rarely used
- Specifications are listed on a website specializing in reverse auctions
- Vendors bid against each other to offer a lower price than the last bidder
- Bidders identities are kept secret during the process but the price is known
- Award goes to the lowest bidder when the clock runs out



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## Cooperative Agreements

- Cooperative agreements are beneficial to Cities. They pool the resources of several municipalities or an organized entity and one or more contract(s) are executed on behalf of the cooperative.
- Organized cooperatives include:
  - TASB BuyBoard
  - TPASS Texas Procurement and Support Services, associated with the Texas Comptrollers Office. Several other cooperative efforts are available through the Comptrollers office including TXMAS-Texas Multiple Award Schedule and the State Travel Management Program
  - DIR Texas Department of Information Resources for Technology



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## Cooperative Agreements (Cont.)

- The cooperative Purchasing Network (TCPN) operated out of Texas ESC4
- Houston-Galveston Area Council (H-GAC)
- U.S. Communities
- Purchasing Solutions Alliance (PSA)
- National IPA
- And many others. We mention these because you may encounter them through resolutions for contract award.



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## Qualifications

- Called SOQ, RFQ, and other acronyms
- The Professional Services Procurement Act listed in Texas Government Code Chapter 2254 specifically applies to certain professional services which include; a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.



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## Qualifications (Cont.)

- Detailed, weighted evaluation criteria must be included and used to evaluate the responses. Criterion not specifically published in the proposal cannot be considered.
- A City shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services; and for a negotiated fair and reasonable price.
- The professional fees under the contract may not exceed any maximum provided by law.
- **A contract entered into or an arrangement made in violation of this subchapter is void as against public policy**



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## Contracts for Professional Services for Architects, Engineers, and Surveyors

- The most highly qualified provider is identified on the basis of demonstrated competence and qualifications
- Then attempt to negotiate a contract with that provider for a fair and reasonable price.
- If a satisfactory contract cannot be negotiated with the most highly qualified provider the entity shall **formally end negotiations** with that provider; select the next most highly qualified provider and attempt to negotiate a contract with that provider for a fair and reasonable price
- The entity shall continue to select and negotiate with providers until a contract is approved and executed.



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## Separate, Sequential, and Component Purchases

- A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements. An offense under this subsection is a Class B misdemeanor
- "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase. For example purchasing chemicals on separate contracts when each contract totals less than \$50,000



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## Separate, Sequential, and Component Purchases

- "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase. For example purchasing water meters in separate orders when each purchase order totals less than \$50,000
- "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase. For example purchasing a piece of equipment for \$47,000 and paying shipping charges of \$4,500 separately.



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## Let's Have a Little Fun

Fabulous Rewards for Correct Answers or Best Guesses



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At what level must a City solicit informal solicitations

- A. \$3,000
- B. \$25,000
- C. \$50,000
- D. \$100,000



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At what level must a City solicit formal solicitations?

- A. \$3,000
- B. \$25,000
- C. \$50,000
- D. \$100,000



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Which of the below is considered a professional service in GC 2254?

- A. Licensed Plumber
- B. Personal Pet Manager
- C. Doctor
- D. Accountant



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Which of the following categories are exempt from competitive solicitation?

- A. Leases for office equipment
- B. Purchases of Land or Right of Way
- C. Purchases of Public Official Liability Insurance
- D. Purchases using only state or federal funds



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A home rule City may, by Charter, adopt different requirements from LGC chapter 252 except;

- A. A higher threshold amount at which competitive bidding is required
- B. Threshold amount at which City Council approval is required
- C. Contracts award process
- D. Solicitations advertisement verbiage



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### General Law Cities

- A. Have populations over 5,000
- B. Can vote to increase the bidding threshold
- C. Can change the name of the City at will
- D. Can vote to lower the bidding threshold



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A city may increase or decrease the amount of a contract after award and execution;

- A. Only by re-soliciting
- B. Only by waiting at least a year before purchasing
- C. Only by delegated authority of City Council to staff if less than \$50,000
- D. Only by a maximum of a 25% increase or decrease



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Separate, Sequential and Component purchases are all of the below, except

- A. Terms used interchangeably
- B. A class B Misdemeanor
- C. A means of avoiding purchasing procedures
- D. Prohibited by Local Government Code Chapter 252



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What information must be contained in a published solicitation notice?

- A. The budget associated with the award
- B. The specifications of the solicitation
- C. The time solicitation is due
- D. The delivery location



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A city may accept bids or proposals through electronic transmission if;

- A. The council adopts rules to ensure confidentiality
- B. Responses remain unopened until the proper time
- C. The names of all respondents are electronically posted publically during the response process
- D. Security is ensured and responses can only be opened by the proper authority



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Which criteria may be considered to evaluate a competitive sealed bid?

- A. Quality of the goods and service offering
- B. Total long-term cost to the City
- C. Bidders past relationship with the City
- D. Any relevant criteria specifically listed in the specifications
- E. All of the above



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The following procedures apply to what type of solicitation?

The next three slides describe procedures required for;

- A. Bid
- B. Proposal
- C. Quotation
- D. Qualification



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Which one?

The responses are publically opened and bid amounts are read aloud at the time and place specified in the notice. The award goes to the lowest responsible responder or bidder providing best value if so noted in the solicitation. No negotiation is allowed.

- A. Bid
- B. Proposal
- C. Quotation
- D. Qualification



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### Which one?

The responses are publically opened only the name of the responder is read aloud at the time and place specified in the notice. Criteria is specified and weights are published in the solicitation. Negotiation is allowed but not required. The award is given to the response offering best value to the city.

- A. Bid   B. Proposal   C. Quotation   D. Qualification



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### Which one?

The responses are not publically opened. Price cannot be a major determining factor. Negotiation is allowed. This process can only be used for specific types of services as listed in Texas Government Code chapter 2254.

- A. Bid   B. Proposal   C. Quotation   D. Qualification



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### What information is not considered confidential under the Public Information Act?

- A. Trade Secrets  
B. Price paid for a contract which is expiring  
C. Commercial or Financial information  
D. Information which would give advantage to a competitor or responder



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All of the below are bond requirements for public work projects except;

- A. A bid bond is required for all projects over \$50,000
- B. A performance bond is required for all projects over \$100,000
- C. A payment bond is required for all projects over \$50,000
- D. Bonds must be written for the total contract value



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A registered architect must prepare plans and specifications for any alteration or addition to an existing building if the following three circumstances are present

- A. The existing structure was built before 1977
- B. The building is or will be used for education, assembly or office occupancy
- C. The construction costs will exceed \$50,000
- D. The alteration or addition requires the removal, relocation, or addition of any walls or partitions or requires the alteration or addition of an exit



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Alternative Delivery Methods for construction of structures do not include:

- A. Best value competitive bidding
- B. Competitive sealed proposals
- C. Design-build
- D. Sole Source Local Contractor
- E. Job order contracting
- F. Construction Management Agent or Risk



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## True or False

- All alternative delivery methods must be awarded to the lowest responsible bidder
- Cities may use all alternative delivery methods involving improvement to real property
- Alternative delivery methods allow greater flexibility to choose contractors that can provide maximum quality
- In all solicitation methods for construction, the city must hire or employ full time architect or engineer independent of the selected company
- Job order contracting may be used to construct facilities under \$100,000.



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## A RFQ (Request for Qualification) for a design-build project **MUST** include:

- A. Project site and scope
- B. Budget
- C. Selection criteria and weighted value of each
- D. A Design Criteria Package
- E. All of the above



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## Supplier preference allowed by statute does not include:

- A. Local business
- B. Historically underutilized businesses
- C. Recycled materials
- D. Suppliers who gave sports event tickets to city officials or employees



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**Which of the following is NOT a discretionary exemption?**

- A. Purchase necessary because of unforeseen damage to public machinery, equipment or other property
- B. Advertising other than legal notices
- C. Architects and engineers
- D. Physicians



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**A municipality may purchase from all of the following without using competitive bidding procedures except:**

- A. Any other local government entity
- B. Regional Council of Governments
- C. Comptroller's office
- D. U.S. General Services Administration
- E. Purchases between \$50,000 and \$100,000



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**Which of the following is included in LGC 176 and 171 defining ethical requirements?**

- A. Local government corporation
- B. Local government board
- C. Commissions
- D. Authority whose members are appointed by mayor or city council
- E. All of the above



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**The city may also extend the LGC 176 and 171 requirements to:**

- A. Any employees making more than \$50,000 per year
- B. Employees who have the authority to approve contracts on behalf of the city
- C. Employees purchasing directly from local vendors
- D. Accounts payable and receivable staff



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**Family members include all of the below EXCEPT:**

- A. Spouse
- B. Father and mother
- C. Son and daughter
- D. Grandchildren
- E. In-laws, father, mother, son, daughter
- F. Stepchildren



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**Non-compliance of bidding requirements may be punished by all of the below EXCEPT**

- A. A fine of up to \$2000
- B. Confinement in jail for up to 180 days
- C. Both fine and jail
- D. Removal from office for eight years



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So Much More  
So Little Time

- Federal Requirements (Grants)
- Investment Recovery
- Statutes for Home Rule vs. General Law Cities
- Newspaper Headlines



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Thank You

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