

## **ORDINANCE NO. A-850**

### **AN ORDINANCE OF THE CITY COUNCIL, CITY OF LIVINGSTON, TEXAS, ADOPTING THE CITY OF LIVINGSTON PURCHASING AND PROCUREMENT POLICY INCLUDING FEDERAL GRANT PROCUREMENT POLICY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND REPEALING ALL ORDINANCES IN CONFLICT HERewith.**

**WHEREAS**, the City of Livingston will competently acquire goods and services that are necessary to provide the citizen with the services of municipal government; and

**WHEREAS**, the City of Livingston Purchasing and Procurement Policy does include the Federal Grant Procurement Policy; and

**WHEREAS**, the City of Livingston Purchasing and Procurement Policy has several goals, among these are the following: 1) to purchase the proper good or service to suit the City's needs; 2) to get the best value for the good or service; 3) to have the good or service available where and when it is needed; 4) to guard against any misappropriation of the assets procured; and 5) to insure that all purchases are made in accordance with the current fiscal year budget; and

**WHEREAS**, the City of Livingston Purchasing and Procurement Policy will endeavor to assure that responsible bidders are given fair opportunity to compete for the City's business, that public funds are safeguarded, and that public spending is not used to enrich elected officials or City employees, or to provide preferential treatment or special benefits to favored constituents; and

**WHEREAS**, the City of Livingston Purchasing and Procurement Policy is applicable to all funds not specifically exempted by law. Any goods or services funded through special monies such as donations, insurance reimbursements, seized property sale, and/or recreation or enterprise programs must comply with procedures established in this policy;

**WHEREAS**, purchases of goods or services funded through state or federal grant monies must comply with procedures established in the City of Livingston Purchasing and Procurement Policy in addition to any and all procurement standards promulgated by the respective agencies;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LIVINGSTON, TEXAS:**

**SECTION 1.** It is the policy of the City of Livingston to purchase through a competitive process when required by law and/or the policies outlined in the City of Livingston Purchasing and Procurement Policy for items and services. This includes the purchase and lease of goods and the purchase of services as well as construction projects.

**SECTION 2.** The City of Livingston Purchasing and Procurement Policy and the competitive principles contained therein apply to all City departments. It is the policy of the City of Livingston to publish specifications that will ensure competitive bids whenever practical and required by law.

**SECTION 3.** The City Council does hereby find and declare that sufficient and timely written notice of place and subject matter of this meeting adopting this Ordinance was posted. The City Council further ratifies, approves and confirms such written notice and the posting thereof.

**SECTION 4.** The City Council adopts the City of Livingston Purchasing and Procurement Policy Including Federal Grant Procurement Policy and directs that a copy of the policy be attached to this ordinance and the same is incorporated herein by reference.

**SECTION 5. SEVERABILITY.** If any provision, section, subsection, sentence, clause or phrase of this Purchasing and Procurement Policy is for any reason held to be unconstitutional, void, or invalid or for any reason unenforceable, the validity of the remaining portions of this Purchasing and Procurement Policy shall not be affected thereby, it being the intent the City of Livingston in adopting this Purchasing and Procurement Policy that no portion hereof or provision hereof shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation and, to this end, all provisions of this ordinance are declared to be severable.


**SECTION 6. EFFECTIVE DATE.** This Ordinance shall take effect after passage and publication on the City of Livingston official website.

**SECTION 7.** The City Secretary is hereby authorized and directed to publish this Ordinance and the City of Livingston Purchasing and Procurement Policy on the City of Livingston official website. The Purchasing and Procurement Policy shall remain posted on the City of Livingston official website and the original shall be maintained in the office of the City Secretary of the City of Livingston.

**SECTION 8.** All ordinances or resolutions that are in conflict with the provisions of this Ordinance are hereby repealed.

**APPROVED AND ADOPTED** at a regular meeting of the City Council of Livingston, Texas, on the 11th day of March, 2025.

**SIGNED:**

  
Judy B. Cochran, Mayor

**ATTEST:**

  
Ellie Monteaux, TRMC, MMC, CPM/  
City Secretary/Assistant City Manager



**CITY OF LIVINGSTON  
PURCHASING AND PROCUREMENT  
POLICY  
INCLUDING FEDERAL GRANT  
PROCUREMENT POLICY**

***Approved and Adopted on March 11, 2025  
by Livingston City Council Ordinance No. A-850***

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# **CITY OF LIVINGSTON PURCHASING AND PROCUREMENT POLICY INCLUDING FEDERAL GRANT PROCUREMENT POLICY**

## **POLICY STATEMENT**

The City of Livingston will competently acquire goods and services that are necessary to provide its citizens with the services of a municipal government. The City Purchasing Program has several goals, among these are:

- To purchase the proper good or service to suit the City's needs
- To get the best value for the good or service
- To have the good or service available where and when it is needed
- To assure a continuing supply of needed goods or services
- To guard against any misappropriation of the assets procured
- To insure that all purchases are made in accordance with the current fiscal year budget

In addition, the City Purchasing Program will endeavor to assure that:

- Responsible bidders are given fair opportunity to compete for the City's business.
- Public funds are safeguarded.
- Public spending is not used to enrich elected officials or City employees, or to provide preferential treatment or special benefits to favored constituents.

The purchasing program for the City of Livingston is decentralized with centralized oversight provided by the Finance Department.

The purchasing policy is applicable to all funds not specifically exempted by law. Any goods or services funded through special monies such as donations, insurance reimbursements, seized property sale, and/or recreation or enterprise programs must comply with procedures established in this document.

Purchases of goods or services funded through state or federal grant monies must comply with procedures established in this document in addition to any and all procurement standards promulgated by the respective agencies.

**It is the policy of the City to purchase through a competitive process when required by law and/or the policies outlined in this document for items or services. This includes the purchase and lease of goods, the purchase of services, and construction projects. These competitive principles apply to all City Departments. It is the policy of the City to publish specifications that will ensure competitive bids whenever practical and required by law.**

**Because competition is so critical to public purchasing, it is essential that specifications be developed so a number of competitive bids/proposals will be received.**

## **GENERAL ETHICAL STANDARDS**

1. It will be a breach of ethics to attempt to realize a personal gain through public employment with the City by any conduct inconsistent with the proper discharge of the employee's duties.
2. It will be a breach of ethics to attempt to influence any public employee of the City to breach the standards of ethical conduct set forth in this code.
3. Any member of the Council, officer or employee of the City who has a substantial financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract contractor supplying the City shall make known that interest to the Council and shall refrain from voting upon or otherwise participating in his capacity as a council person, officer or employee in the making of such sale or in the awarding or performance of such contract. In addition, officials are required to comply with the requirements of Chapter 171 of the Local Government Code. Vendors must comply with the requirements of Chapter 176 of the Local Government Code. Violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with or making a sale to the City shall render the contract or sale voidable by the City Manager or the Council.
4. It will be a breach of ethics to offer, give or agree to give any employee or former employee of the City of Livingston, or for any employee of the City of Livingston to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification, or procurement standard, rendering of advice, investigation, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract, subcontract, or any solicitation or proposal pending before this government.
5. It will be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the City of Livingston, or any person associated therewith, as an inducement for the award of a subcontract or order.
6. The prohibitions against gratuities and kickbacks prescribed above will be conspicuously set forth in every contract and solicitation.
7. It will be a breach of ethics for any employee or former employee of the City of Livingston knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

***Any official or employee who exercises discretion in the planning, recommending, selecting, or contracting of a vendor is required to disclose certain relationships with City of Livingston vendors, or an employee or agent of the vendor, in accordance with Chapter 176 of the Local Government Code.***

### **Purchases Up to \$2,500**

Purchases up to \$2,500 do not require a Purchase Order. The customer department may proceed with the purchase on receipt of the Department Head approval. The following steps are required of the buyer:

- Obtain informal quotes, use price agreements established by contract or conduct price comparisons on standard products regularly purchased through internet review.
- Make the purchase. Invoices are to be directed to user department for approval and coding before being sent to Accounts Payable for payment.

### **Purchases of \$2,500 – \$10,000**

Purchases in the amount of \$2,500 through \$10,000 require a Purchase Order and review by the Finance Director prior to approval.

For purchases that have not been previously bid and contracted, a competitive process is required. User departments must secure three (3) or more informal bids, maintain a record of them and award the bid to lowest responsible bidder or the bidder who provides goods or services at the best value to the City. When determining “best value,” the City may consider: (1) the reputation of the bidder and the bidder’s goods or services; (2) the quality of the bidder’s goods or services; (3) the bidder’s past relationship with the City and/or (4) any other lawful criteria. ***Quotes should be forwarded along with the requisition request to Finance.***

Finance reserves the following rights:

- To change the vendor award when a contract exists or better pricing is available.
- To audit Department files to determine that the lowest responsible bid or bid offering best value to the City was selected.

The following sequence of events applies:

1. Request quotes from three or more vendors capable of providing the item or service specified.
2. Quotes received by a certain time and date are recorded.
3. Department Manager selects lowest responsible bid or bid offering best value to the City.
4. A requisition is submitted to Finance along with a copy of all quotes received.
5. Finance approves and issues a Purchase Order.

6. **Upon receipt of Purchase Order.** Department makes purchase and instructs vendor to reference purchase order number on invoice.
7. Upon receipt of item or satisfactory completion of service, Department forwards properly approved and coded invoice to Accounts Payable for payment.

**Purchases More Than \$10,000 Up to the Threshold Set by State Law for Sealed Bids (Currently \$50,000)**

All contracts or purchases will be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value to the City after receiving at least three estimates from prospective bidders. When determining “best value,” the City may consider: (1) the reputation of the bidder and the bidder’s goods or services; (2) the quality of the bidder’s goods or services; (3) the bidder past relationship with the City and/or (4) any other lawful criteria. ***State law requires that at least two (2) Historically Underutilized Businesses (HUB’s) be contacted on a rotating basis.*** If no disadvantaged businesses providing the goods or services specified are listed on the State Comptroller’s website in the county in which the City is situated, then the City is exempt from this requirement.

The typical sequence of events is outlined as follows:

1. Request quotes from three or more vendors capable of providing the item or service specified. Pursuant to State law, prospective vendors contacted should include two or more Historically Underutilized Businesses (HUBs) registered on the State Comptroller’s website and located in the county. HUBs should be contacted on a rotating basis.
2. Quotes received by a certain time and date are recorded.
3. Department Manager selects lowest responsible bid or bid offering best value to the City.
4. A requisition is submitted to Finance along with a copy of all quotes received.
5. Finance approves and issues a Purchase Order.
6. **Upon receipt of Purchase Order.** Department makes purchase and instructs vendor to reference purchase order number on invoice.
7. Upon receipt of item or satisfactory completion of service, Department forwards properly approved and coded invoice to Finance for payment.

**Purchases Greater Than the Threshold Set by State Law for Sealed Bids (Currently \$50,000)**

After completion of competitive bidding in accordance with the requirements of *Chapter 252 of the Local Government Code, use of reverse auction in accordance with Section 2155.062(d) of the Government Code, or a project delivery method described in Chapter 2269 of the Government Code for construction contracts* and the procedures set forth in this document, the City will award all contracts or purchases involving the higher of either \$50,000 or the threshold set by State law to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City or as otherwise permitted by law. When determining “best value,” the City may consider: (1) the reputation of the bidder and the bidder’s goods or services; (2) the quality of the bidder’s goods or services; (3) the bidder’s past relationship with the City and/or (4) any

other lawful criteria.

**Caution: State law prohibits the purchase of goods or services in a sequential or component manner in order to avoid the requirements of Subsection 252.021 and/or other laws regarding procurement.**

**The policy and procedures for obtaining quotations for small or non-routine purchases protect the City from paying excessive prices but does not substitute for compliance with state law.**

**Failure to follow state law with respect to competitive bidding is a Class B misdemeanor.**

The typical sequence of events is outlined as follows:

1. Budget approval by City Council.
2. Determination is made as to the method of purchase that will provide the best value to the City if a method other than competitive sealed bidding is considered. The City Council may make this determination or may designate a representative to make the determination at their discretion.
3. Specifications and proposed contracts are developed and approved by the involved Department and Finance.
4. Bids published and mailed with first newspaper advertisement.
5. Pre-bid meeting is conducted (if necessary).
6. Second advertisement is published (seven days after the first).
7. Bid opening (must be no sooner than the 15th day after the first advertisement).
8. Bid award by Council.
9. Purchasing issues Purchase Order(s).

Exceptions as listed in **Section 252.022, "Competitive Bidding or Competitive Proposals Required": "General Exemptions" Tex. Local Gov't Code** apply to both formal and informal bid processing. Exceptions must be communicated to Purchasing in writing. Additional documentation may be required by Purchasing to document the circumstances of the exception.

## **EXEMPT PURCHASES**

There are several categories of purchases that are exempt from formal procurement procedures:

- 1. Emergency Purchases** - Purchases that are required immediately for purposes that couldn't reasonably have been foreseen are exempt from formal procurement procedures. The Finance Director must concur that an emergency exists prior to approval.
- 2. Sole Source Purchases** - Purchases available from only one supplier are exempt from bidding requirements. Some effort is required to determine a purchase is truly sole source. See the section on sole source purchases in this policy.

**3. Other Exempt Purchases** - The statutes authorize other categories of exempt purchases. Professional or personal services, purchases of services performed by blind or severely disabled persons, purchases from other governments, some auctions and going out of business sales, and various other purchases are exempt under provisions of the Texas Local Government Code.

## **EMERGENCY PURCHASES**

Texas statutes generally allow the local government to make emergency or exempted purchases without competitive bidding. Council approval prior to purchase is advised, if practical. If this is not feasible, emergency purchases exceeding the threshold set by State law for competitive bidding should be ratified by the Council.

Although there is no clear definition of what constitutes an emergency purchase, a political subdivision is generally exempted from competitive bidding when any one of the following conditions exists:

1. The prompt purchase of items because of a public calamity that requires an immediate appropriation to provide for the needs of the public or to preserve the property of the municipality.
2. The item is necessary to preserve or protect the public health or safety of residents of the political subdivision.
3. The item is made necessary by unforeseen damage to public machinery, equipment, or other property.

Since these exemptions are stated in broad terms, the user Department must justify the emergency and submit documentation of the circumstances that substantiates the necessity to make an emergency purchase to the Finance Director.

The following are guidelines for dealing systematically with emergency purchases.

1. **QUALIFICATION:** The purchase must qualify as an emergency purchase under the definition in the Local Government Code Section 252.022. The buyer will contact the Finance Director to describe the circumstances that qualify the purchase as an emergency. The Finance Department will assist the responsible official in the determination of the emergency status and a practical plan for the purchase.
2. **DESIGNATION:** The designation of emergency purchase indicates a situation of such urgency that the normal purchasing procedure must be modified in the interest of speed, and therefore no competitive bids are required. If the nature of the emergency allows, informal quotes are required.
3. **NORMAL WORKING HOURS:** All emergency purchases occurring during normal working hours are processed through Finance as follows:
  - a. The user Department will notify the Finance Director immediately with as much information as possible about the emergency purchase and follow that with an e-mail to the Finance Director, with a copy to their Department Head, detailing the circumstances designating the purchase as an emergency. Finance will assign a

pre-approved Purchase Order number for this emergency.

- b. A purchasing requisition is prepared (by the Department) and approved through the normal channels, using the pre-approved Purchase Order number. If the purchase exceeds \$500 a copy of the e-mail to the Finance Director should be attached to the purchasing requisition.
  - c. Simultaneously, the buyer Department should request expedited delivery.
4. **EVENINGS, WEEKENDS AND HOLIDAYS:** For other than normal working hours, when Finance support is unavailable, procedures are as follows:
- a. The responsible official of the Department takes whatever steps are necessary to procure needed supplies, services or equipment to relieve the emergency situation. **Only those goods or services actually needed during the evening, weekend or holiday may be procured.**
  - b. If the purchase exceeds \$500, the responsible official will notify Finance on the first day following the emergency and prepare an email to the Finance Director and their Director citing the circumstances of the emergency and certifying that the purchase involved was necessary because of one of the reasons listed in Chapter 252.022. When submitting resulting items to Accounts Payable for payment, the responsible official shall attach to the approved and coded invoices, any bills for materials, receipts, or other documents related to the purchase along with a copy of the email that certified the purchase as an emergency purchase.

### **SOLE SOURCE PURCHASES**

There are many reasons why a purchase might be possible or practical from only one vendor:

1. There is no competitive product. The good/service is a one-of-a-kind or patented product, a copyrighted publication available from only one source, or a unique item such as work of art.
2. The product is only available from a regulated or natural monopoly. For example, regulated utility, gravel from the only pit in the area or some similar situation are natural monopolies.
3. The product is a component of an existing system that is only available from one supplier. The replacement of a component or a repair part may only be available from the original supplier.

There are a number of reasons why the City may occasionally use sole source purchases, and it is proper to have the flexibility to make these purchases. However, sole source purchases must be strictly controlled, since they are directly contrary to the competitive process.

Under most conditions, a sole source purchase should be the subject of a certain amount of negotiation. The purchaser should prepare a detailed list of requirements relating to delivery, quality, performance and other conditions, and be prepared to withhold final intent to purchase in order to negotiate the best price and service. The buyer should do everything in his power to strengthen the City's bargaining position.

**Sole Source Purchase Procedure** - Sole source purchases are handled the same as other purchases, with these exceptions:

1. If the requisitioning party determines that the item is a sole source purchase, one of the following should be attached to the requisition:
  - A statement from the vendor attesting to the fact that the item(s) requested is available from only that vendor.
  - An explanation of why this is a sole source purchase as well as information concerning attempts to obtain competitive bids on the item(s) requested.
2. The requisition is then completed in accordance with established procedure.
3. Finance determines that the item is a sole source purchase. Finance reserves the right to require publication of specifications and advertise for bids to verify sole source status.
4. After the requisition is approved, the Purchase Order is prepared and processed according to established procedure.

## **PROFESSIONAL SERVICES**

Professional services are exempt from competitive bidding but not from a competitive process. Professional services are defined as those disciplines requiring special knowledge or attainment and a high order of learning, skill and intelligence.

**Professional Services Procurement Act** (Tex. Gov't Code Ann. § 2254.003 et. seq.) - This Act states that contracts for the procurement of a *certified public accountant, licensed architect, physician, optometrist, registered surveyor, engineer or any group or association thereof* **may not be awarded** on the basis of cost. Instead, they must be awarded on the basis of demonstrated competence and qualifications, so long as the professional fees are consistent with, and not higher than the published recommended practices and fees of the various professional associations, and do not exceed any maximums provided by state law.

When procuring architectural or engineering services, the Department will use a two-step selection process. First, the entity will select an individual or firm that is capable of performing the service, on the basis of demonstrated competence and qualifications. Second, the entity will then enter into negotiations on a contract at a fair and reasonable price.

If the City is unable to negotiate a satisfactory contract with the most highly qualified individual or firm, it will formally end negotiations with that person or firm, and then proceed to the next most highly qualified and repeat the process. Negotiations are carried on in this sequence until a contract is made.

If any agreement or contract is entered into with one of the above-mentioned professionals on the basis of a competitive bid, it is contrary to public policy and is void. Note that these services are exempt from the bidding requirement, but *not* from proper approval by the governing body. Professional Services contracts exceeding the established bid limit *require City Council approval*.

### **COOPERATIVE PURCHASING**

The Interlocal Cooperation Act (Tex. Gov't Code Ann. § 791.001 et. seq.) allows local governments to contract with one another, and with an agency of the state, or a similar agency of another state to perform "governmental functions and services." Purchasing, data processing, warehousing, equipment repair, printing, and parks and recreation services are included in the list of governmental functions. Note that these purchases are not exempt from competitive bidding, but are bid and contracted for purchases by agencies participating in the cooperative effort.

Local governments and agencies involved must contract with one another to participate in these types of agreements. The City is authorized to participate in various cooperative purchasing programs including the State of Texas, the Houston Galveston Area Council, Tarrant County and BuyBoard. For more information, Departments may contact Finance.

### **AUCTION PURCHASES**

Municipalities may purchase items at an auction. The only critical requirement is that an auctioneer licensed in the State of Texas must conduct the auction.

These purchases must be coordinated through the Finance Department to ensure that the proper authority bids and that budget and purchasing procedures and guidelines are followed.

## **CITY OF LIVINGSTON FEDERAL GRANT PROCUREMENT POLICY**

The City follows State of Texas and Federal 2CFR 200.318-200.327 and Appendix II to Part 200 procurement law and guidance in the purchasing and contract management of goods and services. Additional policy guidance below addresses federal purchasing requirements as required by 2 CFR 200 pertaining to the expenditure of federal grant funds.

### **Standards of Conduct**

Public employment is a public trust. It is the policy of the City to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the City. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially to ensure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the City also observe the ethical standards prescribed herein.

### **Code of Ethics**

- 1     Personal Gain. It shall be a breach of ethics to attempt to realize personal gain through public employment with the City by any conduct inconsistent with the proper discharge of the employee's duties.
- 2     Influence. It shall be a breach of ethics to attempt to influence any public employee of the City to breach the standards of ethical conduct set forth in this code.
- 3     Conflicts of Interest. It shall be a breach of ethics for any employee of the City to participate directly or indirectly in procurement when the employee knows that:
  - 1) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
  - 2) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.
  - 3) any other person, business, or organization with which the employee or any members of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

- 4     Gratuities. It shall be a breach of ethics to offer, give, or agree to give any employee or former employee of the City, or for any employee or former employee of the City to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, requesting for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore pending before this local government.
- 5     Kickbacks. It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the City, or any person associated therewith, as an inducement for the award of a subcontract or order.
- 6     Contract Clause. The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation, therefore.
- 7     Confidential Information. It shall be a breach of ethics for any employee or former employee of the City knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.
- 8     The non-Federal entity's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- 9     The non-federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.214.
- 10    The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price.
- 11    (1) The Non-Federal entity may use a time-and-material type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
  - (i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- 12** The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

### **Competition**

All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in

the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand that must be met by offers must be clearly stated; and
- (2) Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The non-Federal entity must ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

### **Five Methods for Procuring with Federal Funds**

2 CFR § 200.320 provides for five methods that must be used when making purchases with Federal funds. In some cases, these Federal methods are more restrictive than State requirements; in other cases, the State requirements are more restrictive than these Federal methods. In all cases, the City affirms the more restrictive requirements or methods that must be followed when making purchases with Federal funds.

The type of purchase method and procedures required depend on the cost (and type, in some cases) of the item(s) or services being purchased.

- Micro-purchases
- Small purchase procedures
- Sealed bids
- Competitive proposals
- Noncompetitive proposals (sole source)

#### Micro-Purchases (Purchases up to \$3,000.00)

Federal methods provide for procurement by *micro-purchase*. *Micro-purchase* is defined in 2 CFR § 200.320(a) as a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed \$3,000.00. The micro-purchase method is used in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

The City utilizes the micro-purchases method for acquiring supplies or services that do not exceed an aggregate amount of \$3,000.00 if the price is reasonable. The program manager responsible for the Federal award determines if the price is reasonable.

Quotes are not required but encouraged. If quotes are obtained for items under \$3,500.00, they should be kept in the department and attached to the requisition.

#### Small Purchase Procedures (Purchases between \$3,000.01 and \$149,999.99 in the Aggregate)

The Federal threshold for small purchase procedures is \$150,000. 2 CFR § 200.320(b).

*Small purchase procedures* (as defined in 2 CFR § 200.320[b]) may be used in those relatively simple and informal procurement methods for securing non-personal contracted services, supplies, or other property that do not cost more than \$149,999.99.

For purchases funded from local funds, to obtain the most competitive price, the City, may, at its option, obtain price quotes for items costing less than \$150,000. Unlike the mandatory competitive procurement described for purchases over \$150,000, if an item to be paid from local funds costs less than \$150,000, the City may utilize price quotations or a competitive procurement process (purchasing cooperatives, sole source, an existing RFP/bid or a new RFP/bid) to stimulate competition and to attempt to receive the most favorable pricing.

However, if using **State or Federal funds** to purchase goods or services, *price or rate quotations must be obtained* from an adequate number of qualified sources for all purchases between \$3,000.01 and \$49,999.99 or use the competitive procurement process. The City must obtain more than one price or rate quote unless using a purchasing cooperative, existing Bid/RFP, or sole source vendor, in which case, the prices have already been awarded. If purchasing from a purchasing cooperative or existing Bid/RFP, the departments can elect to obtain only one quote to purchase the goods or services although it is recommended to obtain more than one quote. Such price or rate quotations may be obtained orally and/or documented in writing, and the City must demonstrate that price or rate quotations were obtained from an adequate number of qualified sources.

### Purchases \$150,000 or More in the Aggregate

According to Texas law, one of the following competitive methods must be used for purchases of \$150,000 or more in the aggregate:

- (1) competitive bidding for services other than construction services;
- (2) competitive sealed proposals, for services other than construction services;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (7) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

In addition, one of the three following methods must be used, depending on the circumstance described below, when purchasing with Federal funds: sealed bids (formal advertising); competitive proposals; or noncompetitive proposals (sole source).

### Sealed Bids (Formal Advertising)

Bids are publicly solicited and a *firm fixed-price contract* (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them with sufficient response time prior to the date set for opening the bids. The invitation for bids must be publicly advertised. The advertisement will be published at minimum in a newspaper of the city's choosing for 14 days.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.

- All bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publicly.
- A firm-fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

### Competitive Proposals

A competitive proposal is normally used with more than one source submitting an offer, and either a *fixed price* or a *cost-reimbursement* type contract is awarded. (A *cost reimbursement contract* reimburses the contractor for actual costs incurred to carry out the contract.) Competitive proposals are generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and must identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
- The advertisement for proposals will be published at minimum in a newspaper of the City's choosing for 14 days.
- Proposals must be solicited from an adequate number of qualified sources.
- The City will conduct a technical evaluation of all received proposals through a scoring committee composed of at least three members. There will be at least one elected official from the Council on the committee. The committee will assess proposals based on the evaluation criteria outlined in the solicitation to ensure a fair, transparent, and objective selection process. A recommendation based on this scoring will be prepared and submitted by the Committee to the City Council. The City Council is not required to choose the recommended respondent but will take the recommendation into consideration in its decision.
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. The City retains the right to make a selection based on these factors.
- When using Federal funds, the City will use competitive request for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in the procurement of A/E professional

services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. The advertisement for qualifications will be published at minimum in a newspaper of the City's choosing for 14 days.

#### Noncompetitive Proposals (Sole Source Procurement)

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used when using Federal funds only when one or more of the following circumstances apply:

- The item is available only from a single source and an equivalent cannot be substituted. This must be documented.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- After solicitation of a number of sources, competition is determined inadequate.

Additionally, *State* requirements related to sole-source purchasing are, in some ways, more restrictive. In addition to the Federal requirements above, sole source purchases must meet established criteria:

- Identification and confirmation that competition in providing the item or product to be purchased is precluded by the existence of a patent, copyright, secret process, or monopoly;
- A film, manuscript, or book;
- A utility service, including electricity, gas, or water; and
- A captive replacement part or component for equipment.

According to State requirements, sole source does not apply to mainframe data-processing equipment and peripheral attachments with a single item purchase price in excess of \$15,000.

In this case, the City must document why only this product can meet their needs and that it is not available from any other vendor. In all cases, the City will obtain and retain documentation from the vendor that clearly delineates the reasons that qualify the purchase to be made on a sole source basis.

#### **Contracting with Historically Underutilized Businesses (HUB), Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Firms**

The City will take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible. Affirmative steps will include the following:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above.

### **Domestic Preferences for Procurements**

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **Cost/Price Analysis for Federal Procurements in Excess of \$150,000**

In accordance with the requirements in 2 CFR § 200.324, the City will make independent estimates of the goods or services being procured before receiving bids or proposals to get an estimate of how much the goods and services are valued in the current market.

To accomplish this, before bids and proposals are received, the City conducts either a price analysis or a cost analysis, depending on the type of contract, in connection with every procurement with Federal funds in excess of \$150,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the City will come to an independent estimate prior to receiving bids or proposals, 2 CFR § 200.324(a).

Accordingly, the City performs a cost or price analysis in connection with every Federal procurement action in excess of \$150,000, including contract modifications, as follows:

**Cost Analysis → Non-competitive Contracts:** A cost analysis involves a review of proposed costs by expense category, and the Federal cost principles apply, which includes an analysis of whether the costs are allowable, allocable, reasonable, and necessary to carry out the contracted services. In general,

- A cost analysis must be used for all non-competitive contracts, including sole source contracts.
- The Federal cost principles apply.
- All *non-competitive contracts* must also be awarded and paid on a *cost-reimbursement basis*, and not on a fixed-price basis.
- In a cost-reimbursement contract, the contractor is reimbursed for reasonable actual costs incurred to carry out the contract.
- Profit must be negotiated as a separate element of the price in all cases where there is no competition.

When performing a cost analysis, the City negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work, 2 CFR § 200.323(b).

**Price Analysis → Competitive Contracts:** A *price* analysis determines if the lump sum price is fair and reasonable based on the current market value for comparable products or services. In general,

- A price analysis can only be used with *competitive* contracts and is usually used with fixed-price contracts. It cannot be used with non-competitive contracts.

- Compliance with the Federal cost principles is not required for fixed-price contracts, but total costs must be reasonable in comparison to the current market value for comparable products or services.
- A competitive contract may be awarded on a fixed-price basis or on a cost-reimbursement basis. If awarded on a cost-reimbursement basis, the Federal cost principles apply and costs are approved by expense category and not a lump sum.

Costs or prices based on *estimated* costs for contracts are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable costs under the Federal cost principles.

### **Federal Awarding Agency or Pass-Through Entity Review**

The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals, or invitations for bids, or independent cost estimates, when:

- (1) The Non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

The non-federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **Contract Administration**

The City maintains the following oversights to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders, 2 CFR § 200.318(b). The program manager/director of the Federal award is responsible for monitoring contractor performance. The manager/director will compare the actual performance of the contract against the projected performance and have the contractor explain any differences. They may also compare fees paid to date to the contractor versus how far along the contractor is in performing the contractual duties. The manager/director may establish surveys of those who directly benefitted from the contractor's work for feedback purposes.

To ensure proper administration of contracts and any subgrants that may be awarded by the City, the City uses the following guidelines to determine whether each agreement it makes for the disbursement of Federal funds is a *contract*, whereby funds are awarded to a *contractor* or a *sub-award*, whereby funds are awarded to a *sub-recipient*. The substance of the relationship is more important than the form of the written agreement, 2 CFR § 200.330.

### **Subawards/Subgrants**

A *sub-award/subgrant* is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the sub-recipient. The City determines who is eligible to receive what Federal assistance, and a *sub-recipient/subgrantee*:

- Has its performance measured in relation to whether the objectives of a Federal program are met
- Has responsibility for programmatic decision-making
- Is responsible for adhering to applicable Federal program requirements, and
- In accordance with the subgrant agreement, uses the Federal funds to carry out a program for a public purpose specified in the authorizing statute, as opposed to providing goods or services for the City.

### **Contracts**

A *contract* is for the purpose of obtaining goods or services for the City's own use and creates a procurement relationship with the contractor.

### **A Contractor**

- Provides goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Normally operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the Federal program, and
- Is not subject to compliance requirements of the Federal program as a result of the contract, though similar requirements may apply for other reasons.

### **Documentation for Contracts**

The City maintains the following written documentation, at a minimum, for each contract paid with Federal funds:

1. A copy of the written, signed contract/agreement for services to be performed
2. The rationale or procedure for selecting a particular contractor
3. Evidence the contract was made only to a contractor or consultant possessing the ability to perform successfully under the terms and conditions of the contract or procurement

4. Records on the services performed – date of service, purpose of service – ensuring that services are consistent and satisfactorily performed as described in the signed contract or purchase order
5. Documentation that the contractor was not paid before services were performed, and
6. Records of all payments made (such as a spreadsheet or report generated from the general ledger), including the total amount paid to the contractor

### **Payment Only After Services Are Performed**

For both State and Federally funded contracts, it is not permissible under Texas law to pay a contractor or consultant in *advance* of performing services. Advance payment to contractors is considered “lending credit” to the contractor and is prohibited under the *Texas Constitution*, Article 3, §§ 50 and 52. For ongoing services that occur monthly, payment can be made at the end of every month (based on a proper invoice submitted by the contractor and verification of work performed) for services performed during the month, or some other similar arrangement.

Consultants and contractors will not be paid without having a properly signed and dated contract or other written agreement in place that clearly defines the scope of work to be performed, the beginning and ending dates of the contract, and the agreed-upon price. The contract should also include a description of the payment procedures.

Upon performance of services (at contract milestones or upon completion of services), the contractor is required to submit an *invoice* to the City that contains at a minimum the following:

- a clear identification of the contractor/consultant, including name and mailing address
- a corresponding contract (or written agreement) number, if applicable
- the dates (beginning and ending date) during which the services were performed (i.e., billing period)
- a description of the services/activities completed during the billing period
- the total amount due to the contractor for the billing period

By submitting a properly prepared invoice, the contractor is certifying that it is true and correct.

### **Verification of Receipt of Goods and Services Provided by Contractors**

If the purpose of the contract or purchase order is to deliver goods, the City will designate the appropriate staff or consultant to verify that the quantity and quality of goods are as specified in the contract/purchase order. The receiving report and procedures used in all other State/local purchases will be used for all Federal purchases.

If the purpose of the contract is to purchase services, the contract manager along with

the City Mayor will verify that the quality and scope of services were received as specified in the contract.

### **Avoiding the Purchase of Unnecessary or Non-duplicative Items**

The City will ensure that all procurements are necessary and do not include duplicative items. Prior to issuing a solicitation, the City Manager or designated staff will review procurement documents to confirm compliance with this requirement.

To promote cost efficiency, the City will evaluate opportunities to consolidate or break out procurements to achieve the most economical purchase. Where appropriate, an analysis will be conducted to compare lease versus purchase options and other relevant alternatives to determine the most cost-effective approach.

### **Prompt Payment to Vendors/Contractors**

The City pays all vendors/contractors within thirty (30) days of receipt of a proper invoice and the receipt of the goods or services in accordance with the [\*Texas Prompt Payment Act\*](#). *Government Code, Chapter 2251, Subchapter A, for all contractors, and Property Code, Chapter 28 for Construction Contractors.*

### **Suspension and Debarment**

The City will ensure, prior to award, that all contractors have met all the eligibility requirements outlined in state and Federal law. The following steps will be taken to ensure contractor eligibility for all services procured.

- Contractors: All contractors, including professional consulting and engineering firms, must be cleared and registered via a search of the Federal System of Award Management ('SAM') to ensure the contractor is in good standing and has not been debarred.

The SAM portal can be found here:

<https://sam.gov/SAM/pages/public/searchRecords/search.jsf>.

- Subcontractors: Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN  
ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF OFFICERS OF  
MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 171.001. DEFINITIONS. In this chapter:

(1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989; Acts 1991, 72nd

Leg., ch. 561, Sec. 37, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 849, Sec. 1, eff. Sept. 1, 1997.

Sec. 171.0025. APPLICATION OF CHAPTER TO MEMBER OF HIGHER EDUCATION AUTHORITY. This chapter does not apply to a board member of a higher education authority created under Chapter 53, Education Code, unless a vote, act, or other participation by the board member in the affairs of the higher education authority would provide a financial benefit to a financial institution, school, college, or university that is:

- (1) a source of income to the board member; or
- (2) a business entity in which the board member has an interest distinguishable from a financial benefit available to any other similar financial institution or other school, college, or university whose students are eligible for a student loan available under Chapter 53, Education Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 41(a), eff. Aug. 28, 1989.

Sec. 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

- (1) violates Section 171.004;
- (2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or
- (3) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

- (1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.005. VOTING ON BUDGET. (a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

- (1) the member has complied with this chapter; and
- (2) the matter in which the member is concerned has been resolved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 171.006 and amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.006. EFFECT OF VIOLATION OF CHAPTER. The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 171.008 by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.007. COMMON LAW PREEMPTED; CUMULATIVE OF MUNICIPAL PROVISIONS. (a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Added by Acts 1989, 71st Leg., ch. 475, Sec. 2, eff. Aug. 28, 1989.

Sec. 171.010. PRACTICE OF LAW. (a) For purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) A county judge or county commissioner that has a substantial interest in a business entity as described by Subsection (a) must comply with this chapter.

(c) A judge of a constitutional county court may not enter a court appearance or sign court pleadings as an attorney in any matter before:

(1) the court over which the judge presides; or

(2) any court in this state over which the judge's court exercises appellate jurisdiction.

(d) Upon compliance with this chapter, a county judge or commissioner may practice law in the courts located in the county where the county judge or commissioner serves.

Added by Acts 2003, 78th Leg., ch. 227, Sec. 21, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1206, Sec. 3, eff. June 20, 2003.

TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES  
SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE  
THAN ONE TYPE OF LOCAL GOVERNMENT  
CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL  
GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN  
INFORMATION

Sec. 176.001. DEFINITIONS. In this chapter:

(1) "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

(1-a) "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

(1-b) "Charter school" means an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.

(1-c) "Commission" means the Texas Ethics Commission.

(1-d) "Contract" means a written agreement for the sale or purchase of real property, goods, or services.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.

(2-a) "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

(2-b) "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

(2-c) "Goods" means personal property.

(2-d) "Investment income" means dividends, capital gains, or interest income generated from:

(A) a personal or business:

(i) checking or savings account;

(ii) share draft or share account; or

(iii) other similar account;

(B) a personal or business investment; or

(C) a personal or business loan.

(3) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, water district created under Subchapter B, Chapter 49, Water Code, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity;

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or

(C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person

responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions.

(6) "Services" means skilled or unskilled labor or professional services, as defined by Section 2254.002, Government Code.

(7) "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 1, eff. May 25, 2007.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 1, eff. September 1, 2015.

Sec. 176.002. APPLICABILITY TO VENDORS AND OTHER PERSONS.

(a) This chapter applies to a person who is:

- (1) a vendor; or
- (2) a local government officer of a local governmental

entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee or agent of an entity described by Subdivision (1), acting in the employee's or agent's official capacity.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 2, eff.

May 25, 2007.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 3, eff. September 1, 2015.

Sec. 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED.

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor; or

(C) has a family relationship with the local government officer.

(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

(1) a political contribution as defined by Title 15,

Election Code; or

(2) food accepted as a guest.

(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.

(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(e) The commission shall adopt the conflicts disclosure statement for local government officers for use under this section. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a)(2)(A), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor during the 12-month period described by Subsection (a)(2)(B) if the aggregate value of the gifts accepted by the officer or a family member from that vendor exceeds \$100;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Subsection (a)(2)(B); and

(3) the signature of the local government officer acknowledging that the statement is made under oath under penalty

of perjury.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 3, eff. May 25, 2007.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 9(1), eff. September 1, 2015.

Sec. 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE. (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract

with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire:

(1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity;

(2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the vendor;

(3) identify each employment or business relationship described by Subdivision (1) with respect to which the vendor receives, or is likely to receive, taxable income, other than investment income, that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity; and

(4) describe each employment or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of one percent or

more.

(d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person who is both a local government officer and a vendor of a local governmental entity is required to file the questionnaire required by Subsection (a)(1) only if the person:

(1) enters or seeks to enter into a contract with the local governmental entity; or

(2) is an agent of a person who enters or seeks to enter into a contract with the local governmental entity.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(i) The validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 6, eff. May 25, 2007.

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 9, eff. May 25, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.005, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 9(3), eff. September 1, 2015.

Sec. 176.0065. MAINTENANCE OF RECORDS. A records

administrator shall:

(1) maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section 176.006; and

(2) maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 8, eff. May 25, 2007.

Redesignated and amended from Local Government Code, Section 176.011 by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 7, eff. September 1, 2015.

Sec. 176.008. ELECTRONIC FILING. The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Sec. 176.009. POSTING ON INTERNET. (a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that website. This subsection does not require a local governmental entity to maintain an Internet website.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 847, Sec. 3(b), eff. January 1, 2014.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 7, eff. May 25, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 76, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 847 (H.B. 195), Sec. 3(b), eff. January 1, 2014.

Sec. 176.010. REQUIREMENTS CUMULATIVE. The requirements of this chapter are in addition to any other disclosure required by law.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Sec. 176.012. APPLICATION OF PUBLIC INFORMATION LAW. This chapter does not require a local governmental entity to disclose any information that is excepted from disclosure by Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 8, eff. May 25, 2007.

Sec. 176.013. ENFORCEMENT. (a) A local government officer commits an offense under this chapter if the officer:

(1) is required to file a conflicts disclosure statement under Section 176.003; and

(2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

(b) A vendor commits an offense under this chapter if the vendor:

(1) is required to file a conflict of interest questionnaire under Section 176.006; and

(2) either:

(A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

(B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a

questionnaire previously filed by the vendor incomplete or inaccurate.

(c) An offense under this chapter is:

(1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;

(2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or

(3) a Class A misdemeanor if the contract amount is at least \$5 million.

(d) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.

(e) The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest questionnaire required by Section 176.006.

(f) It is an exception to the application of Subsection (a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.

(g) It is an exception to the application of Subsection (b) that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the local governmental entity of the alleged violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 8, eff. September 1, 2015.

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY

SUBTITLE A. MUNICIPAL ACQUISITION, SALE, OR LEASE OF PROPERTY

CHAPTER 252. PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Bond funds" includes money in the treasury received from the sale of bonds and includes the proceeds of bonds that have been voted but have not been issued and delivered.

(2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(3) "Current funds" includes money in the treasury, taxes in the process of being collected in the current tax year, and all other revenue that may be anticipated with reasonable certainty in the current tax year.

(4) "High technology procurement" means the procurement of equipment, goods, or services of a highly technical nature, including:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications equipment and radio and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items.

(5) "Planning services" means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.

(6) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(7) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(8) "Time warrant" includes any warrant issued by a municipality that is not payable from current funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 207, Sec. 1, eff. May 23, 1995.

Sec. 252.002. MUNICIPAL CHARTER CONTROLS IN CASE OF CONFLICT. Any provision in the charter of a home-rule municipality that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, the manner of publicly opening bids or reading them aloud, or the manner of letting contracts and that is in conflict with this chapter controls over this chapter unless the governing body of the municipality elects to have this chapter supersede the charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 749, Sec. 5, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 7, eff. Sept. 1, 1993.

Sec. 252.003. APPLICATION OF OTHER LAW. The purchasing requirements of Section 361.426, Health and Safety Code, apply to municipal purchases made under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 17, eff. Sept. 1, 1991.

#### SUBCHAPTER B. COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED

Sec. 252.021. COMPETITIVE REQUIREMENTS FOR PURCHASES. (a) Before a municipality may enter into a contract that requires an expenditure of more than \$50,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply with a method described by Chapter 2269, Government Code.

(b) A municipality may use the competitive sealed proposal procedure for the purchase of goods or services, including high technology items and insurance.

(c) The governing body of a municipality that is considering using a method other than competitive sealed bidding must determine before notice is given the method of purchase that provides the best value for the

municipality. The governing body may delegate, as appropriate, its authority under this subsection to a designated representative. If the competitive sealed proposals requirement applies to the contract, the municipality shall consider the criteria described by Section 252.043(b) and the discussions conducted under Section 252.042 to determine the best value for the municipality.

(d) This chapter does not apply to the expenditure of municipal funds that are derived from an appropriation, loan, or grant received by a municipality from the federal or state government for conducting a community development program established under Chapter 373 if under the program items are purchased under the request-for-proposal process described by Section 252.042. A municipality using a request-for-proposal process under this subsection shall also comply with the requirements of Section 252.0215.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 56(b), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 749, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 11, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 45, Sec. 1, eff. May 5, 1995; Acts 1997, 75th Leg., ch. 790, Sec. 1, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 571, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 115, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 436, Sec. 2, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 436, Sec. 3, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 217, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 12.003, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(20), eff. September 1, 2013.

Sec. 252.0215. COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS. A municipality, in making an expenditure of more than \$3,000 but less than \$50,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.

Added by Acts 1993, 73rd Leg., ch. 749, Sec. 3, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.18, eff. Sept. 1, 1997;

Acts 2001, 77th Leg., ch. 115, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 2, eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.100, eff.

September 1, 2007.

Sec. 252.022. GENERAL EXEMPTIONS. (a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal, professional, or planning services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive

distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(D) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;

(13) services performed by blind or severely disabled persons;

(14) goods purchased by a municipality for subsequent retail sale by the municipality;

(15) electricity; or

(16) advertising, other than legal notices.

(b) This chapter does not apply to bonds or warrants issued under Subchapter A, Chapter 571.

(c) This chapter does not apply to expenditures by a municipally owned electric or gas utility or unbundled divisions of a municipally owned electric or gas utility in connection with any purchases by the municipally owned utility or divisions of a municipally owned utility made in accordance with procurement procedures adopted by a resolution of the body vested with authority for management and operation of the municipally owned utility or its divisions that sets out the public purpose to be achieved by

those procedures. This subsection may not be deemed to exempt a municipally owned utility from any other applicable statute, charter provision, or ordinance.

(d) This chapter does not apply to an expenditure described by Section 252.021(a) if the governing body of a municipality determines that a method described by Chapter 2269, Government Code, provides a better value for the municipality with respect to that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that chapter with respect to that expenditure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 47(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1001, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 42, Sec. 1, eff. April 25, 1991; Acts 1993, 73rd Leg., ch. 749, Sec. 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 207, Sec. 2, eff. May 23, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 125, Sec. 1, eff. May 19, 1997; Acts 1997, 75th Leg., ch. 1370, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 405, Sec. 41, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.290, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(3), eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(21), eff. September 1, 2013.

Sec. 252.023. EXEMPTIONS FROM REFERENDUM PROVISIONS. The referendum provisions prescribed by Section 252.045 do not apply to expenditures that are payable:

- (1) from current funds;
- (2) from bond funds; or
- (3) by time warrants unless the amount of the time warrants issued by the municipality for all purposes during the current calendar year exceeds:

- (A) \$7,500 if the municipality's population is 5,000 or less;

(B) \$10,000 if the municipality's population is 5,001 to 24,999;

(C) \$25,000 if the municipality's population is 25,001 to 49,999; or

(D) \$100,000 if the municipality's population is more than 50,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, Sec. 1, eff. Aug. 26, 1991.

Sec. 252.024. SELECTION OF INSURANCE BROKER. This chapter does not prevent a municipality from selecting a licensed insurance broker as the sole broker of record to obtain proposals and coverages for excess or surplus insurance that provides necessary coverage and adequate limits of coverage in structuring layered excess coverages in all areas of risk requiring special consideration, including public official liability, police professional liability, and airport liability. The broker may be retained only on a fee basis and may not receive any other remuneration from any other source.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

#### SUBCHAPTER C. PROCEDURES

Sec. 252.041. NOTICE REQUIREMENT. (a) If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud.

(b) If the competitive sealed proposals requirement applies to the contract, notice of the request for proposals must be given in the same manner as that prescribed by Subsection (a) for the notice for competitive sealed bids.

(c) If the contract is for the purchase of machinery for the construction or maintenance of roads or streets, the notice for bids and the order for purchase must include a general specification of the machinery desired.

(d) If the governing body of the municipality intends to issue time warrants for the payment of any part of the contract, the notice must include a statement of:

- (1) the governing body's intention;
- (2) the maximum amount of the proposed time warrant indebtedness;
- (3) the rate of interest the time warrants will bear; and
- (4) the maximum maturity date of the time warrants.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 749, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 6, eff. Sept. 1, 1993.

Sec. 252.0415. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS. (a) A municipality may receive bids or proposals under this chapter through electronic transmission if the governing body of the municipality adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 6, eff. Sept. 1, 2001.

Sec. 252.042. REQUESTS FOR PROPOSALS FOR CERTAIN PROCUREMENTS. (a) Requests for proposals made under Section 252.021 must solicit quotations and must specify the relative importance of price and other evaluation factors.

(b) Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 56(c), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 45, Sec. 2, eff. May 5, 1995.

Sec. 252.043. AWARD OF CONTRACT. (a) If the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(b) In determining the best value for the municipality, the municipality may consider:

- (1) the purchase price;
- (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.

(b-1) In addition to the considerations provided by Subsection (b), a joint board described by Section 22.074(d), Transportation Code, that awards contracts in the manner provided by this chapter may consider, in determining the best value for the board, the impact on the ability of the board to comply with laws, rules, and programs relating to contracting with small businesses, as defined by 13 C.F.R. Section 121.201.

(c) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(d) Except as provided by Subsection (d-1), the contract must be awarded to the lowest responsible bidder if the competitive sealed bidding requirement applies to the contract for construction of:

- (1) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and

taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(2) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(d-1) A contract for construction of a project described by Subsection (d) that requires an expenditure of \$1.5 million or less may be awarded using the competitive sealed proposal procedure prescribed by Subchapter D, Chapter 2269, Government Code.

(e) If the competitive sealed bidding requirement applies to the contract for construction of a facility, as that term is defined by Section 2269.001, Government Code, the contract must be awarded to the lowest responsible bidder or awarded under the method described by Chapter 2269, Government Code.

(f) The governing body may reject any and all bids.

(g) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(h) If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals.

(i) This section does not apply to a contract for professional services, as that term is defined by Section 2254.002, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1370, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1409, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 739 (H.B. 2661), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 428 (S.B. 1618), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.03, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(22), eff. September 1, 2013.

Sec. 252.0435. SAFETY RECORD OF BIDDER CONSIDERED. In determining who is a responsible bidder, the governing body may take into account the

safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

- (1) the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
- (3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 58(b), eff. Aug. 28, 1989.

Sec. 252.0436. CONTRACT WITH PERSON INDEBTED TO MUNICIPALITY. (a) A municipality by ordinance may establish regulations permitting the municipality to refuse to enter into a contract or other transaction with a person indebted to the municipality.

(b) It is not a violation of this chapter for a municipality, under regulations adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the municipality.

(c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the municipality requiring approval by the governing body of the municipality.

Added by Acts 2003, 78th Leg., ch. 156, Sec. 1, eff. Sept. 1, 2003.

Sec. 252.044. CONTRACTOR'S BOND. (a) If the contract is for the construction of public works, the bidder to whom the contract is awarded must execute a good and sufficient bond. The bond must be:

- (1) in the full amount of the contract price;
- (2) conditioned that the contractor will faithfully perform the contract; and
- (3) executed, in accordance with Chapter 2253, Government Code, by a surety company authorized to do business in the state.

(b) Repealed by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993.

(c) The governing body of a home-rule municipality by ordinance may adopt the provisions of this section and Chapter 2253, Government Code,

relating to contractors' surety bonds, regardless of a conflicting provision in the municipality's charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 252.045. REFERENDUM ON ISSUANCE OF TIME WARRANTS. (a) If, by the time set for letting a contract under this chapter, a written petition with the required signatures is filed with the municipal secretary or clerk requesting the governing body of the municipality to order a referendum on the question of whether time warrants should be issued for an expenditure under the contract, the governing body may not authorize the expenditure or finally award the contract unless the question is approved by a majority of the votes received in the referendum. The petition must be signed by at least 10 percent of the qualified voters of the municipality whose names appear as property taxpayers on the municipality's most recently approved tax rolls.

(b) If a petition is not filed, the governing body may finally award the contract and issue the time warrants. In the absence of a petition, the governing body may, at its discretion, order the referendum.

(c) The provisions of Subtitles A and C, Title 9, Government Code, relating to elections for the issuance of municipal bonds and to the issuance, approval, registration, and sale of bonds govern the referendum and the time warrants to the extent those provisions are consistent with this chapter. However, the time warrants may mature over a term exceeding 40 years only if the governing body finds that the financial condition of the municipality will not permit payment of warrants issued for a term of 40 years or less from taxes that are imposed substantially uniformly during the term of the warrants.

(d) This section does not supersede any additional rights provided by the charter of a special-law municipality and relating to a referendum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 38, eff. Sept. 1, 1999.

Sec. 252.046. CIRCUMSTANCES IN WHICH CURRENT FUNDS TO BE SET ASIDE. If an expenditure under the contract is payable by warrants on current funds, the governing body of the municipality by order shall set aside an amount of current funds that will discharge the principal and interest of

the warrants. Those funds may not be used for any other purpose, and the warrants must be discharged from those funds and may not be refunded.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.047. PAYMENT METHOD FOR CERTAIN CONTRACTS. If the contract is for the construction of public works or for the purchase of materials, equipment, and supplies, the municipality may let the contract on a lump-sum basis or unit price basis as the governing body of the municipality determines. If the contract is let on a unit price basis, the information furnished to bidders must specify the approximate quantity needed, based on the best available information, but payment to the contractor must be based on the actual quantity constructed or supplied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.048. CHANGE ORDERS. (a) If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the governing body of the municipality may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.

(c) If a change order involves a decrease or an increase of \$50,000 or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders.

(c-1) If a change order for a public works contract in a municipality with a population of 240,000 or more involves a decrease or an increase of \$100,000 or less, or a lesser amount as provided by ordinance, the governing body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

(d) The original contract price may not be increased under this section by more than 25 percent. The original contract price may not be decreased under this section by more than 25 percent without the consent of the contractor.

(e) This section applies only to a contract awarded through a competitive procedure as required by Section 252.021.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 706, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.09, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1356 (S.B. 1430), Sec. 2, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 406 (H.B. 1440), Sec. 1, eff. September 1, 2023.

Sec. 252.049. CONFIDENTIALITY OF INFORMATION IN BIDS OR PROPOSALS.

(a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.050. LEASE-PURCHASE OR INSTALLMENT PURCHASE OF REAL PROPERTY. (a) This section applies only to a lease-purchase or installment purchase of real property financed by the issuance of certificates of participation.

(b) The governing body of a municipality may not make an agreement under which the municipality is a lessee in a lease-purchase of real property or is a purchaser in an installment purchase of real property unless the governing body first obtains an appraisal by a qualified appraiser who is not an employee of the municipality. The purchase price may not exceed the fair market value of the real property, as shown by the appraisal.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 10, Sec. 2, eff. Oct. 18, 1989.

Sec. 252.051. APPRAISAL REQUIRED BEFORE PURCHASE OF PROPERTY WITH BOND PROCEEDS. A municipality may not purchase property wholly or partly with bond proceeds until the municipality obtains an independent appraisal of the property's market value.

Added by Acts 2011, 82nd Leg., R.S., Ch. 719 (H.B. 782), Sec. 1, eff. September 1, 2011.

#### SUBCHAPTER D. ENFORCEMENT

Sec. 252.061. INJUNCTION. If the contract is made without compliance with this chapter, it is void and the performance of the contract, including the payment of any money under the contract, may be enjoined by:

- (1) any property tax paying resident of the municipality; or
- (2) a person who submitted a bid for a contract for which the competitive sealed bidding requirement applies, regardless of residency, if the contract is for the construction of public works.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 979 (H.B. 3668), Sec. 1, eff. September 1, 2009.

Sec. 252.062. CRIMINAL PENALTIES. (a) 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 of Section 252.021. An offense under this subsection is a Class B misdemeanor.

(b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.

(c) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 3, eff. Sept. 1, 1989.

Sec. 252.063. REMOVAL; INELIGIBILITY. (a) The final conviction of a municipal officer or employee for an offense under Section 252.062(a) or (b) results in the immediate removal from office or employment of that person.

(b) For four years after the date of the final conviction, the removed officer or employee is ineligible:

(1) to be a candidate for or to be appointed or elected to a public office in this state;

(2) to be employed by the municipality with which the person served when the offense occurred; and

(3) to receive any compensation through a contract with that municipality.

(c) This section does not prohibit the payment of retirement or workers' compensation benefits to the removed officer or employee.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 4, eff. Sept. 1, 1989.

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE D. STATE PURCHASING AND GENERAL SERVICES

CHAPTER 2155. PURCHASING: GENERAL RULES AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2155.001. DEFINITIONS. Except as otherwise provided by this chapter and Chapters 2156, 2157, and 2158:

- (1) "Goods" means supplies, materials, or equipment.
- (2) "Service" means the furnishing of skilled or unskilled labor or professional work, but does not include a:
  - (A) professional service subject to Subchapter A, Chapter 2254;
  - (B) service of a state agency employee;
  - (C) consulting service or service of a consultant as defined by Subchapter B, Chapter 2254; or
  - (D) service of a public utility.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 61, eff. June 19, 1997.

Sec. 2155.0011. COMPTROLLER POWERS AND DUTIES. The comptroller has under this chapter the powers and duties described by Section 2151.004(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.06, eff. September 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 7, eff. September 1, 2019.

Sec. 2155.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.06, eff. September 1, 2007.

Sec. 2155.002. FOCUS ON LARGE EXPENDITURES. To the extent possible, the comptroller shall focus its efforts under this chapter and Chapters 2156, 2157, and 2158 on purchases and contracts that involve relatively large amounts of money.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 7, eff. September 1, 2019.

Sec. 2155.003. CONFLICT OF INTEREST. (a) The chief clerk or any other employee of the comptroller may not:

(1) have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state; or

(2) in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.

(b) The chief clerk or any other employee of the comptroller who violates Subsection (a)(2) is subject to dismissal.

(c) In consultation with the comptroller, the Texas Ethics Commission shall adopt rules to implement this section.

(d) The Texas Ethics Commission shall administer and enforce this section and may prepare written opinions regarding this section in accordance with Subchapter D, Chapter 571.

(e) The comptroller must report to the Texas Ethics Commission a campaign contribution from a vendor that bids on or receives a contract under the comptroller's purchasing authority.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.07, eff. September 1, 2007.

Sec. 2155.004. CERTAIN BIDS AND CONTRACTS PROHIBITED. (a) A state agency may not accept a bid or award a contract that includes proposed

financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.

(b) A bid or award subject to the requirements of this section must include the following statement:

"Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) If a state agency determines that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded under Subsection (a), the state agency may immediately terminate the contract without further obligation to the vendor.

(d) This section does not create a cause of action to contest a bid or award of a state contract.

(e) This section does not prohibit a bidder or contract participant from providing free technical assistance to a state agency.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1040, Sec. 62, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 56, eff. June 15, 2001.

Sec. 2155.005. COMPLIANCE WITH ANTITRUST LAWS. (a) A bidder offering to sell goods or services to the state shall certify on each bid submitted that neither the bidder, nor the person represented by the bidder, nor any person acting for the represented person has:

(1) violated the antitrust laws codified by Chapter 15, Business & Commerce Code, or the federal antitrust laws; or

(2) directly or indirectly communicated the bid to a competitor or other person engaged in the same line of business.

(b) The attorney general shall prepare the certification statement. The statement shall be made a part of the bid form.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.006. PROHIBITION ON CERTAIN BIDS AND CONTRACTS. (a) In this section:

(1) "Disaster" has the meaning assigned by Section 418.004.

(2) "Hurricane Katrina" means the hurricane of that name that struck the gulf coast region of the United States in August 2005.

(b) A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been:

(1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or

(2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

(c) A bid or award subject to the requirements of this section must include the following statement:

"Under Section 2155.006, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(d) If a state agency determines that an individual or business entity holding a state contract was ineligible to have the bid accepted or contract awarded under Subsection (b), the state agency may immediately terminate the contract without further obligation to the vendor.

(e) This section does not create a cause of action to contest a bid or award of a state contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 1302 (S.B. 608), Sec. 1, eff. September 1, 2007.

Sec. 2155.0061. PROHIBITION ON CERTAIN BIDS AND CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING. (a) A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking.

(b) A bid or award subject to the requirements of this section must include the following statement:

"Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) If a state agency determines that an individual or business entity holding a state contract was ineligible to have the bid accepted or contract awarded under this section, the state agency may immediately terminate the contract without further obligation to the vendor.

(d) This section does not create a cause of action to contest a bid or award of a state contract.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 6.01, eff. September 1, 2019.

Sec. 2155.007. PROCUREMENT COORDINATION COMMITTEE. (a) In this section, "department" means the Department of Information Resources.

(b) The department and the comptroller shall establish a committee composed of essential personnel of the department and the comptroller to:

(1) identify:

(A) areas of overlap in the procurement functions of the department and the comptroller and methods to avoid duplication of services;

(B) mutually beneficial contracting and procurement methodologies, data collection and management techniques, and customer relations management;

(C) opportunities for collaboration on procurement functions that would benefit the state or other customers; and

(D) opportunities for consolidation of administrative or other functions to improve customer service and reduce operating costs; and

(2) develop:

(A) a standardized method for the department and the comptroller to:

(i) collect and analyze spending data relating to procurement contracts; and

(ii) benchmark and quantitatively measure cost savings and increased administrative efficiency resulting from collaboration and cooperative purchasing; and

(B) strategies that encourage coordination between the department and the comptroller relating to procurement functions.

(c) The committee may appoint advisory members as appropriate to assist the committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 48 (H.B. 2472), Sec. 16, eff. September 1, 2013.

#### SUBCHAPTER B. GENERAL PURCHASING REQUIREMENTS, PROCEDURES, AND PROGRAMS

Sec. 2155.061. COMPTROLLER PURCHASING SYSTEM. (a) The comptroller shall acquire by purchase, lease, rental, or another manner all goods and services for a state agency, including a purchase that does not require a competitive bid or a spot purchase.

(b) The comptroller shall operate an effective and economical system for purchasing goods and services.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 8, eff. September 1, 2019.

Sec. 2155.062. PURCHASE METHODS. (a) In purchasing goods and services the comptroller may use, but is not limited to, the:

- (1) contract purchase procedure;
- (2) multiple award contract procedure, including under any schedules developed under Subchapter I;
- (3) open market purchase procedure; or
- (4) reverse auction procedure.

(b) Chapter 2156 provides additional information on purchase methods.

(c) Chapter 2157 provides additional information on purchase of automated information systems.

(d) In this subchapter, "reverse auction procedure" means:

(1) a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or

(2) a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 436, Sec. 1, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1422, Sec. 7.01, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1013 (H.B. 908), Sec. 1, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 9, eff. September 1, 2019.

Sec. 2155.063. COMPETITIVE BIDDING REQUIREMENT. Except as otherwise provided by this subtitle, a purchase of or contract for goods or services shall, whenever possible, be accomplished through competitive bidding.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.064. SCHEDULE AND BULK PURCHASING. The comptroller may combine orders in a system of schedule purchasing and shall attempt to benefit from bulk purchasing.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 10, eff. September 1, 2019.

Sec. 2155.065. CONTRACTS WITH DEPARTMENT OF CRIMINAL JUSTICE. (a) The comptroller is authorized to make contracts with the Texas Department of Criminal Justice for the purchase of goods and services for use by another state agency.

(b) The Texas Department of Criminal Justice shall test goods and services it sells under this section before delivery to the extent necessary to ensure quality. The department may enter into a contract with a private or public entity to assist with testing.

(c) The comptroller shall make awards under this section based on proposed goods and services meeting formal state specifications developed by the comptroller or meeting commercial specifications approved by the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 11, eff. September 1, 2019.

Sec. 2155.066. REVIEW OF SPECIFICATIONS. The comptroller shall review the specifications and purchase conditions of goods or services considered for purchase.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 12, eff. September 1, 2019.

Sec. 2155.067. PROPRIETARY PURCHASES. (a) If, after review under Section 2155.066, the comptroller finds that specifications and conditions of a purchase request describe a product that is proprietary to one vendor and do not permit an equivalent product to be supplied, the comptroller shall require the requesting state agency to justify in writing the specifications or conditions.

(b) The agency head or the presiding officer of the agency's governing body must sign the written justification.

(c) The written justification must:

- (1) explain the need for the specifications;
- (2) state the reason competing products are not satisfactory; and
- (3) provide other information requested by the comptroller.

(d) If the comptroller requires a resubmission with written justification, the comptroller shall notify the requesting state agency of the requirement not later than the 10th day after the date of receiving the purchase request.

(e) Repealed by Acts 1997, 75th Leg., ch. 1206, Sec. 29, eff. Sept. 1, 1997.

(f) The comptroller shall issue an invitation to bid to vendors not later than the 20th day after the date of receiving the required written justification.

(g) Repealed by Acts 2003, 78th Leg., ch. 785, Sec. 75(2).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 29, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 118, Sec. 1.04, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 785, Sec. 75(2), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 13, eff. September 1, 2019.

Sec. 2155.068. UNIFORM STANDARDS AND SPECIFICATIONS. (a) The comptroller may coordinate uniform standards and specifications for goods purchased by the comptroller. The comptroller by rule may adopt appropriate standards developed by a nationally recognized standards-making association as part of its specifications and standards program.

(b) The comptroller shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications.

(c) The comptroller shall review contracts administered by the comptroller to ensure that all goods and services meet contract specifications.

(d) As part of the standards and specifications program, the comptroller shall:

(1) review contracts for opportunities to recycle waste produced at state buildings;

(2) develop and update a list of equipment and appliances that meet the energy efficiency standards provided by Section 2158.301; and

(3) assist state agencies in selecting products under Section 2158.301, as appropriate.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.04, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 11.022, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 14, eff. September 1, 2019.

Sec. 2155.069. TESTING AND INSPECTION. (a) The comptroller may test and inspect goods and services purchased under a contract administered by the comptroller to ensure compliance with specifications.

(b) The comptroller may contract for testing under this section.

(c) The comptroller may, on request, test and inspect goods and services purchased by other state governmental entities on a cost recovery basis.

(d) The comptroller may also test and inspect goods and services before they are purchased. Other state agencies may test and inspect goods and services before purchase under standard industry testing methods, or they may contract for testing. The comptroller may inform agencies about available private testing facilities.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 14, eff. September 1, 2019.

Sec. 2155.070. FAILURE TO MEET SPECIFICATIONS. (a) A state agency that determines that goods or services received under a contract administered by the comptroller do not meet specifications shall promptly notify the comptroller in writing of the reasons for the determination. The comptroller shall immediately make its own determination of whether the goods and services meet specifications.

(b) The comptroller or a state agency, including an institution of higher education, has the authority to determine that goods and services exempted from the comptroller's purchasing authority meet or fail to meet specifications.

(c) On determining that contract specifications or conditions have not been met, the comptroller shall act against the defaulting contractor, with the assistance of the attorney general as necessary.

(d) If the comptroller receives repeated complaints against a vendor, the comptroller shall remove the vendor's name and the vendor's goods and services from the comptroller's bidders list for not longer than one year. If complaints resume after the vendor is reinstated on the bidders list, the comptroller may bar the vendor from participating in state contracts for a period under Section 2155.077.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 14, eff. September 1, 2019.

Sec. 2155.072. STATEWIDE OR REGIONAL SERVICES CONTRACTS; STUDIES.

(a) The comptroller annually shall select for study at least one service that is purchased by one or more state agencies. The comptroller shall study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. The comptroller shall give priority to studying services for which the comptroller has delegated the purchasing function to many state agencies.

(b) The comptroller is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 14, eff. September 1, 2019.

Sec. 2155.073. PARTICIPATION BY SMALL BUSINESSES IN STATE PURCHASING.

The comptroller shall foster participation of small businesses in the purchasing activities of the state by:

- (1) assisting state agencies in developing procedures to ensure the inclusion of small businesses on state agency master bid lists;
- (2) informing small businesses of state purchasing opportunities;
- (3) assisting small businesses in complying with the procedures for bidding on state contracts;
- (4) working with state and federal agencies and with private organizations in disseminating information on state purchasing procedures and the opportunities for small businesses to participate in state contracts;
- (5) assisting state agencies with the development of a comprehensive list of small businesses capable of providing goods or services to the state;
- (6) making recommendations to state agencies to simplify contract specifications and terms to increase the opportunities for small business participation;
- (7) working with state agencies to establish a statewide policy for increasing the use of small businesses;
- (8) assisting state agencies in seeking small businesses capable of supplying goods and services that the agencies require;

(9) assisting state agencies in identifying and advising small businesses on the types of goods and services needed by the agencies; and

(10) assisting state agencies in increasing the volume of business placed with small businesses.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 14, eff. September 1, 2019.

Sec. 2155.074. BEST VALUE STANDARD FOR PURCHASE OF GOODS OR SERVICES.

(a) For a purchase of goods and services under this chapter, each state agency, including the comptroller, shall purchase goods and services that provide the best value for the state.

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are principal considerations that must be balanced with other relevant factors.

(b-1) The comptroller or other state agency may, subject to Subsection (c) and Section 2155.075, consider the following relevant factors under Subsection (b), including:

(1) installation costs;

(2) life cycle costs;

(3) the quality and reliability of the goods and services;

(4) the delivery terms;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;

(6) the cost of any employee training associated with a purchase;

(7) the effect of a purchase on agency productivity;

(8) the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment;

(9) the impact of a purchase on the agency's administrative resources; and

(10) other factors relevant to determining the best value for the state in the context of a particular purchase.

(c) A state agency shall consult with and receive approval from the comptroller before considering factors other than price and meeting specifications when the agency procures through competitive bidding goods or services with a value that exceeds \$100,000.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 14.16, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 14, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 855 (S.B. 799), Sec. 5, eff. September 1, 2021.

Sec. 2155.075. REQUIREMENT TO SPECIFY VALUE FACTORS IN REQUEST FOR BIDS OR PROPOSALS. (a) For a purchase made through competitive bidding, the comptroller or other state agency making the purchase must specify in the request for bids:

(1) the factors other than price that the comptroller or agency will consider in determining which bid offers the best value for the state; and

(2) the proposal criteria the comptroller or agency will use when considering the factors described by Subdivision (1).

(b) For a purchase made through competitive sealed proposals, the comptroller or other state agency making the purchase:

(1) must specify in the request for proposals the known factors other than price that the comptroller or agency will consider in determining which proposal offers the best value for the state; and

(2) may concurrently inform each vendor that made a proposal on the contract of any additional factors the comptroller or agency will consider in determining which proposal offers the best value for the state if the comptroller or other agency determines after opening the proposals that additional factors not covered under Subdivision (1) are relevant in determining which proposal offers the best value for the state.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 14, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 855 (S.B. 799), Sec. 6, eff. September 1, 2021.

Sec. 2155.0755. VERIFICATION OF USE OF BEST VALUE STANDARD. (a) The contract manager or procurement director of each state agency shall:

(1) approve each state agency contract for which the agency is required to purchase goods or services using the best value standard;

(2) ensure that, for each contract, the agency documents the best value standard used for the contract; and

(3) acknowledge in writing that the agency complied with the agency's and comptroller's contract management guide in the purchase.

(b) For each purchase of goods or services for which a state agency is required to use the best value standard, the comptroller shall ensure that the agency includes in the vendor performance tracking system established under Section 2262.055 information on whether the vendor satisfied that standard.

Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 10, eff. September 1, 2015.

Sec. 2155.076. PROTEST PROCEDURES. (a) The comptroller and each state agency by rule shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the comptroller's rules. The rules must include standards for maintaining documentation about the purchasing process to be used in the event of a protest.

(b) A state agency that is not subject to Chapter 2001 shall provide public notice of its proposed and adopted protest rules and provide a procedure for public comment on the proposed rules.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.  
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 15, eff. September 1, 2019.

Sec. 2155.077. BARRING VENDOR FROM PARTICIPATION IN STATE CONTRACTS.

(a) The comptroller may bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, for:

(1) substandard performance under a contract with the state or a state agency;

(2) material misrepresentations in a bid or proposal to the state or a state agency or during the course of performing a contract with the state or a state agency;

(3) fraud;

(4) breaching a contract with the state or a state agency; or

(5) repeated unfavorable performance reviews under Section 2155.089 or repeated unfavorable classifications received by the vendor

under Section 2262.055 after considering the following factors:

- (A) the severity of the substandard performance by the vendor;
- (B) the impact to the state of the substandard performance;
- (C) any recommendations by a contracting state agency that provides an unfavorable performance review;
- (D) whether debarment of the vendor is in the best interest of the state; and
- (E) any other factor that the comptroller considers relevant, as specified by comptroller rule.

(a-1) The comptroller shall bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if the vendor has been:

(1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005;

(2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or

(3) convicted of any offense related to the direct support or promotion of human trafficking.

(a-2) The comptroller may bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if more than two contracts between the vendor and the state have been terminated by the state for unsatisfactory vendor performance during the preceding three years.

(b) Except as provided by Subsection (d), the comptroller shall bar a vendor from participating in state contracts under Subsection (a) or (a-2) for a period that is commensurate with the seriousness of the vendor's action and the damage to the state's interests.

(c) The comptroller by rule shall:

(1) state generally the reasons for which a vendor may be barred from participating in state contracts and the periods for which the vendor may be barred; and

(2) prescribe the procedures under which the comptroller will determine whether and for how long a vendor will be barred.

(d) The comptroller shall bar a vendor from participating in state contracts under Subsection (a-1) for a period of five years from the date the vendor was convicted or the penalty was assessed.

(e) In this section:

(1) "Disaster" has the meaning assigned by Section 418.004.

(2) "Hurricane Katrina" means the hurricane of that name that struck the gulf coast region of the United States in August 2005.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1302 (S.B. 608), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 11, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 6.02, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 16, eff. September 1, 2019.

Sec. 2155.079. BUYING UNDER CONTRACT ESTABLISHED BY AGENCY OTHER THAN COMPTROLLER. (a) The comptroller shall adopt rules specifying the circumstances under which it is advantageous for the state to allow a state agency to purchase goods or services under a contract made by another state agency other than the comptroller, including as provided under Subchapter I.

(b) If comptroller rules allow other agencies to make purchases under a contract entered into by an agency using delegated purchasing authority, the agency purchasing under delegated authority may offer the goods or services available under the contract to other agencies only if the agency first:

(1) establishes that the goods or services being offered under its contract are not available under a contract administered by the comptroller; and

(2) informs the comptroller of the terms of the contract and the capabilities of the vendor.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 2.02, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 17, eff. September 1, 2019.

Sec. 2155.080. ADVISORY COMMITTEE ON PROCUREMENT. (a) The comptroller may establish an advisory committee on procurement. The purpose of the committee is to represent before the comptroller the state agency purchasing community and the political subdivisions that use the comptroller's purchasing services.

(b) The committee is composed of officers or employees from the comptroller, from state agencies, including institutions of higher education, and from political subdivisions who are invited by the comptroller to serve on the committee. The comptroller shall invite officers and employees who are experienced in public purchasing, in public finance, or who possess other appropriate expertise to serve on the committee. Service on the committee is an additional duty of the member's public office or employment. Chapter 2110 does not apply to the size or composition of the committee. The comptroller shall set staggered terms for the members of the committee.

(c) The committee may establish its own rules of operation.

(d) The committee shall recommend improvements in comptroller or state agency purchasing practices to the comptroller. The committee shall review and comment on findings and recommendations related to purchasing that are made by state agency internal auditors or by the state auditor.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept.1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 18, eff. September 1, 2019.

Sec. 2155.081. VENDOR ADVISORY COMMITTEE. (a) The comptroller may establish a vendor advisory committee. The purpose of the committee is to represent before the comptroller the vendor community, to provide information to vendors, and to obtain vendor input on state procurement practices.

(b) The committee is composed of employees from the comptroller and vendors who have done business with the state who are invited by the comptroller to serve on the committee. The comptroller shall invite a cross-section of the vendor community to serve on the committee, inviting both large and small businesses and vendors who provide a variety of different goods and services to the state. Chapter 2110 does not apply to

the size or composition of the committee. The comptroller shall set staggered terms for the members of the committee.

(c) The committee may establish its own rules of operation but shall post notice of and hold its meetings in accordance with Chapter 551.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.  
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 19, eff. September 1, 2019.

Sec. 2155.082. PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) The comptroller may provide open market purchasing services on a fee-for-service basis for state agency purchases that are delegated to an agency under Section 2155.131, 2155.132, or 2157.121 or that are exempted from the purchasing authority of the comptroller. The comptroller shall set the fees in an amount that recovers the comptroller's costs in providing the services.

(b) The comptroller shall publish a schedule of fees for services that are subject to this section. The schedule must include the comptroller's fees for:

- (1) reviewing bid and contract documents for clarity, completeness, and compliance with laws and rules;
- (2) developing and transmitting invitations to bid;
- (3) receiving and tabulating bids;
- (4) evaluating and determining which bidder offers the best value to the state;
- (5) creating and transmitting purchase orders; and
- (6) participating in agencies' request for proposal processes.

(c) If the state agency on behalf of which the procurement is to be made agrees, the comptroller may engage a consultant to assist with a particular procurement on behalf of a state agency and pay the consultant from the cost savings realized by the state agency.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.  
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 32.01, eff. September 28, 2011.

Sec. 2155.083. ELECTRONIC STATE BUSINESS DAILY; NOTICE REGARDING PROCUREMENTS EXCEEDING \$25,000. (a) Except as provided by Subsection (n), this section applies to each state agency making a procurement that will

exceed \$25,000 in value, without regard to the source of funds the agency will use for the procurement, including a procurement that:

- (1) is otherwise exempt from the comptroller's purchasing authority or the application of this subtitle;
- (2) is made under delegated purchasing authority;
- (3) is related to a construction project; or
- (4) is a procurement of professional or consulting services.

(b) Repealed by Acts 2001, 77th Leg., ch. 1422, Sec. 7.07, eff. September 1, 2001.

(c) The comptroller shall operate the electronic state business daily for state agencies and other eligible entities to advertise pre-solicitation notices, solicitations, and contract awards.

(d) The comptroller shall make the electronic state business daily available on the Internet.

(e) To accommodate businesses that do not have the technical means to access the electronic state business daily, governmental and nongovernmental entities such as public libraries, chambers of commerce, trade associations, small business development centers, economic development departments of local governments, and state agencies may provide public access to the electronic state business daily but may not charge a fee for providing access to the electronic state business daily under this subsection.

(f) The comptroller and other state agencies may not charge a fee designed to recover the cost of preparing and gathering the information that is published in the electronic state business daily. These costs are considered part of a procuring agency's responsibility to publicly inform potential bidders or offerors of its procurement opportunities.

(g) A state agency shall post in the electronic state business daily either the entire bid or proposal solicitation package or a notice that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract, including at a minimum the following information for each procurement that the state agency will make that is estimated to exceed \$25,000 in value:

- (1) a brief description of the goods or services to be procured and any applicable state product or service codes for the goods and services;
- (2) the last date on which bids, proposals, or other applicable expressions of interest will be accepted;
- (3) the estimated quantity of goods or services to be procured;

(4) if applicable, the previous price paid by the state agency for the same or similar goods or services;

(5) the estimated date on which the goods or services to be procured will be needed; and

(6) the name, business mailing address, business e-mail address, and business telephone number of the state agency employee a person may contact to inquire about all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.

(h) The state agency shall continue to either:

(1) post notice of the procurement in accordance with Subsection (g) until the latest of 21 calendar days after the date the notice is first posted; the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; or the date the state agency decides not to make the procurement; or

(2) post the entire bid or proposal solicitation package in accordance with Subsection (g) until the latest of 14 calendar days after the date the bid or proposal solicitation package is first posted; the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; or the date the state agency decides not to make the procurement.

(i) A state agency may not award the procurement contract and shall continue to accept bids or proposals or other applicable expressions of interest for the procurement contract for at least 21 calendar days after the date the state agency first posted notice of the procurement in accordance with Subsection (g) or 14 calendar days after the date the state agency first posted the entire bid or proposal solicitation package in accordance with Subsection (g), as applicable. The minimum time for posting required by this subsection and Subsection (h) does not apply in an emergency requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.

(j) A contract or procurement award made by a state agency that violates the applicable minimum time for posting required by Subsections (h) and (i) is void.

(k) Each state agency that will award a procurement contract estimated to exceed \$25,000 in value shall post in the electronic state business daily:

(1) the information required by this section to be posted in the electronic state business daily; and

(2) a notice when the procurement contract has been awarded or when the state agency has decided to not make the procurement.

(l) Repealed by Acts 2003, 78th Leg., ch. 785, Sec. 75(2).

(m) The requirements of this section are in addition to the requirements of other law relating to the solicitation of bids, proposals, or expressions of interest for a procurement by a state agency. This section does not affect whether a state agency is required to award a procurement contract through competitive bidding, competitive sealed proposals, or another method.

(n) This section does not apply to a state agency to which Section 51.9335 or 73.115, Education Code, applies.

Added by Acts 1997, 75th Leg., ch. 508, Sec. 1, eff. June 1, 1998.

Renumbered from Sec. 2155.074 by Acts 1999, 76th Leg., ch. 62, Sec.

19.01(57), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 2.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1422, Sec. 7.02, 7.07, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 785, Sec. 75(2), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 20, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 618 (H.B. 4012), Sec. 1, eff. June 11, 2023.

Acts 2023, 88th Leg., R.S., Ch. 618 (H.B. 4012), Sec. 2, eff. June 11, 2023.

Sec. 2155.084. PURCHASES FROM FEDERAL GOVERNMENT. (a) The comptroller or the governing body of an institution of higher education may negotiate purchases of goods of any kind needed by a state agency or the institution of higher education with the appropriate agency of the federal government. The governing body of an institution of higher education may act under this section either directly or through the comptroller or another state agency.

(b) The price of goods that are purchased from the federal government may not exceed the fair market value of the goods.

(c) In negotiating purchases of goods from the federal government under this section or under Subchapter G, Chapter 2175, the comptroller or the governing body of the institution of higher education may waive the requirement of a bidder's bond and performance bond that otherwise would be required.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.16, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 816, Sec. 3, eff. Sept. 1, 2001; Acts  
2003, 78th Leg., ch. 1276, Sec. 9.020(h), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 21, eff.  
September 1, 2019.

Sec. 2155.085. REVERSE AUCTION PROCEDURE. (a) The comptroller  
shall:

(1) purchase goods or services using the reverse auction  
procedure whenever:

(A) the procedure provides the best value to the state; or

(B) all purchasing methods provide equal value to the state;

(2) offer historically underutilized businesses assistance and  
training relating to the reverse auction procedure; and

(3) advise historically underutilized businesses on contracts  
available using the reverse auction procedure.

(b) The comptroller shall set a goal of purchasing at least 20  
percent of the dollar value of goods or services purchased by the  
comptroller using the reverse auction procedure.

Added by Acts 2005, 79th Leg., Ch. 1013 (H.B. 908), Sec. 2, eff. September  
1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 22, eff.  
September 1, 2019.

Sec. 2155.088. MATERIAL CHANGES TO CONTRACTS. (a) Notwithstanding  
any other law, the performance of a contract for goods or services awarded  
under this chapter must substantially comply with the terms contained in  
the written solicitation for the contract and the terms considered in  
awarding the contract, including terms regarding cost of materials or  
labor, duration, price, schedule, and scope.

(b) After a contract for goods or services is awarded under this  
chapter, the governing body of a state agency, if applicable, must hold a  
meeting to consider a material change to the contract and why that change  
is necessary. For purposes of this section, a material change includes:

(1) extending the length of or postponing the completion of a  
contract for six months or more; or

(2) increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1404 (H.B. 3648), Sec. 1, eff. June 14, 2013.

Sec. 2155.089. REPORTING VENDOR PERFORMANCE. (a) After a contract is completed or otherwise terminated, each state agency shall review the vendor's performance under the contract. If the value of the contract exceeds \$5 million, the state agency shall review the vendor's performance:

- (1) at least once each year during the term of the contract; and
- (2) at each key milestone identified for the contract.

(b) The state agency shall report to the comptroller, using the tracking system established by Section 2262.055, on the results of each review conducted under Subsection (a) regarding a vendor's performance under a contract.

(b-1) A state agency may not extend a vendor's contract until after the agency reports the results of each review of the vendor conducted under Subsection (a)(1) or (2), as applicable, in the manner prescribed by Subsection (b).

(c) This section does not apply to:

(1) an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015;

(2) a contract of the Employees Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Subtitle H, Title 8, Insurance Code;

(3) a contract entered into by:

(A) the comptroller under Section 2155.061;

(B) the Department of Information Resources under Section 2157.068; or

(C) a university system or an institution of higher education, as those terms are defined by Section 61.003, Education Code; or

(4) a child-specific contract entered into by the Department of Family and Protective Services for a child without placement.

Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 13, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 15, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 14, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 855 (S.B. 799), Sec. 7, eff. September 1, 2021.

Sec. 2155.090. VENDOR AND EMPLOYEE INTERACTION AND COMMUNICATION POLICY. (a) The comptroller shall update a contract management guide to include policies on the interactions and communication between employees of the state agency and a vendor that contracts with the state agency or seeks to conduct business with the state agency.

(b) This subtitle does not prohibit the exchange of information between a state agency and a vendor related to future solicitations or as necessary to monitor an existing contract.

Added by Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 6, eff. September 1, 2017.

Sec. 2155.091. CHIEF PROCUREMENT OFFICER: POWERS AND DUTIES. (a) The comptroller shall employ a chief procurement officer to serve as the chief procurement officer for this state.

(b) The chief procurement officer has authority over state agency procurement, including the authority to:

- (1) analyze state purchasing data to leverage state purchasing power;
- (2) provide functional support to state agencies;
- (3) provide training on state purchasing and contract management;
- (4) review major contract solicitations for information technology projects monitored by the quality assurance team under Section 2054.158;
- (5) review solicitations for major contracts reviewed by the Contract Advisory Team under Section 2262.101;
- (6) delegate to a state agency authority to contract for the purchase of a good or service valued in an amount specified by comptroller rule; and
- (7) provide leadership on procurement issues.

(c) A state agency shall comply with any request for information from the chief procurement officer necessary to conduct the analysis authorized by Subsection (b)(1).

(d) The chief procurement officer shall coordinate with the Department of Information Resources and the quality assurance team to

conduct a contract solicitation review required by Subsection (a)(4) and make appropriate recommendations to the comptroller and legislature based on the review. This section grants the chief procurement officer authority only to review a contract solicitation. The Department of Information Resources or the appropriate state agency retains the authority to award a statewide information resources contract as authorized by law.

(e) The chief procurement officer shall coordinate with the Contract Advisory Team to conduct the review required by Section 2262.101. A state agency shall comply with any request for information by the chief procurement officer that is necessary to conduct the review.

Added by Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 6, eff. September 1, 2017.

#### SUBCHAPTER C. DELEGATIONS OF AND EXCLUSIONS FROM COMPTROLLER'S PURCHASING AUTHORITY AND CERTAIN EXEMPTIONS FROM COMPETITIVE BIDDING

Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES. The comptroller may delegate purchasing functions to a state agency.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 24, eff. September 1, 2019.

Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT. (a) A state agency is delegated the authority to purchase goods and services if the purchase does not exceed \$50,000. If the comptroller determines that a state agency has not followed the comptroller's rules or the laws related to the delegated purchases, the comptroller shall report its determination to the members of the state agency's governing body and to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board.

(b) The comptroller by rule may delegate to a state agency the authority to purchase goods and services if the purchase exceeds \$50,000. In delegating purchasing authority under this subsection or Section 2155.131, the comptroller shall consider factors relevant to a state agency's ability to perform purchasing functions, including:

(1) the capabilities of the agency's purchasing staff and the existence of automated purchasing tools at the agency;

(2) the certification levels held by the agency's purchasing personnel;

(3) the results of the comptroller's procurement review audits of an agency's purchasing practices; and

(4) whether the agency has adopted and published protest procedures consistent with those of the comptroller as part of its purchasing rules.

(c) The comptroller shall monitor the purchasing practices of state agencies that are making delegated purchases under Subsection (b) or Section 2155.131 to ensure that the certification levels of the agency's purchasing personnel and the quality of the agency's purchasing practices continue to warrant the amount of delegated authority provided by the comptroller to the agency. The comptroller may revoke for cause all or part of the purchasing authority that the comptroller delegated to a state agency. The comptroller shall adopt rules to administer this subsection.

(d) The comptroller by rule:

(1) shall prescribe procedures for a delegated purchase; and

(2) shall prescribe procedures by which agencies may use the comptroller's services for delegated purchases, in accordance with Section 2155.082.

(e) Competitive bidding, whether formal or informal, is required for a purchase by a state agency if the purchase:

(1) exceeds \$10,000; and

(2) is made under a written contract.

(f) Goods purchased under this section may not include:

(1) an item for which a contract has been awarded under the contract purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;

(2) an item required by statute to be purchased from a particular source; or

(3) a scheduled item that has been designated for purchase by the comptroller.

(g) A large purchase may not be divided into small lot purchases to meet the dollar limits prescribed by this section. The comptroller may not require that unrelated purchases be combined into one purchase order to exceed the dollar limits prescribed by this section.

(h) A state agency making a purchase under this section for which competitive bidding is required must:

(1) attempt to obtain at least three competitive bids from sources listed on the master bidders list that normally offer for sale the

goods being purchased; and

(2) comply with Subchapter E.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1499, Sec. 1.17, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1354 (H.B. 119), Sec. 1, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 25, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 855 (S.B. 799), Sec. 8, eff. September 1, 2021.

Sec. 2155.136. PURCHASE OF CERTAIN MEDICAL EQUIPMENT BY MEDICAL OR DENTAL UNIT. (a) A medical or dental unit listed under Section 61.003, Education Code, may purchase through the use of competitive sealed proposals:

(1) prototypes of medical equipment not yet available on the market;

(2) medical equipment so new to the market that its benefits are not fully known; and

(3) major medical equipment that is so technically complex that development of specifications for competitive bidding is not feasible.

(b) To make a purchase under this section, the medical or dental unit must:

(1) follow the competitive sealed proposals procedures under Subchapter C, Chapter 2157, and comptroller rules on the use of competitive sealed proposals; and

(2) submit to the comptroller a written finding that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state for the proposed acquisition.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 26, eff. September 1, 2019.

Sec. 2155.137. EMERGENCY PURCHASES. (a) The comptroller shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of an emergency purchase.

(b) The provisions of Section 2161.181 relating to historically underutilized businesses apply to an emergency purchase made under this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 27, eff. September 1, 2019.

Sec. 2155.138. EXEMPTION OF GOODS OR SERVICES OF BLIND OR VISUALLY IMPAIRED PERSONS. (a) The competitive bidding provisions of this chapter do not apply to a state purchase of goods or services that:

- (1) are made or provided by blind or visually impaired persons;
- (2) are offered for sale to a state agency through efforts made under Chapter 122, Human Resources Code;
- (3) meet state specifications for quantity, quality, delivery, and life cycle costs; and
- (4) cost not more than the fair market price of similar items.

(b) The Texas Workforce Commission shall test the goods and services to the extent necessary to ensure quality. The Texas Workforce Commission may enter into a contract with a private or public entity to assist with testing.

(c) The comptroller shall make awards under this section based on proposed goods and services meeting formal state specifications developed by the comptroller or meeting commercial specifications approved by the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 9, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 28, eff. September 1, 2019.

Sec. 2155.139. EXEMPTION FOR CERTAIN LIBRARIES AND HEALTH FACILITIES.

(a) Section 2155.061 does not apply to an acquisition if:

- (1) the acquisition is for a:
  - (A) library operated as a part of a university system or institution of higher education;

(B) library or resource-sharing program operated by the Texas State Library and Archives Commission; or

(C) state-owned hospital or clinic; and

(2) the goods or services acquired are:

(A) serial and journal subscriptions, including electronic databases and information products;

(B) library materials, including books not available under a statewide contract and papers;

(C) library services, including binding services not available under a statewide contract; or

(D) library equipment and supplies.

(b) Section 2155.061 does not apply to a purchase of goods by a state-owned hospital or clinic through a group purchasing program that offers purchasing services at discount prices to two or more hospital or clinic facilities if the chief executive officer of the hospital or clinic or the officer's designee certifies that the purchase of the particular goods through the group purchasing program is the most cost-effective method of purchasing available.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 91, Sec. 2, eff. Sept. 1, 1999.

Sec. 2155.140. PURCHASE FROM GIFT OR GRANT NOT WITHIN COMPTROLLER'S PURCHASING AUTHORITY. The comptroller's authority does not apply to a purchase of goods or services from a gift or grant, including an industrial or federal grant or contract in support of research.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 29, eff. September 1, 2019.

Sec. 2155.141. PURCHASES FOR AUXILIARY ENTERPRISE NOT WITHIN COMPTROLLER'S PURCHASING AUTHORITY. The comptroller's authority does not extend to a purchase of goods and services for an auxiliary enterprise.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.06, eff. June 18, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 29, eff. September 1, 2019.

Sec. 2155.143. PURCHASE OF CARE AND TREATMENT SERVICES BY TEXAS JUVENILE JUSTICE DEPARTMENT. (a) The Texas Juvenile Justice Department may purchase care and treatment services, including educational services, for its wards.

(b) The Texas Juvenile Justice Department shall:

(1) negotiate purchases under this section to achieve fair and reasonable prices at rates that do not exceed any maximum provided by law; and

(2) select service providers according to each provider's qualifications and demonstrated competence.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 112, eff. September 1, 2015.

Sec. 2155.144. PROCUREMENTS BY HEALTH AND HUMAN SERVICES AGENCIES.

(a) This section applies only to the Health and Human Services Commission, each health and human services agency, the Department of Family and Protective Services, and agencies administratively attached to the Health and Human Services Commission. For the purposes of this section, the Department of Family and Protective Services or an agency administratively attached to the Health and Human Services Commission is considered a health and human services agency.

(b) An agency to which this section applies is delegated the authority to procure its goods and services, except as provided by this section.

(b-1) An agency to which this section applies is not delegated the authority to procure common commodities or services:

(1) including goods and services acquired for direct consumption or use by the agency in the day-to-day support of the agency's administrative operations, such as office supplies and equipment, building maintenance and cleaning services, or temporary employment services; and

(2) not including consulting services, professional services, health care services, information resources technology, goods or services acquired for the benefit or on behalf of clients of programs operated by the agency, procurements specifically authorized or delegated to the agency by statute, or the contracting out of agency purchasing functions or other administrative or program functions.

(b-2) The Health and Human Services Commission is delegated the authority to procure goods and services related to a contract for:

(1) a project to construct or expand a state hospital operated by a health and human services agency or a state supported living center as defined by Section 531.002, Health and Safety Code; or

(2) a deferred maintenance project for a health facility described by Subdivision (1).

(c) An agency to which this section applies shall acquire goods or services by any procurement method approved by the Health and Human Services Commission that provides the best value to the agency. The agency shall document that it considered all relevant factors under Subsection (d) in making the acquisition.

(d) Subject to Subsection (e), the agency may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on agency productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency in the context of a particular acquisition.

(e) Repealed by Acts 2003, 78th Leg., ch. 785, Sec. 75(2).

(f) The state auditor may audit the agency's acquisitions of goods and services before or after a warrant is issued to pay for an acquisition.

(g) The agency may adopt rules and procedures for the acquisition of goods and services under this section.

(h) The Health and Human Services Commission shall adopt rules and procedures for the acquisition of goods and services under this section that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program except when a better value is available through another procurement method. The rules of the health and human services agencies must be consistent with the rules of the Health and Human Services Commission.

Text of subsection effective until April 01, 2025

(i) Subject to Section 531.0055(c), the Health and Human Services Commission shall develop a single statewide risk analysis procedure. Each health and human services agency shall comply with the procedure. The procedure must provide for:

(1) assessing the risk of fraud, abuse, or waste in health and human services agencies contractor selection processes, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which health and human services agencies contract;

(2) identifying contracts that require enhanced contract monitoring; and

(3) coordinating contract monitoring efforts among health and human services agencies.

Text of subsection effective on April 01, 2025

(i) Subject to Section 524.0001(b), the Health and Human Services Commission shall develop a single statewide risk analysis procedure. Each health and human services agency shall comply with the procedure. The procedure must provide for:

(1) assessing the risk of fraud, abuse, or waste in health and human services agencies contractor selection processes, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which health and human services agencies contract;

(2) identifying contracts that require enhanced contract monitoring; and

(3) coordinating contract monitoring efforts among health and human services agencies.

Text of subsection effective until April 01, 2025

(j) Subject to Section 531.0055(c), the Health and Human Services Commission shall publish a contract management handbook that establishes consistent contracting policies and practices to be followed by health and human services agencies. The handbook may include standard contract provisions and formats for health and human services agencies to incorporate as applicable in their contracts.

Text of subsection effective on April 01, 2025

(j) Subject to Section 524.0001(b), the Health and Human Services Commission shall publish a contract management handbook that establishes consistent contracting policies and practices to be followed by health and human services agencies. The handbook may include standard contract provisions and formats for health and human services agencies to incorporate as applicable in their contracts.

Text of subsection effective until April 01, 2025

(k) Subject to Section 531.0055(c), the Health and Human Services Commission, in cooperation with the comptroller, shall establish a central contract management database that identifies each contract made with a health and human services agency. The comptroller may use the database to monitor health and human services agency contracts, and health and human services agencies may use the database in contracting. A state agency shall send to the comptroller in the manner prescribed by the comptroller the information the agency possesses that the comptroller requires for inclusion in the database.

Text of subsection effective on April 01, 2025

(k) Subject to Section 524.0001(b), the Health and Human Services Commission, in cooperation with the comptroller, shall establish a central contract management database that identifies each contract made with a health and human services agency. The comptroller may use the database to monitor health and human services agency contracts, and health and human services agencies may use the database in contracting. A state agency shall send to the comptroller in the manner prescribed by the comptroller the information the agency possesses that the comptroller requires for inclusion in the database.

(l) The Health and Human Services Commission shall coordinate the procurement practices of all health and human services agencies and encourage those agencies to use efficient procurement practices such as the use of a group purchasing program, combining maintenance contracts into one

contract, and obtaining prompt payment discounts. In implementing this duty, the Health and Human Services Commission may review the procurement and rate-setting procedures of each health and human services agency to ensure that amounts paid to contractors are consistent and represent the best value for the state. The Health and Human Services Commission may disapprove a procurement and rate-setting procedure of a health and human services agency. A health and human services agency may not use a procurement or rate-setting procedure that has been disapproved by the commission. The Health and Human Services Commission may transfer the procurement functions of a health and human services agency to another appropriate state agency if it determines that transferring those functions would be advantageous to the state. Other state agencies and institutions with experience in acquiring goods and services using the procedures allowed under Subsections (c) and (d) shall on request assist the Health and Human Services Commission to perform its functions under this section.

Text of subsection effective until April 01, 2025

(m) Subject to Section 531.0055(c), the Health and Human Services Commission shall develop and implement a statewide plan to ensure that each entity that contracts with a health and human services agency and any subcontractor of the entity complies with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Text of subsection effective on April 01, 2025

(m) Subject to Section 524.0001(b), the Health and Human Services Commission shall develop and implement a statewide plan to ensure that each entity that contracts with a health and human services agency and any subcontractor of the entity complies with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(n) To the extent of any conflict, this section prevails over any other state law relating to the procurement of goods and services except a law relating to contracting with historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities.

(o) If the Health and Human Services Commission does not receive any responsive bids on a competitive solicitation for goods or services for a state hospital operated by a health and human services agency or a state supported living center as defined by Section 531.002, Health and Safety

Code, the commission after making a written determination that competition is not available may negotiate with and award the contract to any qualified vendor who meets the requirements of the original solicitation:

(1) at a price consistent with the current market value of the goods or services; and

(2) for a term not to exceed five years.

Text of subsection effective until April 01, 2025

(p) In this section, "health and human services agency" has the meaning assigned by Section 531.001.

Text of subsection effective on April 01, 2025

(p) In this section, "health and human services agency" has the meaning assigned by Section 521.0001.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 1460, Sec. 3.11, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 7.07, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 785, Sec. 75(2), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.09, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 2.08(b)(3), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 16, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 15, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 855 (S.B. 799), Sec. 9, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 17, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.20, eff. April 1, 2025.

Sec. 2155.1441. HEALTH CARE PURCHASING. (a) A state agency shall acquire goods and services used in support of the agency's health care programs by the method that provides the greatest volume discount for the goods or services, including group purchasing programs, state agency purchasing consortiums, or competitive sealed proposals.

(b) A state agency may contract with a medical and dental unit to have the unit perform all or part of the purchasing functions of the agency under this section or to participate in a state agency purchasing consortium or group purchasing program with the medical and dental unit.

(c) If a state agency determines that it should consider factors in addition to volume discounts in acquiring a particular good or service, the agency may acquire the good or service by the most cost-effective method of acquisition available, including group purchasing programs, state agency purchasing consortiums, or competitive sealed proposals.

(d) A state agency shall provide appropriate information to the comptroller concerning acquisitions made by the agency under this section, but the comptroller's authority under this chapter and Chapters 2156, 2157, and 2158 does not extend to the acquisition of goods and services made under this section.

(e) The central administration of The University of Texas System shall develop methods for sharing information concerning acquisitions made under this section, including methods for sharing the information electronically. Electronic sharing may include posting information on acquisitions on the comptroller's state government electronic bulletin board.

(f) A state agency shall collect and maintain information as specified by the central administration of The University of Texas System relating to the agency's acquisitions under this section. The central administration of The University of Texas System is entitled to access to all information collected and maintained under this section.

(g) In this section:

(1) "Goods" means material, supplies, equipment, or other tangible items.

(2) "Group purchasing program" means a program administered by a business entity that offers discount prices on goods and services to participants in the program.

(3) "Health care program" means a program or activity administered or funded by a state agency to provide health care services, research, education, or goods.

(4) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.

(5) "State agency purchasing consortium" means a group of three or more state agencies acting under a written agreement to receive discount prices from vendors based on volume purchases of goods and services.

(h) This section does not apply to the state Medicaid program.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 17.01(a), eff. Sept. 1, 1997.  
Renumbered from Sec. 2155.144 by Acts 1999, 76th Leg., ch. 62, Sec.  
19.01(58), eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 30, eff.  
September 1, 2019.

Sec. 2155.1442. FOSTER CARE RESIDENTIAL CONTRACT MANAGEMENT. (a)  
Subject to Subsection (e), the state auditor shall conduct a management  
review of the residential contract management employees of the Health and  
Human Services Commission and the Department of Family and Protective  
Services and make recommendations regarding the organization of, and skills  
and educational requirements for, those employees. The state auditor shall  
also make recommendations regarding the implementation of financial  
accountability provisions and processes to ensure effective and efficient  
expenditure of state and other contract funds.

(b) The Health and Human Services Commission shall contract with the  
state auditor to perform on-site financial audits of selected residential  
contractors as necessary. The state auditor, in consultation with the  
commission, shall select the contractors to audit based on the contract's  
risk assessment rating, allegations of fraud or misuse of state or other  
contract funds, or other appropriate audit selection criteria. The  
residential contractors selected to be audited must be included in the  
audit plan and approved by the legislative audit committee under Section  
321.013.

(c) The Department of Family and Protective Services shall require  
that all files related to contracts for residential care of foster  
children:

(1) be complete and accurately reflect the contractor's actual  
updated contract performance; and

(2) be maintained in accordance with the department's record  
retention procedures and made available to the state auditor when  
requested.

(d) Subject to the availability of funds appropriated for the  
purpose, the Department of Family and Protective Services may develop an  
Internet-based system to enable residential contractors to review their  
reimbursement accounts or other pertinent financial data and reconcile  
their accounts.

(e) Work performed under Subsections (a) and (b) by the state auditor  
is subject to approval by the legislative audit committee for inclusion in

the audit plan under Section 321.013(c).

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.72(a), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 22, eff. September 1, 2007.

Sec. 2155.145. CERTAIN PURCHASES BY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY. The Texas Commission on Environmental Quality is delegated all purchasing functions relating to the administration of Subchapters F and I, Chapter 361, Health and Safety Code, subject to the rules adopted by the comptroller under Section 2155.132(c).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 16, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 31, eff. September 1, 2019.

Sec. 2155.146. CERTAIN PURCHASES BY EMPLOYEES RETIREMENT SYSTEM OF TEXAS. (a) The Employees Retirement System of Texas is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the retirement system determines relates to the fiduciary duties of the retirement system.

(b) The Employees Retirement System of Texas shall acquire goods or services by any procurement method approved by the board of trustees of the retirement system that provides the best value to the retirement system. The retirement system shall consider the best value standards enumerated in Section 2155.074, as added by Chapter 1206, Acts of the 75th Legislature, Regular Session, 1997.

(c) The comptroller shall procure goods or services for the Employees Retirement System of Texas at the request of the retirement system, and the retirement system may use the services of the comptroller in procuring goods or services.

Added by Acts 1999, 76th Leg., ch. 1541, Sec. 55, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 32, eff. September 1, 2019.

Sec. 2155.147. CERTAIN PURCHASES BY GENERAL LAND OFFICE. (a) The General Land Office is delegated all purchasing functions relating to purchases under Section 33.603, Natural Resources Code, including coastal erosion studies, demonstration studies, and response projects.

(b) The General Land Office shall acquire goods and services by any procurement method that provides the best value to the land office. The land office shall consider the best value standards provided by Section 2155.074.

(c) The comptroller shall procure goods and services for the General Land Office at the request of the land office, and the land office may use the services of the comptroller in procuring goods and services.

Added by Acts 2001, 77th Leg., ch. 1076, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 33, eff. September 1, 2019.

Sec. 2155.148. CERTAIN PURCHASES FOR TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM. (a) The Texas Emergency Services Retirement System is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the state board of trustees of the Texas Emergency Services Retirement System determines relates to the fiduciary duties of the retirement system.

(b) The Texas Emergency Services Retirement System shall acquire goods or services by any procurement method approved by the state board of trustees of the Texas Emergency Services Retirement System that provides the best value to the retirement system. The retirement system shall consider the best value standards provided by Section 2155.074.

(c) The comptroller shall procure goods or services for the Texas Emergency Services Retirement System at the request of the retirement system, and the retirement system may use the services of the comptroller in procuring goods or services.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.08, eff. June 18, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. 220), Sec. 3.04, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 34, eff. September 1, 2019.

Sec. 2155.149. CERTAIN PURCHASES BY VETERANS' LAND BOARD. (a) The Veterans' Land Board is delegated all purchasing functions relating to veterans homes and veterans cemeteries.

(b) The Veterans' Land Board shall acquire goods and services under Subsection (a) by any procurement method that provides the best value to the Veterans' Land Board. The Veterans' Land Board shall consider the best value standards listed in Section 2155.074.

(c) At the request of the Veterans' Land Board, the comptroller shall procure goods and services described by Subsection (a) for the Veterans' Land Board. The Veterans' Land Board may use the services of the comptroller in procuring goods and services described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 17 (S.B. 581), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 35, eff. September 1, 2019.

Sec. 2155.150. CERTAIN PURCHASES BY RAILROAD COMMISSION OF TEXAS.

(a) The Railroad Commission of Texas is delegated all purchasing functions relating to purchases under:

- (1) Chapter 89, Natural Resources Code;
- (2) Sections 81.067 and 81.068, Natural Resources Code; and
- (3) Chapters 131 and 134, Natural Resources Code.

(b) The Railroad Commission of Texas shall acquire goods and services, under Subsection (a), by any procurement method that provides the best value to the railroad commission. The railroad commission shall consider the best value standards listed in Section 2155.074.

(c) The comptroller shall procure goods and services, under Subsection (a), for the Railroad Commission of Texas at the request of the railroad commission, and the railroad commission may use the services of the comptroller in procuring goods and services.

Added by Acts 2005, 79th Leg., Ch. 514 (H.B. 773), Sec. 1, eff. September 1, 2005.

Renumbered from Government Code, Section 2155.149 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(42), eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 9.019, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 28 (S.B. 1587), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 36, eff. September 1, 2019.

SUBCHAPTER D. EXTENSION OF COMPTROLLER PURCHASING SERVICES TO OTHER ENTITIES

Sec. 2155.202. COMMUNITY CENTERS; ASSISTANCE ORGANIZATIONS; CHILD-CARE PROVIDERS. The following entities may purchase goods and services through the comptroller:

(1) a community center for mental health services or intellectual disability services that receives state grants-in-aid under Subchapter B, Chapter 534, Health and Safety Code;

(2) an assistance organization as defined by Section 2175.001 that receives state funds; and

(3) a child-care provider that meets Texas Rising Star Program certification criteria.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 382 (S.B. 400), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 241 (H.B. 376), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 5.25, eff. September 1, 2023.

Sec. 2155.203. PURCHASES BY LEGISLATURE AND LEGISLATIVE AGENCIES. A house of the legislature, or an agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the state auditor's office, and the Legislative Reference Library, may use the comptroller's purchasing services for purchasing goods and services, including items covered by Section 21, Article XVI, Texas Constitution.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 38, eff. September 1, 2019.

Sec. 2155.204. LOCAL GOVERNMENT PURCHASING PROGRAM. The comptroller's provision of purchasing services for local governments is governed by Subchapter D, Chapter 271, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 38, eff. September 1, 2019.

Sec. 2155.205. INTERSTATE PURCHASING. (a) Subject to Section 2156.181 or other law, the comptroller may enter into agreements to authorize state agencies and political subdivisions of other states to purchase goods or services through comptroller contracts.

(b) The comptroller may charge a reasonable administrative fee to state agencies and political subdivisions of other states that purchase a good or service under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 7, eff. September 1, 2017.

#### SUBCHAPTER E. MASTER BIDDERS LIST

Sec. 2155.261. APPLICABILITY. This subchapter:

(1) applies to a purchase or other acquisition under this chapter or Chapters 2156, 2157, and 2158 for which competitive bidding or competitive sealed proposals are required;

(2) applies to a state agency that makes a purchase or other acquisition under this chapter or Chapters 2156, 2157, and 2158, including the comptroller and an agency that makes an acquisition under Section 2155.131; and

(3) does not apply to a purchase or other acquisition made by the comptroller under Subchapter A, Chapter 2156.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 39, eff. September 1, 2019.

Sec. 2155.262. UNIFORM REGISTRATION FORM. (a) The comptroller shall develop a uniform registration form for applying to do business with the comptroller or with another state agency.

(b) The comptroller and each state agency shall make the form available to an applicant.

(c) The form must include an application for:

- (1) certification as a historically underutilized business;
- (2) a payee identification number for use by the comptroller; and
- (3) placement on the comptroller's master bidders list.

(d) A state agency shall submit to the comptroller each uniform registration form that it receives.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 2, eff. June 18, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 39, eff. September 1, 2019.

Sec. 2155.263. CENTRALIZED MASTER BIDDERS LIST. (a) The comptroller shall maintain a centralized master bidders list and register on the list the name and address of each vendor that applies for registration under rules adopted under this subchapter. The comptroller may include other relevant vendor information on the list.

(b) The comptroller shall maintain the centralized master bidders list in a manner that facilitates a state agency's solicitation of vendors that serve the agency's geographic area.

(c) The centralized master bidders list shall be used for all available procurement processes authorized by this subtitle and shall also be used to the fullest extent possible by state agencies that make purchases exempt from the comptroller's purchasing authority.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 3, eff. June 18, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 39, eff. September 1, 2019.

Sec. 2155.264. AGENCY SOLICITATION OF BIDS OR PROPOSALS FOR ACQUISITION OVER \$25,000. A state agency that proposes to make a purchase or other acquisition that will cost more than \$25,000 shall solicit bids or proposals from each eligible vendor on the master bidders list that serves the agency's geographic region. A state agency may also solicit bids or proposals through the use of on-line electronic transmission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 494, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. 1705), Sec. 3.02, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 855 (S.B. 799), Sec. 10, eff. September 1, 2021.

Sec. 2155.265. ACCESS TO MASTER BIDDERS LIST. (a) The comptroller shall make the master bidders list available to each state agency that makes a purchase or other acquisition to which this subchapter applies.

(b) The comptroller shall make the list available either electronically or in another form, depending on each state agency's needs.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 39, eff. September 1, 2019.

Sec. 2155.266. REGISTRATION AND RENEWAL FEE. (a) The comptroller may charge a person applying for registration on the master bidders list a registration fee and may charge a registrant a biennial renewal fee in an amount designed to recover the comptroller's costs in:

- (1) making and maintaining the master bidders list; and
- (2) soliciting bids or proposals under this subchapter.

(b) In addition to the fee provided by Subsection (a), the comptroller shall also collect \$20 from each registrant to be used for the purpose of enforcing compliance with requirements of state purchasing statutes and the prevention of fraud in the historically underutilized businesses program as set forth in Chapter 2161.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 4, eff. June 18, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 855 (S.B. 2381), Sec. 1, eff. June 19, 2009.

Sec. 2155.267. RULES AND PROCEDURES REGARDING MASTER BIDDERS LIST.

(a) The comptroller shall adopt procedures for:

- (1) making and maintaining the master bidders list; and

(2) removing an inactive vendor from the list.

(b) The comptroller shall establish by rule a vendor classification process under which only a vendor able to make a bid or proposal on a particular purchase or other acquisition may be solicited under this subchapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 39, eff. September 1, 2019.

Sec. 2155.268. USE OF STATE AGENCY BIDDERS LIST. (a) A state agency may not maintain and use its own bidders list. The prohibition of this subsection does not apply to the Texas Department of Transportation.

(b) A state agency may supplement the bidders list with its own list of historically underutilized businesses if it determines that the supplementation will increase the number of historically underutilized businesses that submit bids.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 17, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1499, Sec. 1.18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 118, Sec. 1.05, eff. Sept. 1, 2001.

Sec. 2155.269. WAIVER. The comptroller by rule may establish a process under which the requirement for soliciting bids or proposals from eligible vendors on a bidders list may be waived for an appropriate state agency or an appropriate purchase or other acquisition under circumstances in which the requirement is not warranted.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 39, eff. September 1, 2019.

Sec. 2155.270. AGENCY ASSISTANCE WITH BIDDERS LIST ISSUES. The comptroller may assist a state agency with issues relating to a bidders list.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 39, eff. September 1, 2019.

SUBCHAPTER F. INSPECTION AND CERTIFICATION OF GOODS OR SERVICES; AUDITS

Sec. 2155.321. DEFINITIONS. In this subchapter:

- (1) "Financial information" means information that the comptroller determines is necessary to audit a claim under Chapter 403.
- (2) "Purchase information" means information that the comptroller determines is necessary to audit a purchase under this subchapter.
- (3) "Service" means the furnishing of skilled or unskilled labor or professional work but does not include the service of a state agency employee.
- (4) "State agency" has the meaning assigned by Section 2103.001.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 62, eff. June 19, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 40, eff. September 1, 2019.

Sec. 2155.322. INSPECTION AND CERTIFICATION. (a) A state agency shall:

- (1) inspect and evaluate at the time of receipt all goods or services that the agency receives to determine whether the goods or services comply with the contract under which they were purchased; and
- (2) certify, if true, that the goods or services comply with contract requirements and that the invoice for them is correct.

(b) If state law requires that a payment for the goods or services be made on a warrant drawn or an electronic funds transfer initiated by the comptroller or a state agency with delegated authority under Section 403.060, promptly after the later of the receipt of the invoice or the receipt of the goods or services, the agency shall send to the comptroller the certification, together with the financial information and purchase information provided by the invoice and purchase voucher, on a form or in the manner prescribed by the comptroller.

(c) The comptroller by rule may require that purchase information be sent directly to the comptroller in circumstances under which the comptroller considers it necessary.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 63, eff. June 19, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.10, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 41, eff. September 1, 2019.

Sec. 2155.323. AUDIT OF FINANCIAL INFORMATION. (a) On receipt of a certification, financial information, and purchase information from a state agency as required by this subchapter, the comptroller shall audit the financial information under Chapter 403.

(b) If the comptroller approves the financial information, the comptroller shall determine whether the purchase information should also be audited under Section 2155.324.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 1.117(5), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 1.117(5), eff. September 1, 2007.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.117(5), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 42, eff. September 1, 2019.

Sec. 2155.324. PURCHASE AUDIT. (a) When the comptroller considers a purchase audit to be advisable, the comptroller shall audit the purchase information for compliance with applicable purchasing statutes and rules.

(b) The comptroller may determine the auditing method used under this section, including stratified or statistical sampling techniques.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.12, eff. September 1, 2007.

Sec. 2155.325. PURCHASE AUDIT AFTER ISSUANCE OF WARRANT. (a) The comptroller may audit purchase information after a warrant has been issued if the audit will expedite the payment process.

(b) For audits under this section, the comptroller by rule shall:

(1) determine the types of purchases that will be audited after a warrant is issued; and

(2) specify the purchase information that a state agency must send to the comptroller before a warrant is issued.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 64, eff. June 19, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.13, eff. September 1, 2007.

Sec. 2155.326. AUDIT BY STATE AUDITOR. Transactions, processes, and the performance of functions under this chapter and Chapters 2156, 2157, and 2158 are subject to audit by the state auditor under Chapter 321.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.14, eff. September 1, 2007.

Sec. 2155.327. INTERAGENCY PURCHASES AND TRANSACTIONS. This subchapter does not apply to an interagency purchase or transaction. An interagency purchase or transaction must be accomplished on a special voucher or electronically as prescribed by the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

#### SUBCHAPTER G. PAYMENT PROVISIONS

Sec. 2155.381. INVOICE. (a) The contractor or seller of goods or services contracted for by the comptroller shall submit an invoice to the ordering agency at the address shown on the purchase order.

(b) The invoice shall be prepared and submitted as provided by rule of the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.15, eff. September 1, 2007.

Sec. 2155.382. PAYMENT BY WARRANT. (a) After the comptroller approves financial information and purchase information, when advance approval of that information is required by rule of the comptroller, the comptroller shall draw a warrant on the state treasury for:

- (1) the amount due on the invoice; or
- (2) the amount on the invoice that has been allowed.

(b) The comptroller shall complete the procedures for drawing the warrant not later than the eighth day after the date of receiving the necessary information. If a payment is not due until after the eighth day, the comptroller may delay drawing a warrant if the delay will maximize the state's cash flow.

(c) The comptroller may issue the warrant directly to the vendor. The comptroller, when appropriate, may combine into a single warrant payments that the state owes to a vendor under more than one invoice, including payments to the vendor made on behalf of more than one state agency.

(d) The comptroller may allow or require a state agency to schedule payments that the comptroller will make to a vendor. The comptroller shall prescribe the circumstances under which advance scheduling of payments is allowed or required. The comptroller shall require advance scheduling of payments when it is advantageous to the state.

(e) The comptroller may require vendors to provide payment addresses, vendor identification numbers, and other account information directly to the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 634, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.16, eff. September 1, 2007.

Sec. 2155.383. ADVANCE PAYMENTS TO STATE OR FEDERAL AGENCY. A state agency may make an advance payment to a federal or other state agency for goods purchased from the agency if an advance payment will expedite delivery of the goods.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.384. AUTHORITY TO PAY CHARGES. The comptroller, a state agency, or an entity authorized under Chapter 271, Local Government Code, or Section 2155.202 to purchase from a contract entered into under the authority of the comptroller may pay a restocking charge, cancellation fee, or other similar charge if the comptroller, state agency, or other entity determines that the charge is justifiable.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 5, eff. June 18, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 43, eff. September 1, 2019.

Sec. 2155.385. CREDIT CARDS. (a) If authorized by rule adopted by the comptroller under Section 403.023, the comptroller may contract with one or more credit card issuers for state agencies to use credit cards to pay for purchases. The comptroller may not enter into a contract that conflicts with the rules described by this subsection.

(b) This section does not apply to contracts regarding travel services or the use of credit cards to pay for travel services under Chapter 2171.

(c) In this section and notwithstanding Section 2151.002, "state agency" has the meaning assigned by Section 403.023(e).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 44, eff. September 1, 2019.

Sec. 2155.386. PREPAYMENT FOR LIBRARY MATERIALS BY INSTITUTION OF HIGHER EDUCATION. An institution of higher education may pay for books and other published library materials before receiving them if reasonably necessary for the efficient operation of the institution's libraries.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.387. PAYMENT FOR ROAD CONSTRUCTION MATERIALS DELIVERED BY VEHICLE EXCEEDING WEIGHT LIMITS. A state agency that purchases road construction materials may pay for road construction materials delivered in

a vehicle that exceeds the maximum gross weight authorized by law for the vehicle an amount computed using the lesser of:

(1) the actual weight of the load; or

(2) the weight determined by subtracting the weight of the vehicle from the sum of the maximum gross weight authorized by law for the vehicle and the tolerance allowance set for the gross weight of that vehicle by Section 621.403, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.200, eff. Sept. 1, 1997.

#### SUBCHAPTER H. PURCHASING PREFERENCES

Sec. 2155.441. PREFERENCE FOR PRODUCTS OF PERSONS WITH INTELLECTUAL OR PHYSICAL DISABILITIES. (a) The products of workshops, organizations, or corporations whose primary purpose is training and employing individuals having an intellectual disability or a physical disability shall be given preference if they meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

(b) The workshops, organizations, or corporations shall test the products to the extent necessary to ensure quality in accordance with Section 2155.069 and may enter into contracts with a private or public entity to assist with testing.

(c) The comptroller is not required to purchase products under this section that do not meet formal state specifications developed by the comptroller or meet commercial specifications approved by the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 12, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 45, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 5.26, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 5.27, eff. September 1, 2023.

Sec. 2155.442. PREFERENCE FOR ENERGY EFFICIENT PRODUCTS. The comptroller shall give preference to energy efficient products in purchases made under this subtitle if:

(1) the products meet state specifications regarding quantity and quality; and

(2) the cost of the product is equal to or less than the cost of other similar products that are not energy efficient.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 46, eff. September 1, 2019.

Sec. 2155.443. PREFERENCE FOR RUBBERIZED ASPHALT PAVING. The comptroller may give preference to rubberized asphalt paving made from scrap tires by a facility in this state in purchases of rubberized asphalt paving material if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15 percent the bid cost of alternative paving materials.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 47, eff. September 1, 2019.

Sec. 2155.444. PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS AND TEXAS SERVICES. (a) The comptroller and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows:

(1) goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal; and

(2) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(b) If goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c) In this section:

(1) "Agricultural products" includes textiles and other similar products.

(1-a) "Service-disabled veteran" means a person who is a veteran as defined by 38 U.S.C. Section 101(2) and who has a service-connected disability as defined by 38 U.S.C. Section 101(16).

(2) "Texas bidder" means a business:

(A) incorporated in this state;

(B) that has its principal place of business in this state;

or

(C) that has an established physical presence in this state.

(d) The comptroller and all state agencies making purchase of vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation native to the region if the cost to the state is not greater and the quality is not inferior.

(e) The comptroller and all state agencies procuring services shall give first preference to services offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident and shall give second preference to services offered by other Texas bidders if:

(1) the services meet state requirements regarding the service to be performed and expected quality; and

(2) the cost of the service does not exceed the cost of other similar services of similar expected quality that are offered by a bidder that is not entitled to a preference under this subsection.

(f) The comptroller and each state agency conducting an advertising campaign that involves the creation or production of a commercial shall give preference to a commercial production company and advertising agency located in this state if:

(1) the services meet state requirements regarding the service to be performed and regarding expected quality; and

(2) the cost of the service does not exceed the cost of other similar services of similar expected quality that are offered by a bidder that is not entitled to a preference under this subsection.

(g) For purposes of Subsection (f), "commercial production company" means a corporation, limited liability company, partnership, or other private entity that includes as one of its purposes the production of one or more television, film, radio, or other media-related commercials.

(h) The Music, Film, Television, and Multimedia Office within the office of the governor has exclusive rulemaking authority for purposes of:

(1) determining whether an advertising campaign is subject to the requirements of this section;

(2) establishing a bid process for purposes of the services described by Subsection (f); and

(3) establishing criteria to determine whether a commercial production company or advertising agency is located in this state for the purposes of this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 5.12, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1033, Sec. 1, 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 3.11, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1305 (H.B. 2521), Sec. 1, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 48, eff. September 1, 2019.

Sec. 2155.4441. PREFERENCE UNDER SERVICE CONTRACTS. A state agency that contracts for services shall require the contractor, in performing the contract, to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside this state.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.19, eff. Sept. 1, 1999.

Sec. 2155.445. PREFERENCE FOR RECYCLED, REMANUFACTURED, OR ENVIRONMENTALLY SENSITIVE PRODUCTS. (a) The comptroller and state agencies shall give preference to recycled, remanufactured, or environmentally sensitive products, as those terms are defined by rule of the comptroller, in purchases made under this subtitle if:

(1) the product meets state specifications regarding quantity and quality; and

(2) the average price of the product is not more than 10 percent greater than the price of comparable nonrecycled products.

(b) The comptroller regularly shall review and revise its procurement procedures and specifications for the purchase of goods to:

(1) eliminate procedures and specifications that explicitly discriminate against recycled, remanufactured, or environmentally sensitive products, as those terms are defined by rule of the comptroller; and

(2) encourage the use of recycled, remanufactured, or environmentally sensitive products.

(c) In developing new procedures and specifications, the comptroller shall encourage the use of recycled products and products that may be recycled or reused or that are remanufactured or environmentally sensitive.

(d) In addition to the products covered by the definition adopted by rule under this section, in this section "recycled product" includes recycled steel products. The preference for recycled steel products under this section applies also to products purchased in connection with projects described by Section 2166.003.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 6, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1033, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1180 (H.B. 3395), Sec. 1, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 49, eff. September 1, 2019.

Sec. 2155.446. PURCHASE AND USE OF PAPER CONTAINING RECYCLED FIBERS.

(a) Subject to Subsection (c), the comptroller shall contract for paper containing the highest proportion of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that the paper is available through normal commercial sources to supply the state's needs.

(b) Subject to Subsection (c), a state agency that purchases through the comptroller shall place orders for papers containing recycled fibers to the highest extent of its needs and to the extent that the paper is available through the comptroller's purchasing procedures.

(c) This section does not apply if the average price of paper with recycled fibers exceeds by more than 10 percent the price of comparable nonrecycled paper.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1180 (H.B. 3395), Sec. 2, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 50, eff. September 1, 2019.

Sec. 2155.447. PURCHASE OF RECYCLED OIL. The comptroller, all state agencies, and all state agency employees who purchase motor oil and other

automotive lubricants for state-owned vehicles shall give preference to motor oils and lubricants that contain at least 25 percent recycled oil if the cost to the state and the quality are comparable to those of new oil and lubricants.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 51, eff. September 1, 2019.

Sec. 2155.448. EXPENDITURES FOR RECYCLED, REMANUFACTURED, OR ENVIRONMENTALLY SENSITIVE COMMODITIES OR SERVICES. (a) Each state fiscal year, the comptroller by rule may identify recycled, remanufactured, or environmentally sensitive commodities or services, as those terms are defined by rule of the comptroller, and designate purchasing goals for the procurement of those commodities and services by state agencies for that fiscal year.

(b) A state agency that intends to purchase a commodity or service that accomplishes the same purpose as a commodity or service identified under Subsection (a) that does not meet the definition of a recycled product or that is not remanufactured or environmentally sensitive, as those terms are defined by rule of the comptroller, shall include with the procurement file a written justification signed by the executive head of the agency stating the reasons for the determination that the commodity or service identified by the comptroller will not meet the requirements of the agency.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1312, Sec. 99(21), eff. September 1, 2013.

(d) This section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1082, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 7, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 57, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1266, Sec. 5.03, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1122 (H.B. 2466), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(21), eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 52, eff. September 1, 2019.

Sec. 2155.449. PREFERENCE TO PRODUCTS AND SERVICES FROM ECONOMICALLY DEPRESSED OR BLIGHTED AREA. (a) In this section, "economically depressed or blighted area" means an area that:

(1) is an economically depressed or blighted area as defined by Section 2306.004; or

(2) meets the definition of a historically underutilized business zone as defined by 15 U.S.C. Section 632(p).

(b) The comptroller and all state agencies procuring goods or services shall give preference to goods or services produced in an economically depressed or blighted area if:

(1) the goods or services meet state specifications regarding quantity and quality; and

(2) the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 14.03, eff. Sept. 1, 2001.  
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 53, eff. September 1, 2019.

Sec. 2155.450. PREFERENCE FOR PRODUCTS OF FACILITIES ON FORMERLY CONTAMINATED PROPERTY. The comptroller and state agencies shall give preference to goods produced at a facility located on property for which the owner has received a certificate of completion under Section 361.609, Health and Safety Code, if the goods meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

Added by Acts 2001, 77th Leg., ch. 483, Sec. 4, eff. Sept. 1, 2001.  
Renumbered from Government Code Sec. 2155.449 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(84), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 54, eff. September 1, 2019.

Sec. 2155.451. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.

(a) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are defined by Section 386.001, Health and Safety Code.

(b) The comptroller and state agencies procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(c) The preference may be given only if the cost to the state for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 19, eff. June 20, 2003.

Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 14.01, eff. Jan. 11, 2004; Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 1, eff. Oct. 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 55, eff. September 1, 2019.

Sec. 2155.452. PREFERENCE FOR CONTRACTORS PROVIDING FOODS OF HIGHER NUTRITIONAL VALUE. (a) The comptroller and state agencies making purchases of food for consumption in a public cafeteria may give preference to contractors who provide foods of higher nutritional value and who do not provide foods containing trans fatty acids for consumption in the cafeteria.

(b) In complying with this section, the comptroller and state agencies shall review the Department of Agriculture's nutrition standards.

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 3.12, eff. September 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 56, eff. September 1, 2019.

Sec. 2155.453. CERTAIN CONTRACTS FOR HOMELAND SECURITY OR LAW ENFORCEMENT TECHNOLOGY. A state governmental entity that issues a request

for proposals for technological products or services for homeland security or law enforcement purposes must allow a business entity to substitute the qualifications of its executive officers or managers for the qualifications required of the business entity in the request for proposals.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 18.04, eff. September 1, 2007.

Renumbered from Government Code, Section 2155.452 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(45), eff. September 1, 2009.

#### SUBCHAPTER I. MULTIPLE AWARD CONTRACT SCHEDULE

Sec. 2155.501. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of Information Resources.
- (2) "Local government" has the meaning assigned by Section 271.101, Local Government Code.
- (3) "Multiple award contract" means an award of a contract for an indefinite amount of one or more similar goods or services from a vendor.
- (4) "Schedule" means a list of multiple award contracts from which agencies may purchase goods and services.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.502. DEVELOPMENT OF MULTIPLE AWARD CONTRACT SCHEDULE. (a) The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by:

- (1) the federal government, including the federal General Services Administration; or
- (2) any other governmental entity in any state.

(b) In developing a schedule under Subsection (a) or (e), the comptroller or department, as appropriate, shall modify any contractual terms, with the agreement of the parties to the contract, as necessary to comply with any federal or state requirements, including rules adopted under this subchapter.

(c) The comptroller may not list a multiple award contract on a schedule developed under Subsection (a) if the goods or services provided by that contract:

- (1) are available from only one vendor;
- (2) are telecommunications services, facilities, or equipment;
- (3) are commodity items as defined by Section 2157.068(a); or

(4) are engineering services as described by Section 1001.003, Occupations Code, or architectural services as described by Section 1051.001, Occupations Code.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 326 , Sec. 26, eff. September 1, 2015.

(e) The department may develop a schedule of multiple award contracts for commodity items as defined by Section 2157.068(a) using the criteria established under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1081 (H.B. 2918), Sec. 8, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.06, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 26, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 57, eff. September 1, 2019.

Sec. 2155.503. RULES. (a) The comptroller and the department shall adopt rules to implement this subchapter. The rules must:

(1) establish standard terms for contracts listed on a schedule;  
and

(2) maintain consistency with existing purchasing standards.

(b) The comptroller and the department shall consult with the attorney general in developing rules under this section.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.17, eff. September 1, 2007.

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES. (a) Except as provided by this subsection, a state agency or local government may purchase goods or services directly from a vendor under a contract listed on a schedule developed under this subchapter. A state agency or local government contracting for the purchase of an automated information system under a contract listed on a schedule developed under this subchapter shall comply with Section 2157.068(e-1). A purchase authorized by this section

satisfies any requirement of state law relating to competitive bids or proposals.

(b) The price listed for a good or service under a multiple award contract is a maximum price. An agency or local government may negotiate a lower price for goods or services under a contract listed on a schedule developed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 716 (S.B. 262), Sec. 2, eff. September 1, 2017.

Sec. 2155.505. HISTORICALLY UNDERUTILIZED AND SMALL BUSINESSES. (a)  
In this section:

(1) "Historically underutilized business" has the meaning assigned by Section 2161.001.

(2) "Small business" means a small business concern as defined by regulations of the United States Small Business Administration in 13 C.F.R. Section 121.201 or a veterans service agency.

(3) "Veterans service agency" means a community-based organization that:

(A) is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described in Section 501(c)(3) of that code;

(B) has as its principal purpose to provide housing, substance abuse treatment, case management services, and employment training to low-income veterans, disabled veterans, and homeless veterans and their families; and

(C) employs veterans to provide at least 75 percent of the hours of direct labor by individuals required to produce goods or provide services required under a contract entered into under this section.

(b) The comptroller shall strongly encourage each vendor with a contract listed on a schedule developed under this subchapter and who is not a historically underutilized business or small business to use historically underutilized or small businesses to sell or provide a service under the contract. If a vendor does not make a good faith effort to use historically underutilized and small businesses under the contract, the comptroller may exclude the vendor from being listed on a schedule developed under this subchapter.

(c) A historically underutilized business or small business may sell or provide a service under another vendor's contract listed on a schedule

developed under this subchapter if:

(1) the contract is on a schedule developed under Section 2155.502;

(2) the vendor for the contract authorizes in writing the historically underutilized business or small business to sell or provide a service under that contract; and

(3) the historically underutilized business or small business provides that written authorization to the comptroller.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 604 (S.B. 327), Sec. 1, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 58, eff. September 1, 2019.

Sec. 2155.506. REPORTING REQUIREMENTS. (a) A vendor listed on a contract for a schedule developed under this subchapter shall report its sales to the comptroller in the manner prescribed by the comptroller.

(b) The comptroller shall compile the information reported under Subsection (a) and include the information in its report under Section 2101.011.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 59, eff. September 1, 2019.

Sec. 2155.508. INTERNET AVAILABILITY. (a) The comptroller shall develop a database of the multiple award contracts developed under this subchapter and make that information available on an Internet site. The database must have search capabilities that allow a person to easily access the contracts.

(b) The comptroller shall allow vendors to apply through the Internet site to be listed on a schedule developed under this subchapter. The applicant shall provide an electronic mail address to the comptroller as part of the application process.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. 1705), Sec. 3.07(1), eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 59, eff. September 1, 2019.

Sec. 2155.509. NOTICE REGARDING PROCUREMENTS EXCEEDING \$25,000. After a purchase order has been placed, a state agency subject to Section 2155.083 shall post, as required under that section, a procurement made under a contract listed on a schedule developed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.510. REBATES. (a) The comptroller may collect a rebate from a vendor under a contract listed on a schedule developed under this subchapter.

(b) The comptroller shall notify a state agency purchasing a good or service through a contract listed on a schedule developed under this subchapter of the percentage used to calculate the rebate authorized under Subsection (a).

(c) If a purchase resulting in a rebate under this section is made in whole or in part with federal funds, the purchasing state agency shall ensure that, to the extent the purchase was made with federal funds, the appropriate portion of the rebate is reported to the appropriate federal funding agency.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.09, eff. June 18, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 59, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 359 (S.B. 220), Sec. 1, eff. September 1, 2021.

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2269. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION  
PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2269.001. DEFINITIONS. In this chapter:

- (1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.
- (2) "Engineer" means an individual licensed as an engineer under Chapter 1001, Occupations Code.
- (3) "Facility" means, unless otherwise specifically provided, an improvement to real property.
- (4) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.
- (5) "General contractor" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a facility at the contracted price.
- (6) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public work contract made by a governmental entity authorized by state law to make a public work contract, including:

- (1) a state agency as defined by Section 2151.002, including the Texas Facilities Commission;

(2) a local government, including:

(A) a county;

(B) a municipality;

(C) a school district;

(D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter 379B, Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and

(E) any other political subdivision of this state;

(3) a public junior college as defined by Section 61.003, Education Code; and

(4) a board of trustees governed by Chapter 54, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.

(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.

(c) This chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility in a procedure described by Section 252.022(c), Local Government Code, that:

(1) requires the use of competitive bidding or competitive sealed proposals; or

(2) prescribes a design-build procurement procedure that conflicts with this chapter.

(d) This chapter does not prevail over any law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services, or to procurement of construction services pursuant to Section 49.273, Water Code, that applies to a river authority or to a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, unless the governing body of the river authority or conservation and reclamation district elects to permit this chapter to supersede the law, rule, or regulation.

(e) This chapter does not prevail over a conflicting provision in a regulation that prescribes procurement procedures for construction services that is adopted by the governing board of a river authority or of a conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, that owns electric generation capacity in excess of 2,500 megawatts, except with respect to Subchapter H.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

- (1) a contract entered into by the Texas Department of Transportation; or
- (2) a project that receives money from a state or federal highway fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.005. APPLICABILITY: INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education," "public junior college," and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) This chapter applies to a public junior college but does not apply to:

- (1) any other institution of higher education; or
- (2) a university system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES. This chapter does not apply to a regional tollway authority under Chapter 366, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to an improvement project undertaken by or through a local government corporation exempt from competitive bidding requirements or restrictions under Section 431.110, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES. This chapter does not apply to a regional mobility authority under Chapter 370, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This chapter does not apply to a project of a county under Chapter 284, Transportation Code, unless the county adopts an order electing to be governed by this chapter for a project to be developed by the county under Chapter 284.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.010. EXEMPTION: COORDINATED COUNTY TRANSPORTATION AUTHORITY. This chapter does not apply to a coordinated county transportation authority under Chapter 460, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

#### SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2269.051. RULES. A governmental entity may adopt rules as necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.052. NOTICE REQUIREMENTS. (a) A governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

(b) For a contract entered into by a governmental entity under a method provided by this chapter, the governmental entity shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

(c) For a contract entered into by a municipality, river authority, conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority under any of the methods provided by this chapter, the municipality, river authority, conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county in which the defense base development authority's or municipality's central administrative office is located or the county in which the greatest amount of the river authority's or such conservation and reclamation district's territory is located once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in that county, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the defense base development authority's

or municipality's central administrative office is located or the county in which the greatest amount of the river authority's or such conservation and reclamation district's territory is located. In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

(d) For a contract entered into by a county under any of the methods provided by this chapter, the county shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in the county, the notice shall be:

(1) posted at the courthouse door of the county; and

(2) published in a newspaper of general circulation in the nearest county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.053. DELEGATION OF AUTHORITY. (a) The governing body of a governmental entity may delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person.

(b) The governmental entity shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualifications or in an addendum to the request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.054. RIGHT TO WORK. (a) This section applies to a governmental entity when the governmental entity is engaged in:

(1) procuring goods or services under this chapter;

(2) awarding a contract under this chapter; or

(3) overseeing procurement or construction for a public work or public improvement under this chapter.

(b) In engaging in an activity to which this section applies, a governmental entity:

(1) may not consider whether a person is a member of or has another relationship with any organization; and

(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.0541. AGREEMENT WITH COLLECTIVE BARGAINING ORGANIZATION.

(a) A governmental entity awarding a public work contract funded with state money, including the issuance of debt guaranteed by this state, may not:

(1) prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or

(2) discriminate against a person described by Subdivision (1) based on the person's involvement in the agreement, including the person's:

- (A) status or lack of status as a party to the agreement; or
- (B) willingness or refusal to enter into the agreement.

(b) This section may not be construed to:

(1) prohibit activity protected by the National Labor Relations Act (29 U.S.C. Section 151 et seq.), including entering into an agreement with a collective bargaining organization relating to the project; or

(2) permit conduct prohibited under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

Added by Acts 2019, 86th Leg., R.S., Ch. 366 (H.B. 985), Sec. 2, eff. September 1, 2019.

Sec. 2269.055. CRITERIA TO CONSIDER. (a) In determining the award of a contract under this chapter, the governmental entity may consider:

- (1) the price;
- (2) the offeror's experience and reputation;

- (3) the quality of the offeror's goods or services;
- (4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- (5) the offeror's safety record;
- (6) the offeror's proposed personnel;
- (7) whether the offeror's financial capability is appropriate to the size and scope of the project; and
- (8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

(b) In determining the award of a contract under this chapter, the governmental entity shall:

- (1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and
- (2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.056. USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a) The governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity.

(b) The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. The governmental entity shall publish in the request for proposals or qualifications:

- (1) the criteria that will be used to evaluate the offerors;
- (2) the applicable weighted value for each criterion; and
- (3) a detailed methodology for scoring each criterion.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 13, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 1, eff. September 1, 2021.

Sec. 2269.057. ARCHITECT OR ENGINEER SERVICES. (a) An architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter 1051 or 1001, Occupations Code, as applicable.

(b) If the selected or designated architect or engineer is not a full-time employee of the governmental entity, the governmental entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.058. USE OF OTHER PROFESSIONAL SERVICES. (a) Independently of the contractor, construction manager-at-risk, or design-build firm, the governmental entity shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS REQUIRED. A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.060. DOCUMENTS RELATED TO EVALUATION AND RANKING. (a) An offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under this chapter may, after the contract is awarded, make a request in writing to the governmental entity to provide documents related to the evaluation of the offeror's submission.

(b) Not later than the 30th day after the date a request is made under Subsection (a), the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

Added by Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 2, eff. September 1, 2021.

#### SUBCHAPTER C. COMPETITIVE BIDDING METHOD

Sec. 2269.101. CONTRACTS FOR FACILITIES: COMPETITIVE BIDDING. (a) In this chapter, "competitive bidding" is a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

(b) Except as otherwise provided by this chapter or other law, a governmental entity may contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.102. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the

construction documents required for a project to be awarded by competitive bidding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.103. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.104. EVALUATION OF OFFERORS. The governmental entity shall receive, publicly open, and read aloud the names of the offerors and their bids.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.105. SELECTION OF OFFEROR. Not later than the seventh day after the date the contract is awarded, the governmental entity shall document the basis of its selection and shall make the evaluations public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise specifically provided by this section, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process conducted under this chapter. Sections 271.026, 271.027(a), and 271.0275, Local Government

Code, apply to a competitive bidding process conducted under this chapter by a governmental entity as defined by Section 271.021, Local Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

#### SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2269.151. CONTRACTS FOR FACILITIES: COMPETITIVE SEALED PROPOSALS. (a) In this chapter, "competitive sealed proposals" is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

(b) In selecting a contractor through competitive sealed proposals, a governmental entity shall follow the procedures provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.152. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer to prepare construction documents for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.153. PREPARATION OF REQUEST. (a) In this section, "civil works project" has the meaning assigned by Section 2269.351.

(b) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope,

estimated project completion date, and other information that a contractor may require to respond to the request.

(c) Except as provided by Subsection (d), for civil works projects, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria.

(d) If the governing body of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 3, eff. September 1, 2021.

Sec. 2269.154. EVALUATION OF OFFERORS. (a) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

(b) Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.155. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on:

- (1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and
- (2) its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(d) Not later than the seventh business day after the date the contract is awarded, the governmental entity shall make the evaluations, including any scores, public and provide them to all offerors.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 4, eff. September 1, 2021.

#### SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

##### Sec. 2269.201. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT.

(a) In this chapter, the "construction manager-agent method" is a delivery method by which a governmental entity contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services described by Subsection (a) for the construction, rehabilitation, alteration, or repair of a facility.

(c) A governmental entity may retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

##### Sec. 2269.202. CONTRACT PROVISIONS OF CONSTRUCTION MANAGER-AGENT.

The contract between the governmental entity and the construction manager-

agent may require the construction manager-agent to provide:

- (1) administrative personnel;
- (2) equipment necessary to perform duties under this subchapter;
- (3) on-site management; and
- (4) other services specified in the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A construction manager-agent may not:

- (1) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
- (2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
- (3) provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.204. FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT. A construction manager-agent represents the governmental entity in a fiduciary capacity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.205. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) To the extent that the construction manager-agent's services are defined as part of the practice of architecture or engineering under Chapter 1051 or 1001, Occupations Code, those services must be conducted by a person licensed under the applicable chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.206. SELECTION OF CONTRACTORS. A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the governmental entity in accordance with applicable laws.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.208. INSURANCE. A construction manager-agent selected under this subchapter shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

#### SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2269.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) In this chapter, the "construction manager-at-risk method" is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

(c) A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.252. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-at-risk, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer for a project, or an entity related to the governmental entity's architect or engineer, may

not serve, alone or in combination with another person, as the construction manager-at-risk. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) For purposes of Subsection (b), an entity is related to the governmental entity's architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner or has any other relationship in which the governmental entity's architect or engineer has an ownership interest, or is subject to common ownership or control, or is party to an agreement by which it will receive any proceeds of the construction manager-at-risk's payments from the governmental entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 788 (H.B. 2634), Sec. 1, eff. September 1, 2015.

Sec. 2269.253. SELECTION PROCESS. (a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.

(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:

(1) a statement as to whether the selection process is a one-step or two-step process;

(2) general information on the project site, project scope, schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and

(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.

(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.

(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.

(g) Not later than the 45th day after the date on which the final proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.254. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2269.253(g) public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(11), eff. September 1, 2013.

Sec. 2269.255. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

(b) A construction manager-at-risk may seek to perform portions of the work itself if:

(1) the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and

(2) the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.256. REVIEW OF BIDS OR PROPOSALS. (a) The construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.257. DEFAULT; PERFORMANCE OF WORK. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this subchapter, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications.

(b) The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

#### SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

Sec. 2269.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building or an associated structure, including an electric utility structure. This subchapter does not apply to:

(1) a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. In using that method, the governmental entity shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.304. DESIGN-BUILD FIRMS. A design-build firm under this subchapter must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT REPRESENTATIVE. The governmental entity shall select or designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.306. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, those services shall be provided in accordance with the applicable law.

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site

development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

(d) The governmental entity may not require offerors to submit architectural or engineering designs as part of a proposal or a response to a request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

(b) Each firm must certify to the governmental entity that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004.

(c) The governmental entity shall qualify a maximum of five responders to submit proposals that contain additional information and, if the governmental entity chooses, to interview for final selection.

(d) The governmental entity shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

(e) The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. As used in this subsection, "costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed maximum price or bid for overall design or construction.

(f) The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.308. SELECTION OF DESIGN-BUILD FIRM. (a) The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

(b) The governmental entity shall first attempt to negotiate a contract with the selected firm.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the governmental entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2269.307(f) public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(12), eff. September 1, 2013.

Sec. 2269.309. SUBMISSION OF DESIGN AFTER SELECTION. After selection of the design-build firm, that firm's architects or engineers shall submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's architect or engineer before or concurrently with construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.310. FINAL CONSTRUCTION DOCUMENTS. The design-build firm shall supply a set of construction documents for the completed project to the governmental entity at the conclusion of construction. The documents must note any changes made during construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.311. PERFORMANCE OR PAYMENT BOND. (a) A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm under this subchapter.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the design criteria package.

(c) The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

#### SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

Sec. 2269.351. DEFINITIONS. In this subchapter:

(1) "Civil works project" means:

(A) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B) and that are primarily civil engineering construction projects.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer and a construction contractor qualified to engage in civil works construction in Texas.

(3) "Design criteria package" means a set of documents that:

(A) provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and

(B) permits a design-build firm to:

- (i) assess the scope of work and the risk involved; and
- (ii) submit a proposal on the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.352. APPLICABILITY. This subchapter applies to a governmental entity that:

(1) has a population of more than 100,000 within the entity's geographic boundary or service area; or

(2) is a board of trustees governed by Chapter 54, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.353. CONTRACTS FOR CIVIL WORKS PROJECTS: DESIGN-BUILD. (a) A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a civil works project. In using this method and in entering into a contract for the services of a design-build firm, the contracting governmental entity and the design-build firm shall follow the procedures provided by this subchapter.

(b) A contract for a project under this subchapter may cover only a single integrated project. A governmental entity may not enter into a

contract for aggregated projects at multiple locations. For purposes of this subsection:

(1) if a metropolitan transit authority created under Chapter 451, Transportation Code, enters into a contract for a project involving a linear transit project with multiple stops along the project route for boarding passengers, created under Chapter 451, Transportation Code, the linear transit project is a single integrated project; and

(2) a water treatment plant, including a desalination plant, that includes treatment facilities, well fields, and pipelines is a single integrated project.

(c) A governmental entity shall use the following criteria as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project:

(1) the extent to which the entity can adequately define the project requirements;

(2) the time constraints for the delivery of the project;

(3) the ability to ensure that a competitive procurement can be held; and

(4) the capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 11, eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(13), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 11, eff. September 1, 2013.

Sec. 2269.354. LIMITATION ON NUMBER OF PROJECTS. (a) After August 31, 2013:

(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this

subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts; and

(3) a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter 54, Transportation Code, may enter into contracts under this subchapter for not more than four projects in any fiscal year.

(b) For purposes of determining the number of eligible projects under this section, a municipally owned water utility with a separate governing board appointed by the governing body of the municipality is considered part of the municipality.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1356 (S.B. 1430), Sec. 1, eff. June 14, 2013.

Sec. 2269.355. USE OF ENGINEER. (a) The governmental entity shall select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project. The selected or

designated engineer has full responsibility for complying with Chapter 1001, Occupations Code.

(b) If the engineer is not a full-time employee of the governmental entity, the governmental entity shall select the engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.356. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the civil works project by the entity:

- (1) inspection services;
- (2) construction materials engineering and testing; and
- (3) verification testing services.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.357. REQUEST FOR QUALIFICATIONS. (a) The governmental entity shall prepare a request for qualifications that includes:

- (1) information on the civil works project site;
- (2) project scope;
- (3) project budget;
- (4) project schedule;
- (5) criteria for selection under Section 2269.359 and the weighting of the criteria; and
- (6) other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare a design criteria package as described by Section 2269.358.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(14), eff. September 1, 2013.

Sec. 2269.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A design criteria package may include, as appropriate:

- (1) budget or cost estimates;
- (2) information on the site;
- (3) performance criteria;
- (4) special material requirements;
- (5) initial design calculations;
- (6) known utilities;
- (7) capacity requirements;
- (8) quality assurance and quality control requirements;
- (9) the type, size, and location of structures; and
- (10) notice of any ordinances, rules, or goals adopted by the

governmental entity relating to awarding contracts to historically underutilized businesses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The governmental entity shall receive proposals and shall evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted at this stage.

(b) Each offeror must:

- (1) select or designate each engineer that is a member of its team based on demonstrated competence and qualifications, in the manner provided by Section 2254.004; and
- (2) certify to the governmental entity that each selection or designation was based on demonstrated competence and qualifications, in the manner provided by Section 2254.004.

(c) The governmental entity shall qualify offerors to submit additional information and, if the entity chooses, to interview for final selection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.360. SELECTION OF DESIGN-BUILD FIRM. The governmental entity shall select a design-build firm using a combination of technical and cost proposals as provided by Section 2269.361.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(15), eff. September 1, 2013.

Sec. 2269.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND COST PROPOSALS. (a) A governmental entity shall request proposals from design-build firms identified under Section 2269.359(c). A response to a request for detailed proposals must be submitted on or before the earlier of the time for submission requested by the governmental entity or the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms. The request for proposals must include:

- (1) a design criteria package;
- (2) if the project site is identified, a geotechnical baseline report or other information that provides the design-build firm minimum geotechnical design parameters to submit a proposal;
- (3) detailed instructions for preparing the technical proposal and the items to be included, including a description of the form and level of completeness of drawings expected; and
- (4) the relative weighting of the technical and price proposals and the formula by which the proposals will be evaluated and ranked.

(b) The technical proposal is a component of the proposal under this section.

(c) Each proposal must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

- (1) project approach;
- (2) anticipated problems;
- (3) proposed solutions to anticipated problems;
- (4) ability to meet schedules;
- (5) conceptual engineering design; and
- (6) other information requested by the governmental entity.

(e) The governmental entity shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for proposals and assign points on the basis of the weighting specified in the request for proposals. The governmental entity may reject as nonresponsive any firm that makes a significant change to the composition of its firm as initially submitted. The governmental entity shall subsequently open, evaluate, and score the cost proposals from firms that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals. The governmental entity shall select the design-build firm in accordance with the formula provided in the request for proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(16), eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 14, eff. September 1, 2017.

Sec. 2269.3615. IDENTIFICATION OF PROJECT TEAM. (a) A governmental entity may require a design-build firm responding to a request for detailed proposals to identify companies that will:

(1) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) If a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 5(b), eff. September 1, 2013.

Sec. 2269.362. NEGOTIATION. After selecting the highest-ranked design-build firm under Section 2269.361, the governmental entity shall first attempt to negotiate a contract with the selected firm. If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(17), eff. September 1, 2013.

Sec. 2269.363. ASSUMPTION OF RISKS. The governmental entity shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the governmental entity;

(B) unknown or differing site conditions unless otherwise provided by the governmental entity in the request for proposals and final contract;

(C) regulatory permitting, if the governmental entity is responsible for those risks and costs by law or contract; and

(D) natural disasters and other force majeure events unless otherwise provided by the governmental entity in the request for proposals and final contract; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The governmental entity shall return all copies of the proposal and other information submitted to an unsuccessful offeror. The governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.

(b) A violation of this section voids the contract for the project entered into by the governmental entity. The governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.

(c) The governmental entity may offer an unsuccessful design-build firm that submits a response to the entity's request for additional information under Section 2269.361 a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be one-half of one percent of the contract amount and must be specified in the initial request for proposals. If the offer is accepted and paid, the

governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.

(d) Notwithstanding other law, including Chapter 552, work product contained in an unsuccessful proposal submitted and rejected under this subchapter is confidential and may not be released unless a stipend offer has been accepted and paid as provided by Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(18), eff. September 1, 2013.

Sec. 2269.365. COMPLETION OF DESIGN. (a) Following selection of a design-build firm under this subchapter, the firm's engineers shall submit all design elements for review and determination of scope compliance to the governmental entity before or concurrently with construction.

(b) An appropriately licensed design professional shall sign and seal construction documents before the documents are released for construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.366. FINAL CONSTRUCTION DOCUMENTS. At the conclusion of construction, the design-build firm shall supply to the governmental entity a record set of construction documents for the project prepared as provided by Chapter 1001, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.367. PERFORMANCE OR PAYMENT BOND. (a) A performance or payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, if commercially available and practical, as specified in the design criteria package.

(c) If the governmental entity awards a design-build contract under Section 2269.362, the design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before the commencement of construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(19), eff. September 1, 2013.

#### SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

Sec. 2269.401. JOB ORDER CONTRACTING. In this chapter, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a

structure or land, whether improved or unimproved, that is associated with a building. This subchapter does not apply to:

(1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES.

(a) A governmental entity may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:

(1) the work is of a recurring nature but the delivery times are indefinite; and

(2) indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.

(c) The governing body of a governmental entity shall approve each job, task, or purchase order that exceeds \$500,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.404. CONTRACTUAL UNIT PRICES. The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price proposal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A governmental entity may use the competitive sealed proposal method under Subchapter D for job order contracts.

(b) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(c) The governmental entity may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.406. AWARDING OF JOB ORDER CONTRACTS. The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.407. USE OF JOB ORDER CONTRACT. A job order contract may be used to accomplish work only for the governmental entity that awards the contract unless:

(1) the solicitation for the job order contract and the contract specifically provide for use by other persons; or

(2) the governmental entity enters into an interlocal agreement that provides otherwise.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.408. USE OF ARCHITECT OR ENGINEER. (a) If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) Subsection (a) does not apply to a job order contract or an order issued under the contract for industrialized housing, industrialized buildings, or relocatable educational facilities subject to and approved under Chapter 1202, Occupations Code, if the contractor employs the services of an architect or engineer who approves the documents for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.409. JOB ORDER CONTRACT TERM. The base term for a job order contract may not exceed two years. The governmental entity may renew the contract annually for not more than three additional years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.410. JOB ORDERS. (a) An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.

(b) The order may be:

(1) a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or

(2) a unit price order based on the quantities and line items delivered.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.411. PAYMENT AND PERFORMANCE BONDS. The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

#### SUBCHAPTER J. ENFORCEMENT

Sec. 2269.451. VOID CONTRACT. A contract, including a job order, entered into in violation of this chapter is voidable as against public policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 15th calendar day after the date on which the contract is awarded.

(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Facilities Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 5, eff. September 1, 2021.