



Victoria County Purchasing Policy

ADOPTED September 14, 2020

VICTORIA COUNTY COMMISSIONERS COURT

BENJAMIN L. ZELLER, COUNTY JUDGE
DANNY E. GARCIA, COMMISSIONER PRECINCT 1
KEVIN M. JANAK, COMMISSIONER PRECINCT 2
GARY BURNS, COMMISSIONER PRECINCT 3
CLINT C. IVES, COMMISSIONER PRECINCT 4

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INTRODUCTION

To: Elected Officials, Department Heads, and County Employees,

This document contains the authorized policy and procedures for purchasing and asset management by Victoria County officials and employees. County purchasing procedures are governed by Texas statutes; and these statutes, including interpretations of them made by Texas courts, are the ultimate authority on the validity of purchasing procedures. The procedures described in this manual are based on state law, and this manual, in many instances, contains language taken directly from the statutes, and paraphrases of and broad generalizations about Texas statutory law which have been included where appropriate to assist in applying the law to routine situations.

This manual cannot address every situation; and when an unusual situation occurs or a difficult legal or factual problem arises, the exact statutory language must be reviewed and analyzed. In every situation, the final authority for County purchasing is the law itself.

It is the intent of this Purchasing Policy to promote Victoria County's reputation for courtesy, fairness, and impartiality. The responsibility for achieving this goal rests with every individual who participates in the procurement process. This includes all County Elected Officials, Department Heads and employees, as well as the vendors.

The mission of the Victoria County Purchasing Policy is to:

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

Public purchasing has several goals including:

- purchasing the proper goods and services;
- obtaining the best possible price and value for the goods/services, without sacrificing the quality needed;
- ensuring goods and services are available where and when needed, and that a continuing supply is available; and
- guarding against the misappropriation of assets that have been acquired through the procurement process.

Victoria County purchasing must also ensure:

- Responsible bidders are given a fair opportunity to compete for the County's business. This can be accomplished by compliance with statutory requirements regarding competitive bids and proposals, and this purchasing policy.
- Public funds are safeguarded, and the best value is received for the public dollar.

- Public spending is not used to enrich County Officials or employees, or to confer favors. Adoption and implementation of a Code of Ethics and this policy accomplish this.

Victoria County Commissioners Court has adopted this purchasing policy that provides guidance to offices and departments regarding contracting for goods and services.

Victoria County is committed to promoting effective, professional and consistent procurement methods, as well as championing the public perception that tax dollars are wisely spent.

This policy is intended to guide Victoria County Officials and employees through the purchasing process and asset management procedures; all applicable local, state and federal laws, which are subject to change, will always supersede this policy.

This policy does not create any rights of individuals or entities enforceable against Victoria County.

AUTHORITY

These policies and procedures are adopted and approved by the Commissioners Court acting in its capacity as the governing body of Victoria County, Texas. Victoria County adopts these policies and procedures under the authority of Texas Local Government Code, Chapter 262.

VIOLATIONS OF POLICY

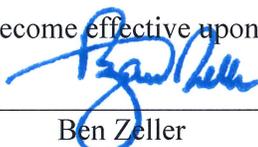
Violations of this policy may result in disciplinary action up to and including termination. If a County Official or employee makes a purchase in violation of this policy, they may be held financially liable for said purchase.

CHANGES TO THE POLICY

This policy is subject to regular review and updates by Commissioners Court. Any addition or deletion, or invalidity found in one area of the policy will not affect the validity of the remainder of the policy and its application.

EFFECTIVE DATE

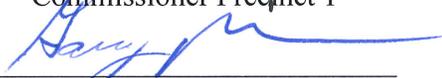
The revised policies and procedures will become effective upon approval by the Commissioners Court.



Ben Zeller
County Judge



Danny Garcia
Commissioner Precinct 1



Gary Burns
Commissioner Precinct 3

NAY

Kevin M. Janak
Commissioner Precinct 2

NAY

Clint C. Ives
Commissioner Precinct 4

GLOSSARY OF TERMS

Authorized Signature - A signature that has been approved by the Elected Official/Department Head to initiate a purchase request and which is recognized by the County Auditor to authorize the expenditure of funds from the department's budgeted funds.

Bid Advertisement-A public notice put in a newspaper of general circulation containing information about an Invitation for Bid or a Request for Proposal.

Bid Bond - A bond required of a contractor that ensures that the contractor will enter into the contract for which he has submitted a formal written bid and/or proposal.

Buyer – Department Head/Elected Official or his/her designee functioning under the direction of Court.

Capital Items - A capital item is generally an item that has a unit cost in excess of \$1,000 and has a life expectancy of greater than one (1) year. Certain items with a *unit* cost of less than \$1,000 are designated as reportable for the purpose of equipment accountability, e.g. computers and computer equipment, chain-saws, electric or air powered tools, etc.

Capital Improvement Project – A project that enhances the property's overall value, extends the useful life of the asset or adapts to a new use.

Competitive Bidding - The process wherein a vendor openly competes with other vendors through a formal process for the County's business.

Contract - A formal, written agreement executed by the County and a vendor containing the essential terms and conditions under which goods or services are to be furnished to the County. A contract becomes a commitment of the County's funds when approved by the Commissioners Court and properly signed and dated by the County Judge.

Emergency Purchase – A purchase that is needed because of an emergency condition as described in Texas Local Government Code Section 262.024(a)(1).

Goods - A generic term that includes all types of property to be purchased by the County; equipment, supplies, materials, component and repair parts. .

Invitation to Bid (ITB) - A formal written document that requests from bidders a firm price and delivery details for specified merchandise. An Invitation to Bid is always required when the anticipated level of expenditure will be greater than \$50,000. It may also be used anytime the Auditor's Office and/or the Commissioners Court deem it is justified.

Lease - A specific contract for the use of real estate or personal property for a specified period of time with a specified rent or other compensation to be paid.

Lowest Responsible Bid- The lowest bid or offer received by the County. It meets all the specifications, requirements, terms and conditions of the Invitation to Bid. It is expressly understood that the lowest responsible bid includes any related costs to the County, using a total cost concept. The term "responsible" refers to the financial and practical ability of the bidder to perform the contract. The term is also used to refer to the experience record of the vendor with the County or the vendor's safety record.

Performance Bond - A bond that is normally required of all contractors doing business with the County, which guarantees vendor performance during the execution of the contract.

Professional Service – Services directly related to professional practices as defined by the Professional Services Procurement Act – Government Code 2254, including services within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, and professional engineering.

Proprietary Information – Information on bids or proposals to which the vendor claims ownership or exclusive rights and which is protected.

Public Works Contract - A contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

Purchasing - The act, function and responsibility for the acquisition of goods and services.

Request for Proposal (RFP) - A formal written document requesting that potential vendors make an offer for services to the County. The offer allows for negotiations after the proposals have been received, but before a contract is awarded. This process is normally used for the acquisition of insurance coverage and high technology items.

Request for Qualifications (RFQ) – A document that requests details about the qualifications of professionals whose services must be obtained in compliance with the Professional Services Procurement Act.

Requisition – The invoice or source document for all purchasing activity.

Sole Source Good or Service – A good or service that can be obtained from only one source and is purchased in compliance with Texas Local Government Code, Section 262.024(a)(7).

Services - A generic term to include all work or labor performed for the County on an independent contractor basis, including maintenance, construction, manual, clerical or professional services.

Specifications -This statement contains a detailed description of the terms of the contract, as well as an enumeration of particulars, required details, and all other restrictions for goods and/or services. The enumeration of the specifications should be descriptive, but not restrictive.

Surplus Property - An item no longer required by a department, regardless of its value or condition.

Vendor - A generic term applied to individuals and companies alike who provide goods and services to Victoria County.

CODE OF ETHICS

It is the policy of Victoria County that the following ethical principles will govern the conduct of every County Official and employee directly or indirectly involved in the County procurement process.

RESPONSIBILITY TO COUNTY

County Officials and employees must avoid any activities that would compromise or give the perception of compromising the best interests of Victoria County. Employees must not use confidential proprietary information for actual or anticipated personal gain.

CONFLICT OF INTEREST

This Policy is governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the organization and the public being served. County Officials and employees must avoid any activity that would create a conflict between personal interests and the interests of Victoria County. Conflicts exist in any relationship where an Official or employee is not acting in the County's best interest and may be acting in their own best interests or the interests of someone associated with them.

Such conflicts of interest would include being involved in any procurement activity in which:

1. The employee or any member of the employee's family [persons who are related to the employee within the first degree by consanguinity (blood) or affinity (marriage)] has any financial interest pertaining to the Victoria County procurement process;
2. A business or organization in which the employee, or any member of the employee's family, has a financial interest pertaining to the Victoria County procurement process; or
3. Any other person, business, or organization with whom the employee or a member of the employee's family is negotiating or has any arrangement concerning prospective employment.

If any such conflicts of interest exist, the Official or employee must immediately notify the Department Head/Elected Official in charge of their office's purchasing in writing and remove himself/herself from the conflicted procurement activity. The official or employee must also submit a Local Government Officer Conflicts Disclosure Statement (Form CIQ) and the Vendor must complete a Conflict of Interest Questionnaire, to be filed in the Auditor's Office.

PERCEPTION

Employees must avoid any appearance of unethical or compromising practices in all relationships, actions, and communications.

GIFTS/BENEFITS

County Officials and employees must not solicit or accept money, loans, gifts, favors, or anything of value, from present or potential vendors which might influence or appear to influence any purchasing decision. Please also review all requirements in Texas Local Government Code, Section 176.003.

If anyone is in doubt whether a transaction complies with this policy, the individual should disclose the transaction to the Department Head/Elected Official in charge of their office's purchasing, the County Auditor and/or seek a County legal representative for interpretation.

CONFIDENTIAL INFORMATION

County Officials and employees must keep all proponents' and vendors' proprietary information confidential. Elected Officials and employees must maintain confidentiality on all Victoria County procurement information obtained from an RFP, RFQ, or ITB confidential as long as that vendor information is retained by Victoria County to the extent provided by state and federal law.

USER DO'S & DON'TS

Coordination among many County departments and offices may be necessary for the process to work smoothly. To avoid delays and comply with County policy and state law, user departments should remember the following:

- Do not authorize the purchase of any goods/services without your Department Head/Elected Official's approval.
- Do not purchase any goods/services for your own personal benefit.
- Do not obligate the purchase of goods that are delivered for use on a trial basis.
- Do not commit to acquire goods/services without approval of your Department Head/Elected Official.
- Do adhere to the County Purchasing Code of Ethics and avoid activities and behaviors that are unethical, create a conflict of interest, or the perception of a conflict of interest. Examples of activities that are inappropriate include:
 - soliciting or accepting gratuities from present or potential contractors which might influence or appear to influence a purchasing decision;
 - failing to disclose in writing to the Department Head/ Elected Official of a conflict of interest and not removing yourself from the procurement process when there is a conflict;
 - disclosing confidential proprietary information from solicitations to other vendors or using the information for personal gain;
 - disclosing quotes or pricing of one vendor to another; or
 - any action that would give one vendor an unfair advantage over another.
- Do not use purchasing strategies that violate the law to avoid competition. Strategies that are prohibited by law include:
 - purchasing a series of component parts that would normally be purchased as a whole (component purchases);
 - purchasing items in a series of separate purchases that normally would be purchased as a single purchase (separate purchases); and
 - purchasing items over a period of time, that normally would be done as one purchase (sequential purchases).

A County Official or employee who intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Texas Local Government Code § 262.023, is committing a Class B misdemeanor according to Texas Local Government Code § 262.034(a).

- Do not violate or authorize the violation of the Purchasing Act (Local Government Code, Chapter 262). Any person who knowingly violates or authorizes the violation of the Purchasing Act commits a criminal offense which is a Class B and/or Class C misdemeanor.

- Do ensure funding is available before making a purchase. The law does not allow expenditures that exceed the County budget.
- Do plan purchases to minimize the use of emergency and expedited purchases. Rush purchases are generally more expensive and vendors may attempt to charge premium prices for goods/services when there is insufficient time allowed to explore alternative sources or options.
- Do ensure that purchasing policies and procedures are understood before ordering. Departments must assure that all employees responsible for making department purchases have read and understand the purchasing procedures in this manual and Local Government Code, Chapter 262.

VICTORIA COUNTY PURCHASING REQUIREMENTS

Purchasing Matrix

| Purchase Amount | Support Required | Additional Forms | BID/RFP | Approval |
|--|---|---|--|---|
| Sole Source Purchase | 1 Quote | Sole Source Acknowledgement from County Auditor and contract reviewed by legal counsel. | NOT REQUIRED | Commissioners Court |
| Department- Wide Annual Aggregate Cost of Commodity Item LESS THAN \$50,000 | | | | |
| \$5,000 & Less | Detailed Invoice | NOT REQUIRED | NOT REQUIRED | Elected Official/Department Head within Approved Budget. |
| \$5,001 to \$25,000 | Minimum of 1 Quote and Detailed Invoice | NOT REQUIRED | NOT REQUIRED | Elected Official/Department Head within Approved Budget. |
| \$25,001 to \$49,999 | Minimum of 3 Quotes and detailed invoice of purchase. | NOT REQUIRED | NOT REQUIRED | Elected Official/Department Head within Approved Budget. If outside of amount that was budgeted, approval from Commissioners Court is required. |
| Department- Wide Aggregate Cost of Commodity or Service Item GREATER THAN \$50,000 | | | | |
| \$50,000 and Over Not Covered by COOP, Interlocal and/or State Contracts | Formal Bid/Proposal Documents | Specifications and procedures reviewed by a field expert (architect/engineer) if required and final awarded contract review by legal counsel. | REQUIRED | Commissioners Court |
| \$50,000 and Over through Cooperative Purchasing Programs, Interlocal Agreements and State Contracts | Cooperative Purchasing Program, Interlocal, or State Contract # | Contract reviewed by legal counsel. | Completed by Cooperative Purchasing Program/Inter-local or State | Commissioners Court |
| ANY PURCHASES THAT REQUIRE A CONTRACT MUST BE APPROVED THROUGH COMMISSIONERS COURT BEFORE THE PURCHASE IS MADE. | | | | |

PURCHASES UNDER \$50,000

For purchases under \$50,000 that are within a departments/office's budget, the approval of Commissioners Court is not required.

Be sure that your department/office will not be spending \$50,000 or more in aggregate purchases of the same or similar products/services. If this is the case, you will need to go out for bids/proposals. The purchasing matrix should be followed to ensure all requirements are met and there is not a delay in payment to Vendors.

All purchases are required to have a detailed invoice to submit for payment to the Auditor's Office. Please see the Invoice Requirements section of this policy for more details.

- 1) **PURCHASES BETWEEN \$5,001 AND \$25,000** are required to have one written quote, in which a detailed invoice would be adequate to use as a quote.
- 2) **PURCHASES BETWEEN \$25,001 AND \$49,999** are required to solicit three informal quotes to ensure the County is getting the best value for services/products. It is the responsibility of the department/office to keep these records. Soliciting an informal quote satisfies the requirement, even in an instance where the potential vendor says they are unable to meet the County's need/request, or when a vendor is unresponsive.
 - a) If a department/office is unable to solicit three informal quotes on an item between \$25,000-49,999, then it will need to get approval from Commissioners Court before the purchase can be made with an explanation of why three quotes cannot be obtained.
 - b) Three quotes are not needed if purchased through a cooperative purchasing program, interlocal agreement or state contract or for professional services.

3) CONTRACTS

- a) Any purchase that requires a contract must be reviewed by legal counsel and approved by Commissioners Court before the purchase is made, even if it is within the office/department's budget.
 - i) Contracts cannot bind the hands of future Commissioners Court, so to the extent possible multi-year contracts should be avoided and where applicable a 90-day termination should be included in the contract.
 - ii) It is the total contract price that needs to be considered when determining the procurement method. For example, a three-year contract that costs \$20,000 a year is considered a \$60,000 purchase and as such would need to be procured using a method described in the Policy for purchases \$50,000 and over.
 - iii) The contract must meet all requirements of applicable laws and regulations related to contracting with local governmental entities.

4) CONTRACT ADMINISTRATION

- a) The user office/department will be responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be shared with the

Auditor's Office. If, after clarification, the vendor complies with expected performance standards, no further documentation will be required. If poor performance or non-compliance with the contract is evidenced, the County Auditor and/or a County legal representative will be responsible for initiating corrective action with the Vendor.

5) SOLICITING QUOTES

- a) It is the goal of Victoria County, through this purchasing policy, to ensure ethical purchasing practices and provide fair and equal access to all vendors. In order to do this when approaching vendors for products and services it is best to follow these guidelines:
 - i) Give the same information to all vendors. It may help to make a list of what information you are providing vendors and what information you are seeking to gather before contacting vendors.
 - ii) Do not disclose any proprietary information of one vendor to another.
 - iii) Keep all quotes confidential and do not disclose the quote/pricing of one vendor to another.

6) ACKNOWLEDGEMENT REQUIREMENT

Once a year all Elected Officials/Department Heads will sign a purchasing affidavit acknowledging they have received the most current copy of the Victoria County Purchasing Policy and understand it is their responsibility to ensure they and their employees review and understand all applicable policies and local, state, and federal purchasing laws.

7) CONFLICT OF INTEREST FORMS FOR VENDORS

- a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - i) 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 Local Government Code, Section 176.003(a)(2)(A);
 - ii) 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 Local Government Code, Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - iii) has a family relationship with a local government officer of that local governmental entity
- b) This form shall be filed with the County Auditor.

8) DISCLOSURE OF INTERESTED PARTIES (FORM 1295)

- a) A disclosure of interested parties form required by §2252.908 of the Government Code must be filed on an electronic form prescribed by the Ethics Commission that contains the following:
 - i) The name of the business entity filing the form and the city, state, and country of the business entity's place of business;
 - ii) The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;

- iii) The name of each interested party and the city, state, and country of the place of business of each interested party;
 - iv) The identification number used by the governmental entity or state agency to track or identify the contract for which the form is being filed and a short description of the services, goods, or other property used by the governmental entity or state agency provided under the contract; and
 - v) An indication of whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.
- b)** The certification of filing and the completed disclosure of interested parties form generated by the commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the governmental entity or state agency that is the party to the contract for which the form is being filed.
- c)** A governmental entity or state agency that receives a completed disclosure of interested parties form and certification of filing shall notify the commission, in an electronic format prescribed by the commission, of the receipt of those documents not later than the 30th day after the date the governmental entity or state agency receives the disclosure.
- d)** The commission shall make each disclosure of interested parties form filed with the commission under §2252.908(f) of the Government Code available to the public on the commission's Internet website not later than the seventh business day after the date the commission receives the notice required under subsection (c) of this section.
- e)** This form will be processed and received by Administrative Services.

PURCHASES \$50,000 AND OVER

The Texas Local Government Code requires competitive bidding or proposals for all County purchases equal to or in excess of \$50,000 (per user department) for a product or service. State law also prohibits the County from making "separate, sequential, or component purchases to avoid the competitive bidding requirements." This category not only includes single product or service purchases, but several purchases with the same vendor for different products. Purchases from this category must have Commissioners Court approval prior to purchase.

Sealed competitive bids or proposals must be secured for all transactions reasonably anticipated to be equal to or in excess of \$50,000 (annually department wide) unless offered on State contract or Interlocal agreement.

1) THE COMPETITIVE BIDDING PROCESS

- a) Competitive requirements for certain purchases.
 - i) Before a County may purchase one or more items under a contract that will require an expenditure exceeding \$50,000, the Commissioners Court of the County must:
 - (1) comply with the competitive bidding or competitive proposal procedures prescribed by Local Government Code Chapter 262;
 - (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) Purchases of more than \$50,000 from one vendor must be made through formal, written, sealed, competitive bids unless exempt by state statute. Departments are prohibited from making "split purchases" in an effort to circumvent the formal bid requirement.

2) INVITATION TO BID (ITB)

- a) Competitive Bidding: "Sealed" bids are solicited through an Invitation to Bid (ITB) for contracts for goods/services expected to exceed \$50,000 per budget year or on any contract that spans multiple years. The ITB is the document used to solicit bids from vendors in response to the County's specifications, contractual terms, and conditions. ITB's are required to be presented to and awarded by Commissioners Court. The County reserves the right to choose the lowest responsible bid, as determined by the bid specifications. Please see attached legal opinion for more information on bid specifications and selection.

3) REQUEST FOR PROPOSALS (RFP)

- a) Competitive proposals: Competitive proposals are solicited through a sealed Request for Proposals (RFP) process. The RFP solicits proposals from vendors in response to the County's requirements, contractual terms, and conditions. Vendors submit responses for consideration; a formal contract is then negotiated with the top ranking vendor, and presented to Commissioners Court for approval.

The primary difference between and ITB and RFP is that the RFP results in a negotiated procurement. Cost is not the only determining evaluation factor; however, its relative importance to other evaluation factors must be specified in the RFP and considered in

recommending award. Proposal contents are not disclosed until after the contract is awarded. Proposal contents that are trademarked or proprietary may remain confidential pursuant to the Texas Public Information Act.

Formal "sealed" proposals may be used to procure insurance, high technology goods and services, or for purchases where it is impractical to prepare detailed specifications. In accordance with the Texas Local Government Code § 262.030(d), the formal competitive proposal (RFP) method may also be used to purchase other items more typically bid when the official who makes purchases for the County determines that it is in the best interest of the County and obtains the consent of the Commissioners Court.

4) OTHER REQUIREMENTS FOR COMPETITIVE PROCUREMENT

a) Compliance with Laws & Policies

The Auditor's Office will be responsible for Victoria County's adherence to any and all legal requirements of purchasing and compliance with this policy.

b) Bid/Proposal Specifications

- i) The user department shall be responsible for establishing specifications. Specifications may be written on a technical or functional basis. When developing specifications, one should ensure that a fair competitive environment exists. The Auditor's Office and County Engineer/Project Manager will consult and advise user departments in drafting specifications. If any scenario arises where bid specifications are unclear, legal review should be obtained. The procedure is jointly undertaken in order to establish a quality level of goods or services being procured.
- ii) Once bid specifications are approved by the Auditor's Office, County Engineer/Project Manager, and the User Department/Selection Committee, it will then be taken to Commissioners Court for approval and authorization to advertise and begin bid process. Please see Appendix E for legal opinion for more information on bid specifications and selection.

c) Pre-Bid Conference

It is the intent of a pre-bid conference to disseminate information equally and ensure all prospective bidders understand the scope and/or specifications of the project. All material changes to bidding conditions or specifications (resulting from pre-bid conferences, vendor inquiries, and all other reasons) will be documented, and issued in an addendum, by the County Engineer/Project Manager or County representative hired for said project. All questions from vendors concerning the bid package are to be addressed to the County Engineer/Project Manager or County representative hired for said project.

d) Delegation of Authority

- i) Commissioners Court may delegate its authority to a Court Member or County Employee to execute contracts and documents related to a contract that has been approved by Commissioners Court. Commissioners Court Delegation of Authority is given on a per project/contract basis and as such must be voted on each time it is given.

Sec. 262.001. APPOINTMENT OF AGENT TO MAKE CONTRACTS.

(a) The commissioners court of a County may appoint an agent to make a contract on behalf of the County for:

- (1) erecting or repairing a County building;*
- (2) supervising the erecting or repairing of a County building; or*
- (3) any other purpose authorized by law.*

(b) A contract or other act of an agent appointed under this section that is properly executed on behalf of the County and is within the agent's authority binds the County to the contract for all purposes.

e) Selection Committee

If the user department or Commissioners Court finds it is within the best interest of the County it may designate a Selection Committee to prepare and review bid/proposal specifications, rank bids/proposals, and bring a recommendation of the best bid/proposal to the Court for Award.

f) Public Notices/Authorize to Advertise

- i) Commissioners Court must give approval to advertise for bids.
- ii) The public notice must meet the requirements set out in Local Government Code Section. 262.025. **COMPETITIVE BIDDING NOTICE.**

Local Government Code Sec. 262.025. COMPETITIVE BIDDING NOTICE.

(a) A notice of a proposed purchase must be published at least once a week for two consecutive weeks in a newspaper of general circulation in the County, with the first day of publication occurring at least 14 days before the date of the bid opening. If there is no newspaper of general circulation in the County, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening. Notice published in a newspaper must include:

- (1) a general statement of the proposed purchase;*
- (2) the name and telephone number of the purchasing agent; and*
- (3) the County website address, if any.*

(a-1) Subsection (a) does not require more than two notices in one newspaper or limit the County from providing additional notice for longer periods or in more locations.

(b) The notice must include:

- (1) the specifications describing the item to be purchased or a statement of where the specifications may be obtained;*
- (2) the time and place for receiving and opening bids and the name and position of the County official or employee to whom the bids are to be sent;*
- (3) whether the bidder should use lump-sum or unit pricing;*
- (4) the method of payment by the County; and*
- (5) the type of bond required by the bidder.*

(c) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

(d) In a County with a population of 3.3 million or more, the County and any district or authority created under Article XVI, Section 59, of the Texas Constitution of which the governing body is the commissioners court may require that a minimum of 25 percent of the work be performed by the bidder and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds.

- iii) In addition to soliciting vendors through newspaper advertisements, and on the County website, County personnel will work to identify possible vendors with interest in submitting a bid to Victoria County.

g) Receiving Solicitations

- i) The following procedures will apply when receiving responses to bids/proposals:
 - (1) All responses to bids/proposals will be received by Administrative Services. The bids/proposals are to be received sealed and shall remain sealed until publicly opened on the advertised date, time and location by Administrative Services. .
 - (2) All responses to bids/proposals will be stamped with the time and date received. The clock on the phone system in Administrative Services will serve as the official time clock for the purpose of identifying the date and time bids were received.
 - (3) Responses to bids/proposals will **not** be accepted after the time and date specified in the bid/proposal document. All responses to bids/proposals received after the time and date specified will remain unopened, until such time the qualified responses to bids/proposals are publicly opened and recorded, and then they shall be returned to bidder unopened with notice of disqualification.
 - (4) Administrative Services will securely store received responses until the published opening date. The above process should be undertaken in a manner that will preclude any notion of favoritism, or revealing proposal information. Having sealed responses to bids/proposals publicly opened and recorded should help avoid any perception that Victoria County is manipulating the receiving of bids/proposals.

h) Public Opening of Solicitations

- i) The County Engineer/Project Manager in charge of opening sealed responses to bids/proposals shall present them to the Commissioners Court during an open meeting.
 - (1) ITB: Administrative Services will publicly open and read aloud bids at the date, time, and place specified in the notice, except proposals under Section 262.030, Local Government Code. The County Clerk shall document the process and all bids received at the date, time, and place specified in the notice.
 - (2) RFP: Administrative Services will publicly open proposals and the County Clerk shall document sealed proposals at the date, time, and place specified in the notice.
 - (a) Only the names of vendors submitting proposals are announced.
 - (b) Proposals are opened to avoid disclosure of contents to competing proposers and are kept confidential during the process of negotiation.
 - (c) All proposals that have been submitted are available and open for public inspection after the contract is awarded, except for trade secrets and confidential proprietary information contained in them. Disclosure of all information obtained from a vendor is subject to the provisions of the Texas Public Information Act.

i) Evaluation & Ranking

- i) It will be Administrative Services' responsibility to coordinate with the Selection Committee/User Department a time to evaluate the bids/proposals.

- ii) Administrative Services along with the Selection Committee will evaluate all bids/proposals, with assistance from the user office/department, and a joint recommendation will be made to Commissioners Court.
- iii) Evaluation of bids/proposals may include, but are not limited to the following factors:
 - (1) The relative prices of the bids, including the cost of repair and maintenance of heavy equipment if that is the subject of the bid/proposal, and the cost of delivery and hauling if road construction equipment;
 - (2) The ranking specifications described in the proposal method, if applicable;
 - (3) Compliance with specifications of goods and services offered;
 - (4) The responsibility of the vendor, including the vendor's safety record if Commissioners Court has adopted a definition of safety that is included in the bid/proposal; and
 - (5) The past performance of the vendor.

j) Negotiations

- i) Any negotiations permitted by statute will be supervised by Administrative Services and legal counsel. Offices/departments contacting proponents without coordinating with Administrative Services and legal counsel risk jeopardizing the integrity of the County procurement process and possibility of proposer's offer being disqualified. All proponents must be accorded fair and equitable treatment with respect to any opportunity for discussion and revision of proposals and submittal of a best and final offer.

k) Conflict of Interest Forms For Vendors

- i) 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 Local Government Code, 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 Local Government Code, 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
- ii) This form shall be filed with the County Auditor.

l) Disclosure of Interested Parties (Form 1295)

- i) A disclosure of interested parties form required by §2252.908 of the Government Code must be filed on an electronic form prescribed by the Ethics Commission that contains the following:
 - (1) The name of the business entity filing the form and the city, state, and country of the business entity's place of business;
 - (2) The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;

- (3) The name of each interested party and the city, state, and country of the place of business of each interested party;
 - (4) The identification number used by the governmental entity or state agency to track or identify the contract for which the form is being filed and a short description of the services, goods, or other property used by the governmental entity or state agency provided under the contract; and
 - (5) An indication of whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.
- ii) The certification of filing and the completed disclosure of interested parties form generated by the commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the governmental entity or state agency that is the party to the contract for which the form is being filed.
 - iii) A governmental entity or state agency that receives a completed disclosure of interested parties form and certification of filing shall notify the commission, in an electronic format prescribed by the commission, of the receipt of those documents not later than the 30th day after the date the governmental entity or state agency receives the disclosure.
 - iv) The commission shall make each disclosure of interested parties form filed with the commission under §2252.908(f) of the Government Code available to the public on the commission's Internet website not later than the seventh business day after the date the commission receives the notice required under subsection (c) of this section.
 - v) This form will be processed and received by Administrative Services.

m) Contract Review

- i) All contracts are to be reviewed and approved by legal counsel prior to being presented to Commissioners Court for approval to ensure the following:
 - (1) That all bond requirements are met.
 - (2) That all insurance requirements are met.
 - (3) That the contract meets all requirements of applicable laws and regulations related to contracting with local governmental entities.
 - (4) That multiyear contracts do not bind the decisions and budgets of future Commissioners Court.

n) Awarding Contract

Once an evaluation has been prepared, Administrative Services and the Selection Committee will make a joint recommendation to the Commissioners Court for consideration and award.

o) Contract Administration

- i) The user office/department will be responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be shared with the Auditor's Office. If, after clarification, the vendor complies with expected performance standards, no further documentation will be required.

ii) If poor performance or non-compliance with the contract is evidenced, the County Auditor will be responsible for initiating corrective action with the Vendor.

p) Modifications/Change Orders

Authorized individuals may be granted, on a case by case basis, approval by Commissioners Court to modify contracts for goods and services as long as the modification and/or change order does not exceed \$50,000. All modifications or change orders must be made in writing and signed by the authorized individual and received in Commissioners Court for the record. Modifications or change orders exceeding \$50,000 must be approved by Commissioners Court.

ADDITIONAL REQUIREMENTS FOR INSURANCE EXPENDITURES

- 1) When Victoria County receives an insurance claim meeting the requirement of engaging the services of an architect/engineer for a Public Works Contract, the architect/engineer will work to ensure all claims are resolved, contract requirements for repairs are met, invoices are correct, work is complete, and payment to the vendor(s) is appropriate.
- 2) All contracts related to insurance expenditures must be approved through Commissioners Court along with any and all documents related to property damage estimates, the scope of work, bid specifications, supplemental changes, or change orders.
- 3) All payments made to contractors in excess of \$25,000 for insurance related expenses, are to be put on the agenda as an independent agenda item with a detailed memo of the work that was done, approval signatures from the County Engineer/Project Manager and the following individuals:
 - a) The County Facilities Director if work done was in a County Building under his purview
 - b) The County Commissioner whose Precinct the work was done in, if the project involves road or drainage work.
- 4) If an insurance claim exceeds \$50,000 the Commissioners Court will review the scope and cost of the repairs and determine if the services of an independent insurance adjuster or construction manager are needed.

ADDITIONAL REQUIREMENTS FOR CAPITAL IMPROVEMENT PROJECTS

1) COMMISSIONERS COURT APPROVAL REQUIRED

- a) Commissioners Court approval is needed on capital improvement projects. Projects must be submitted for approval with a budget and timeline along with the following items before a project can go out for solicitation:
 - i) A Resolution determining the Construction Procurement Method
 - ii) A Resolution Delegating Authority
 - iii) A Resolution to determine Prevailing Wages
 - iv) A Resolution designating a Selection Committee and Evaluation Criteria
 - v) Authorization to Advertise

2) REQUIREMENTS FOR PAYMENT

a) Payment Requests

- i) All payments made to contractors in excess of \$25,000 for capital improvement projects must be submitted to Commissioners Court for approval with a detailed memo of the work that was done, approval signatures from at least two of the following individuals:
 - (1) the County Engineer/Project Manager;
 - (2) The County Facilities Director if work done was in a County Building under his purview.
 - (3) The County Commissioner whose Precinct the work was done in if the project involves a County Road improvement done by a contractor.
 - (4) If the project requires the services of an architect/engineer, approval from the architect/engineer is required before payment can be made.

b) Project Conclusion, Final Payment & Release of Retainage

- i) At the conclusion of all capital improvement projects and before the final contract payment is made and any retainage is released, the County Engineer/Project Manager in conjunction with any applicable individuals listed above, will give a project conclusion report to Commissioners Court that documents the following:
 - (1) Total cost of the project, including all change orders
 - (2) A statement of substantial completion of the work
 - (3) A general synopsis of the project
 - (4) An all bills paid affidavit from the contractor

3) ENGAGING USE OF ARCHITECT OR APPROVED ENGINEER

- a) Victoria County will engage the use of an architect or approved engineer for design and construction observation of a capital improvement project when:
 - i) It involves a public building that is a residential facility,
 - ii) It is the construction of a new public building and costs will exceed \$100,000.
 - iii) It is construction done on an existing public building involving the removal, relocation, or addition of walls/partitions, or the alteration or addition of an exit, and costs are expected to exceed \$50,000.

- iv) In accordance with the Texas Board of Architectural Examiners, rules and regulations of the board regulating the practice of Architecture.

4) 3. ENGAGING USE OF PROFESSIONAL ENGINEER

- a) a) Victoria County will engage the use of professional engineer for a new capital improvement project when:
 - i) i) Electrical or mechanical engineering is involved and expenses for completed project will exceed \$8,000.
 - ii) ii) When expenses for a completed project will exceed \$20,000
 - iii) iii) In accordance with the Texas Engineering and Land Surveying Practice Acts and rules concerning practice and licensure.

5) BONDING REQUIREMENTS

All bonds must be executed by a surety company authorized to do business in Texas.

a) Bid Bonds

- i) Bid bonds will be required for construction contracts that exceed \$100,000. Bid bonds will not be required from any bidder whose rates are subject to regulation by a state agency. If the official who makes purchases for the County determines that a bid bond is required for a particular contract, the notice to bidders or request for proposals will state that a bid bond in the amount of 5% of the contract price is required. A surety company authorized to do business in Texas must execute the bid bond.

b) Performance Bonds

- i) For all contracts in excess of \$100,000 for the construction, repair, or alteration of a public work, or the completion of any public work, the contractor, before commencing work, must execute a performance bond that is:
 - (1) Payable to Victoria County;
 - (2) In the full amount of the contract;
 - (3) Conditioned on faithful performance of the work in accordance with the plans, specifications, and contract documents;
 - (4) Solely for the protection of the County;
 - (5) Executed by a corporate surety or sureties in accordance with the Insurance Code; and
 - (6) In a form approved by Commissioners Court.

c) Payment Bonds

- i) For contracts in excess of \$25,000 for the construction, repair, or alteration of a public work, or the completion of any public work, the contractor, before commencing work, must execute a payment bond that is:
 - (1) Solely for the protection of all claimants supplying labor and material in the performance of work provided in the contract;
 - (2) Payable to Victoria County for the use of these claimants;
 - (3) In the full amount of the contract;
 - (4) Executed by a corporate surety or sureties in accordance with the Insurance Code; and
 - (5) In a form approved by the Commissioners Court.

d) Maintenance Bonds

- i) Maintenance bonds may be required in some capital improvement contracts.

e) Liability of the County

- i) If bonds are not furnished, Victoria County is subject to the same liability that a surety would have if the surety had issued the bonds and the governmental entity had required the bonds to be provided. To recover in a suit under this subsection, the only notice required of a bond beneficiary is a notice given to the governmental entity, as if the governmental entity were the surety.

f) All Bills Paid Affidavit

- i) Before any bonds are released, the County must have received an all bills paid affidavit from the contractor.

BID EXEMPTIONS

The Texas Local Government Code, Section 262.024 allows certain discretionary exemptions from the competitive procurement process if the Commissioners Court by order grants the exemption.

1) Emergency Purchases:

- a) An emergency is constituted where there is an immediate response required to provide for the safety of persons and/or property. Sections 262.024(a)(1)-(a)(3) outline the discretionary exemptions allowed by law in the case of an emergency:
 - i) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the County;
 - ii) an item necessary to preserve or protect the public health or safety of the residents of the County;
 - iii) an item necessary because of unforeseen damage to public property;
- b) Emergency purchases or component purchases that will exceed \$50,000 require an Order granting the exemption by the Commissioners Court before a purchase may be made. Victoria County Commissioners Court will regularly review and reassess the need for bid exemptions during the response and recovery phase of an emergency or disaster within Victoria County.

2) From time to time, the Legislature will exempt specific types of transactions or purchases from competitive bidding. The following is a list of some of these specific authorities:

- a) Certain Transportation Construction A local government corporation expenditure for: (1) an improvement constructed in a reinvestment zone the construction of which is managed by a private venture participant; or (2) an improvement constructed by the corporation for which more than 50 percent of the construction is funded by a private entity is exempt from competitive bidding procedures. Tex. Transp. Code §431.110.
- b) Housing Finance Corporation A housing finance corporation is exempt from any competitive bidding requirement imposed on the award of contracts for acquisition, construction, rehabilitation or lease, sale or other disposition of property for action taken under the Texas Housing Finance Corporations Act. Tex. Loc. Gov't Code §394.904.
- c) Purchase from Certain Nonprofits Products or services purchased from a nonprofit agency for persons with disabilities under Chapter 122, Human Resources Code.
- d) Airport Purchases Certain purchases of a jointly operated county and municipal airport under Subchapter D, Chapter 22, Texas Transp. Code.
- e) Depository for Certain Sale Proceeds Selection of depository for proceeds from sale of county park, recreational, and cultural resources bonds in counties with a population of 5,000 or greater.. Tex. Local Gov't Code §320.079.

3) Texas Local Government Code Sec. 262.024. DISCRETIONARY EXEMPTIONS.

(a) A contract for the purchase of any of the following items is exempt from the requirement established by Section [262.023](#) if the commissioners court by order grants the exemption:

- (1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the County;*
- (2) an item necessary to preserve or protect the public health or safety of the residents of the County;*
- (3) an item necessary because of unforeseen damage to public property;*

- (4) a personal or professional service;
 - (5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;
 - (6) any land or right-of-way;
 - (7) an item that can be obtained from only one source, including:
 - (A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
 - (B) films, manuscripts, or books;
 - (C) electric power, gas, water, and other utility services; and
 - (D) captive replacement parts or components for equipment;
 - (8) an item of food;
 - (9) 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; or
 - (C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government;
 - (10) any work performed under a contract for community and economic development made by a County under Section [381.004](#); or
 - (11) vehicle and equipment repairs.
- (b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section [262.023](#) if the commissioners court by order grants the exemption and if:
- (1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;
 - (2) the renewal or extension does not exceed one year; and
 - (3) the renewal or extension is the first renewal or extension of the lease or agreement.
- (c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the County official who makes purchases for the County as to the existence of only one source, must enter in its minutes a statement to that effect.
- (d) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the commissioners court. Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection. The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the commissioners court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of at least one year or until audited by the County auditor.

PROFESSIONAL SERVICES

- 1) These services are characterized by their reliance on mental or intellectual skills, often accompanied by formal certification or licensing by a state or other regulatory agency.
 - a) *Government Code §2254.002*
 - 2) "Professional services" means services:
 - (A) *within the scope of the practice, as defined by state law, of:*
 - (i) *accounting;*
 - (ii) *architecture;*
 - (iii) *landscape architecture;*
 - (iv) *land surveying;*
 - (v) *medicine;*
 - (vi) *optometry;*
 - (vii) *professional engineering;*
 - (viii) *real estate appraising; or*
 - (ix) *professional nursing;*
 - (B) *provided in connection with the professional employment or practice of a person who is licensed or registered as:*
 - (i) *a certified public accountant;*
 - (ii) *an architect;*
 - (iii) *a landscape architect;*
 - (iv) *a land surveyor;*
 - (v) *a physician, including a surgeon;*
 - (vi) *an optometrist;*
 - (vii) *a professional engineer;*
 - (viii) *a state certified or state licensed real estate appraiser; or*
 - (ix) *a registered nurse; or*
 - (C) *provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter [1053](#), Occupations Code.*
- 2) State law exempts the procurement of these services from competitive bidding requirements. Professional service consultants should be selected on the basis of demonstrated competence, qualifications, and a fair and reasonable price.
 - a) *Government Code. §2254.003. SELECTION OF PROVIDER; FEES.*
 - (a) *A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:*
 - (1) *on the basis of demonstrated competence and qualifications to perform the services; and*
 - (2) *for a fair and reasonable price.*
 - (b) *The professional fees under the contract may not exceed any maximum provided by law.*

If the Commissioners Court determines use of a professional service is in the best interest of the County, the User Department will prepare a draft RFQ (Request for Qualifications) to be reviewed by the County Auditor and/or County Engineer/Project Manager and approved legal counsel. Once approved, the User Department will submit for approval to Commissioners Court the RFQ and authorization to advertise. RFQ's will be evaluated by the user department and the Auditor's Office and/or County Engineer/Project Manager, or a committee (that will include the user department and the Auditor's Office and/or County Engineer/Project Manager) established by Commissioners Court. A recommendation will be made and a fee negotiated. Once complete, a draft contract will be proposed based on the RFQ and the consultant's proposal.

- 3) Any negotiated contract and fee structure document shall be reviewed and approved by legal counsel and then placed on the agenda for Commissioners Court approval.

PURCHASES MADE THROUGH COOPERATIVE PURCHASING PROGRAMS, INTERLOCAL AGREEMENTS AND STATE CONTRACTS

Texas Local Government Code §271. subch. D, subch. F & subch. F, Texas Government Code §2155.504, and Texas Government Code, Chapter 791 (the Interlocal Cooperation Act), authorizes local governments to contract directly with other governments to increase their efficiency and effectiveness.

Victoria County's legal counsel must review and approve all Cooperative Purchasing Programs, Interlocal Agreements and State Contracts involving the purchase of goods, repair, or maintenance agreements before the agreement or purchase is submitted to Commissioners Court for approval.

To initiate a purchase through a cooperative purchasing program, interlocal agreement or state contract, the user department may research to determine if the needed goods/services are available from the cooperative purchasing program, interlocal agreement or state contract.

When purchasing goods and services from the cooperative purchasing program, interlocal agreement or state contract the invoice or purchase order must reference the agreement, contract number, and approval of purchase from Commissioners Court, if applicable.

The County Judge, or Judge Pro Tem if the County Judge is not available, may authorize elected or appointed officials to enter into contracts for purchase through a cooperative purchasing program, interlocal agreement or state contract and have it ratified during the next regularly held session of Commissioners Court, when it presents a cost savings for the County.

PURCHASING LAWS

These policies are intended to guide Victoria County Officials and employees through the purchasing process; all local, state and federal laws, which are subject to change, will always supersede this policy.

In addition to other requirements of this policy, Victoria County must comply the laws that govern County purchasing. These laws include, but are not limited to:

- Purchasing and Contracting Authority of Counties, (TEX. LOC. GOV'T CODE ANN., Chapter 262)
- Purchasing and Contracting Authority Of Municipalities, Counties, And Certain Other Local Governments, (TEX. LOC. GOV'T CODE ANN., Chapter 271)
- State Cooperation in Local Purchasing Programs (TEX. LOC. GOV'T CODE ANN., Chapter 271, subch. D)
- Cooperative Purchasing Program (TEX. LOC. GOV'T CODE ANN., Chapter 271, subch. F)
- Authority to Purchase Road Equipment and Tires through Comptroller (TEX. LOC. GOV'T CODE ANN., §262.002)
- Use of Schedule by Governmental Entities. (TEX .GOV'T CODE ANN., Chapter 2155.504)
- Purchase of Automated Information Systems (TEX. LOC. GOV'T CODE ANN., ch.2157)
- Purchases from Federal Schedule Sources of Supply (TEX. LOC. GOV'T CODE ANN., Chapter 271, subch. G)
- Purchasing from People with Disabilities (TEX. HUM. RES. CODE ANN., Chapter. 122)
- Interlocal Cooperation Contracts, (TEX .GOV'T CODE ANN., Chapter 791)
- Payment for Goods and Services, Prompt Payment Act, (TEX. GOV'T CODE ANN., Chapter 2251)
- Contracts with Governmental Entity (TEX. GOV'T CODE ANN., Chapter 2252)
- Contracting and Delivery Procedures for Construction Projects (TEX. GOV'T CODE ANN., Chapter 2269)
- Public Works Performance and Payment Bonds, (TEX. GOV'T CODE ANN., Chapter 2253)
- Professional Services Procurement Act, (TEX GOV'T CODE ANN., Chapter 2254, subch. A)
- Wage Rate for Construction Projects, (TEX GOV'T CODE ANN., Chapter 2258)
- Sales tax exemption for governmental entities (TEX. TAX CODE ANN. §151.309)
- Worker's Compensation Compliance (Workers Compensation Rule §110.110)
- Uniform Electronic Transaction Act (TEX. BUS. & COM.CODE ANN. Chapter 43)

- Depositories for Public Funds (TEX. LOC. GOV'T CODE ANN., Chapter 116)
- Depositories for Certain Trust Funds and Court Registry Funds (TEX. LOC. GOV'T CODE ANN., Chapter 117)
- Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information (TEX. LOC. GOV'T CODE ANN., Chapter 176)
- Disclosure Of Interested Parties (TEX GOV'T CODE ANN., Chapter 2252.908)
- Disposition of Salvage or Surplus Property (TEX. LOC. GOV'T CODE ANN., Chapter 263 subch. D)
- Prohibition on contracts with companies boycotting Israel (TEX. GOV'T CODE ANN., Chapter 2271)
- Workers' Compensation Insurance Coverage (LABOR CODE, Chapter 406)

Full statute language for referenced laws can be found on the Texas Constitution and Statutes website at <https://statutes.capitol.texas.gov/>.

ADDITIONAL STATUTORY REQUIREMENTS

In addition to other requirements of this policy, Victoria County must comply with the following statutes:

- 1) Wage Rate for Construction Projects, (TEX GOV'T CODE ANN., Chapter 2258)
- 2) WORKERS' COMPENSATION INSURANCE COVERAGE (LABOR CODE Chapter 406) Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS.
 - a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.
 - b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.
 - c) A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.
 - d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.
- 3) Payment for Goods and Services, Prompt Payment Act, (TEX. GOV'T CODE ANN., Chapter 2251)
- 4) CONTRACTS WITH GOVERNMENTAL ENTITY, (TEX. GOV'T CODE ANN., Chapter 2252). This particular code sets standards for Nonresident Bidders and a prohibition on contracts with companies engaged with business in Iran, Sudan or a Foreign Terrorist Organization.
- 5) PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL (TEX. GOV'T CODE ANN., Chapter 2271)
 - a) Sec. 2271.002. PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that:
 - (1) is between a governmental entity and a company with 10 or more full-time employees; and
 - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.
 - (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:
 - (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.

PURCHASING CARD (PCARD) REQUIREMENTS

All County Officials and employees who are given a Purchasing Card (PCard) are to sign and acknowledge a Cardholder Agreement and Purchase Card Policy and Procedures Manual with the Office of the County Treasurer. In addition to Cardholder Agreement, any and all purchases made with a PCard must be in compliance with this purchasing policy.

Violation of the Cardholder Agreement and Purchasing Policy may result in PCard privileges being revoked and disciplinary action up to and including termination.

A copy of Victoria County's Purchase Card Programs' Policy and Procedure Manual and Cardholder Agreement can be found in the appendices of this policy.

INVOICE REQUIREMENTS

Before payment can be processed, a “detailed” invoice and PO/work order must be received by Accounts Payable, in the Auditor’s Office, with the following elements:

Each invoice presented by a vendor for payment must be clear, accurate and free from mathematical or quantity errors. This list is not all inclusive and contractual provisions or other requirements/circumstances may require additional information to be provided, but would generally include:

- Name of the vendor and “Remit to” address
- Vendor invoice number and date
- Vendor contact name and phone number
- County contact name
- Name of County department
- Written description of goods/services delivered
- Delivery date or service date
- Substituted items must have documented approval
- Quantity and unit price of item
- Extension on each line item
- Total Amount Due
- Payment Due Date
- Payment Terms and Discount
- Shipping payment terms
- Supporting documentation (such as Agendas for conferences)

Detailed itemized receipts & delivery tickets must be provided for all vendor expenses or reimbursement requests.

Additional requirements for professional and personal services invoices:

- Description of services performed
- Date, time and hours worked
- Hourly rate
- Name and title of person performing service
- Total amount due
- Other information as required

Additional requirements for purchases made through interlocal agreements and state contracts:

For purchases made through a state or interlocal contract, such as DIR, the interlocal agreement and contract number must be included on all invoices.

When a defective invoice is received:

- Invoices missing any required element will be deemed defective and will be returned without action to the Department Head/Elected Official detailing what defect needs to be corrected.
- When a corrected invoice is received, a new due date will be calculated.

PROPERTY SALVAGE AND DISPOSAL

1) SALVAGE

Equipment no longer needed by a department shall be reported to the Auditor's Office by completing a Property Acquisition, Transfer and Disposition form. If it is found that this item is of no further use by any County Department, the Auditor's Office and User Department will dispose of it in accordance with Local Government Code, Chapter 263, Subchapter D - DISPOSITION OF SALVAGE OR SURPLUS PROPERTY.

2) DISPOSAL

Upon approval by Commissioners Court, surplus or salvage material and equipment may be disposed of in one of the following methods:

- a) Public auction
- b) Trade-in on new equipment
- c) Sealed competitive bids
- d) Ordered destroyed or distributed as unsalvageable

INVENTORY

A physical inventory of all Victoria County property shall be maintained and reviewed regularly by each department/office.

Upon completion of the physical inventory, an updated inventory report shall be completed. The report should include:

- i. a listing all County property notated as 'located' or 'not located';
- ii. the condition of the property; and
- iii. all physical attributes, i.e., serial number, make/model, etc.

The Auditor's Office will also randomly and periodically conduct a physical inventory of assets. If any time items are found to be missing, the missing items will be reported to the Elected Official/Department Head and the Auditor.

The Victoria County Commissioners Court will determine the necessary action to be taken on property found to be missing.

GRANT PURCHASES

In addition to this policy all federal, state and grant funds must be used in accordance with the funding contract and all applicable local, state and federal laws, such as, the Uniform Guidance (2 CFR § 200).

DEPOSITORIES

In the selection of Depositories for public funds, certain trust funds and court registry funds, Victoria County will abide by the processes established in Local Government Code, Chapter 116, Depositories for Public Funds and Local Government Code, Chapter 117, Depositories for Certain Trust Funds and Court Registry Funds.

REPORTING POLICY VIOLATIONS, FRAUD, ABUSE, OR WASTE

If you have knowledge of, or suspect a violation of this policy and/or fraud, abuse, waste or unethical behavior in the purchasing process, please immediately report the violation to your Department Head/Elected Official and Human Resources and document said violation/behavior.

If you are not comfortable reporting said violation/behavior directly to your Department Head/Elected Official, you may report it directly to Human Resources and/or your Commissioners Court Liaison.

APPENDIX A

Local Government Officer Conflicts Disclosure Statement (FORM CIS)

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

2 Office Held

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day
of _____, 20 _____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. This form is required to be filed 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 this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a misdemeanor.

Refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

- 1. Name of Local Government Officer.** Enter the name of the local government officer filing this statement.
- 2. Office Held.** Enter the name of the office held by the local government officer filing this statement.
- 3. Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code.** Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an employment or other business relationship with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 4. Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.** Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100.** List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed \$100 in value.
- 6. Affidavit.** Signature of local government officer.

Local Government Code § 176.001(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.

Local Government Code § 176.003(a)(2)(A):

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

(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.

APPENDIX B

Vendor Conflict of Interest Questionnaire (FORM CIQ)

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(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.

Local Government Code § 176.003(a)(2)(A) and (B):

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

(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.

Local Government Code § 176.006(a) and (a-1)

(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.

APPENDIX C

Purchasing Affidavit and Acknowledgement



VICTORIA COUNTY PURCHASING AFFIDAVIT

2021

I certify as the Department Head or Elected Official that I and my office/department have received the most current version of the Victoria County Purchasing Policy. I understand it is my responsibility to ensure all applicable local, state, and federal laws are adhered to and all purchases for my office/department are made in compliance with the Victoria County Purchasing Policy.

Office/Department Name

Printed Name of Elected Official

Signature of Elected Official

Printed Name of Department Head

Signature of Department Head

Date

APPENDIX D

Purchase Card Program and Cardholder Agreement

County of Victoria

CITI MasterCard Purchase Card Program

Policy and Procedures Manual

December 22, 2014

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I. Introduction

Welcome to the Victoria County Purchasing Card (PCard) Program.

This reference guide will provide each cardholder with the specifics of the program, including general guidelines, reconciliation and record keeping procedures, as well as customer service information. It is important to read the following information carefully, as each cardholder will be responsible for adhering to the established policy and procedures.

It is difficult to anticipate every question or issue that may arise, so any feedback on this program will provide an opportunity to refine the policies and procedures.

Please contact the Program Administrators for any questions regarding this program. The following is a list of all Purchasing Card Program Administrators:

County Treasurer – Sean Kennedy 361.575.8588
Chief Deputy – Darla Cabeldue 361.575.8588

II. General Guidelines

Card Issuance

Requests for new Purchasing Cards should be sent by the Department Head to the Program Administrator. When the request is approved, the cardholder will be required to complete the attached **Cardholder Agreement Form**. By signing this form the cardholder agrees to adhere to the guidelines established in this manual. Most importantly **that cardholder is the only person entitled to use the card and the card is not to be used for personal use.** The card cannot be transferred from one employee to another as each card is assigned to an individual employee.

Once the PCard is received the account can be activated by calling the toll-free number printed on the card. For verification purposes the cardholder will have to provide a piece of information provided to the cardholder by the Program Administrator. Although the card will be issued in the employee's name the cardholder's personal credit history will not affect their ability to obtain a card. Victoria County is responsible for payment of all authorized purchases.

Card Usage

The PCard can be used at any merchant that accepts MasterCard except as the County otherwise directs. It is designed for in-store purchases; however, online purchases can be made with authorized County of Victoria Purchasing Card Online Vendors.

Not all vendors will accept MasterCard. If a vendor does not accept MasterCard please contact the Primary Program Administrator.

Limitations and Restrictions

Each cardholder account has been assigned credit limits. A single transaction limit is placed on each cardholder account which means the purchase will be declined if an attempt is made to purchase more than this set amount at any one time.

Do not split a purchase to avoid the single transaction limit. Failure to comply with the above guidelines for authorized purchases under the Purchasing Card Program will result in disciplinary action, cancellation of your card privileges, and/or possible termination of employment.

In addition to the single transaction limit every cardholder account has a total monthly dollar limit assigned to their account. This limit tracks all of the authorized purchases in any given month and will not allow the cardholder to exceed this limit.

The PCard Program also allows for merchant category blocking. If a particular merchant category, a jewelry store for example, is blocked and a purchase is attempted at such a merchant, the purchase will be declined. The Program Administrators have made an effort to ensure that the vendors /suppliers used during the normal course of business are not restricted. If your card is refused at a merchant where the cardholder believes it should have been accepted, contact the Primary Program Administrator to determine the reason for refusal.

IMPORTANT: All requests for changes in limitations and restrictions must be made in writing through the cardholder's supervisor and then forwarded to the Primary Program Administrator.

Lost or Stolen Cards

Each cardholder is responsible for the security of their card and any purchases made on their account. If a card is lost or stolen, inform the Program Administrator. **It is extremely important to act promptly in the event of a lost or stolen card to avoid County liability for fraudulent transactions.**

As with any personal credit card, the cardholder's account number will be disabled immediately after notifying the card issuer CITI at 1-800-248-4553.

III. Purchases

Authorized Transactions

- Office supplies and forms
- Books and subscriptions
- Hardware and tools
- Spare parts
- Courier or Overnight Deliveries
- Travel Expenses (with the applicable card authorizations)
- Registration Fees (with the applicable card authorizations)

Any purchase made is subject to the annual appropriations as approved by Commissioners' Court. Payment of any purchase is subject to the approval of Commissioners' Court.

Unauthorized Transactions

- Items for personal use
- Any single transaction exceeding your current limit
- Capital goods or Leased equipment, unless previously approved in writing
- Sales Tax on any purchase made
- Computer Software or License (This must always be coordinated with the County IT Dept)

As with any County purchase, the PCard is not to be used for any product, service or with any merchant considered to be inappropriate for County funds.

Failure to comply with the above guidelines for authorized purchases under the Victoria County Purchasing Card Program will result in disciplinary action, cancellation of your card privileges, and/or possible termination of employment.

IV. Levels of Authorization

Maintenance and Operation

The first level of authorization is given to all cardholder accounts. It allows for purchase of routine items needed to perform the daily activities as required by their position. The PCard, when used for maintenance and operation purchases, must be used in accordance with the County's established Procurement Policy.

Travel

PCard allows employees to make payment on airfare, hotels and authorized business expenses while on official county business. The PCard, when used for travel, must be used in accordance with the County's established Procurement and Travel Policies.

V. Reconciliation and Payment

Reconciliation of Purchases

Each statement will reflect the transaction date, posting date, supplier or merchant name and the total amount of the purchase.

Each cardholder is responsible for the following:

- Retaining all itemized receipts for items purchased using the card.
- Ensuring all transactions posted are legitimate purchases made by the cardholder on behalf of the County.
- Verifying the coding, both department and account, on each transaction is correct.
- Adding a description to each purchase as necessary.

Immediately upon receipt of the statement notice ensure that all the transactions listed are legitimate purchases

If all transactions are correct mark the statement as reviewed. Once the statement has been marked as reviewed an email will be issued to the cardholder's supervisor for their approval. In order for the supervisor to approve the statement the transactions and all receipts should be forwarded to them for review.

Disputed or Fraudulent Charges

Any discrepancy in transaction receipts or the cardholder statement should be addressed immediately. The cardholder may need to contact the merchant or complete the online dispute form through Victoria County to resolve the disputed transaction.

If the merchant has charged an incorrect amount, or there is an outstanding quality or service issue, first contact the merchant and try to resolve the error or problem. If the matter is resolved directly with the merchant, and the error involved an overcharge, a credit adjustment should be requested and will appear on the next statement.

If the merchant disagrees that an adjustment is necessary, complete the online dispute form. The details of the disputed transaction will be entered online and handled by Victoria County Treasurer.

The cardholder should never assume that a dispute will be resolved in the County's favor.

If the dispute is not resolved satisfactorily the cardholder should notify the Primary Program Administrator with the relevant details to take further action.

Any fraudulent charge (i.e., a charge appearing which was not authorized) must be reported immediately to the Program Administrator. Prompt reporting of any such charge will help to prevent the County from being held responsible.

Payment of Monthly Invoice

The Auditor's office is responsible for paying the PCard Program invoice each month. Each cardholder is not responsible for the actual payment of their individual transactions or account balance; however, each cardholder is responsible for approving their purchases and the cumulative of all transactions for the month.

VI. Sales and Use Tax

The County of Victoria is exempt from paying sales tax on any purchase. If a vendor requires a Tax Exemption Form please contact Auditor's office for a copy.

VII. Frequently Asked Questions

- **What is the procedure when I pay for something with my Purchasing Card?**

Essentially, the process is the same as when using a personal credit card. Always ensure purchases are tax exempt. Always obtain an itemized receipt for the cardholder's records.

- **Are there any restrictions associated with the use of the Purchasing Card?**

Yes, in addition to County Policy stating the type of products that can be bought, other controls and limits that may be placed on the card include:

- Per transaction dollar limit
- Monthly dollar limits
- Blocked merchant categories

Please see your supervisor or County Treasurer for your specific restrictions.

- **How will I know if I have exceeded my monthly limit?**

You can check your balance and expenditures online at any time. Please contact the County Treasurer for assistance on this process.

- **What should I do if a supplier does not accept the Purchasing Card?**

Please contact the County Treasurer and provide them with the supplier's name, address and phone number.

- **How will I know if the County is billed correctly for the purchases I have made?**

You will be able to check all transactions online at any time. This statement is for your review only and allows you to reconcile your purchases. You must review the statement in a timely manner as any disputed or fraudulent transactions must be reported to Program Administrator in a timely manner.

- **How will my monthly Purchasing Card expenses be paid?**

You are not responsible for the payment of your Purchasing Card bills. The monthly statement will be received by the County Treasurer's Office, reviewed and one monthly payment made to CITI covering expenses for all County employees using the card.

- **Who in the County may I talk to if I have questions going forward?**

We have designated the following individual(s) as Program Administrator(s) (PA):

County Treasurer – Sean Kennedy 361.575.8588

Chief Deputy – Darla Cabeldue 361.575.8588

The PA should be contacted for any questions you have regarding limits, usage and other issues. Only the PA has the authority to change any existing information or restrictions to a cardholder's account.

- **Once I receive the card, can I begin using it immediately?**

Once you receive your card you will be instructed to call the Victoria County Treasurer and provide certain information (e.g., employee ID number or other meaningful data) to activate the card. This procedure ensures a secure card issuance process and helps to prevent fraud.

- **What should I do if my card is lost or stolen?**

It is extremely important to call the Victoria County Treasurer's Office immediately in the event your card is lost or stolen or call CITI at 1-800-248-4553.

- **Can another employee utilize my card for purchases?**

Each Purchasing Card will be embossed with the individual employee's name. The employee is responsible for the proper use of their card. At no time should another individual utilize your card.

- **Can the Purchasing Card be used outside the United States?**

Yes, the Victoria County PCard is accepted worldwide. Purchases can be made in any currency and billed in U.S. Dollars; however, please contact a Program Administrator prior to making any international purchase.

- **What should I do if I need to change my monthly or single purchase limits?**

You must contact your supervisor who will forward the request to a Program Administrator.

County of Victoria

CITI MasterCard Purchasing Card (PCard) CARDHOLDER AGREEMENT

I, _____, agree to the following regarding my use of the Victoria County CITI MasterCard Commercial Purchasing Card (PCard).

1. I understand that I am being entrusted with a County Purchasing Card (the PCard), and that each time I use the PCard I will be making financial commitments on behalf of the County of Victoria.
2. I will not allow others to use my PCard and will ensure that my PCard is kept secure at all times. If my PCard is lost or stolen, I understand that it is my responsibility to immediately notify the Program Administrator or 361-575-8588 or 1-800-248-4553.
3. I agree that the PCard may only be used for County business expenses.
4. I understand that under no circumstances will I use the PCard to make personal purchases, either for myself or for others. If an accidental personal purchase is made, I will immediately refund the County of Victoria for the full purchase price. **I authorize a payroll deduction if I do not refund a personal purchase or if documentation of a purchase is not provided.**
5. I will obtain an **itemized receipt**, which reflects the total amount paid to the vendor with details of the items purchased. **All County of Victoria purchases are tax- exempt.**
6. I will use the PCard in accordance with this agreement and in accordance with PCard processes and procedures and submit my Cardholder Statement, with all itemized receipts attached, to my Authorized Approver within two working days of distribution of cardholder statements. Failure to do so may result in revocation of my PCard usage privileges.
7. I am aware of my PCard credit limits and will abide by those limits.
8. I understand and agree that failure to adhere to the terms of this Agreement or use of the PCard for personal use or gain will be treated as a serious violation of County Policy and will result in disciplinary action up to and including termination of employment.

Employee Name (Print)

Employee Signature / Date

APPENDIX E

Legal Opinion regarding bids

CULLEN, CARSNER, SEERDEN & CULLEN, L.L.P.

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PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

June 11, 2020

Caitlin Weinheimer
Chief of Staff
Victoria County Judge's Office
101 N. Bridge Street, Ste. 102
Victoria, TX 77901

Dear Caitlin:

Caitlin you have asked what are the matters that may be considered in awarding a contract to a competitive bidder?

The statute states that the County "shall award the contract to the responsible bidder who submits the lowest and best bid or reject all bids". That leaves two terms to be defined. The first who is a "responsible bidder". And the second is "what constitutes the lowest and best bid"?

The legislature has defined lowest and best to mean:

"a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties and customer service after a sale".

If the Court chooses not to award the contract to the lowest dollar bidder, it should have a good reason. Lower bidders have a legal right to appear before the Commissioner's Court and demonstrate their responsibility before such a contract can be awarded and there are notice requirements that the Court is required to provide to a lower dollar bidder who is not going to be awarded the contract. However, Commissioner's Court does have considerable discretion to judge the quality of a bidder's product and service in addition to his experience, reputation, financial stability and other extrinsic factors which a reasonable person would consider in making a purchase.

The State Purchasing and General Services Act has a list of factors which may be considered in determining the lowest and best bid. This is found in Government Code §2156.007. The State may consider

the bidder's safety record; the quality and the availability of goods and services and their adaptability; the scope of conditions offered by the bidder; the bidder's ability, capacity and skill; the bidder's ability to perform without delay or interference; the bidder's character, responsibility, integrity and experience or demonstrated capability; quality of prior work; compliance with laws; noncompliance with bid specification requirements as to submission of information; financial resources; and the bidder's capability to furnish maintenance, repair, parts and service.

Additionally, the County may condition acceptance of any bid on compliance with the requirement for attendance at a mandatory pre-bid conference.

A County may also consider whether health insurance is provided by the bidder. If a bidder provides reasonable health insurance coverage to its employees and requires any of its subcontractors to provide reasonable health insurance coverage, as well, and the bid is within 5% of the lowest and best price received by another bidder who does not provide or require health insurance coverage, the Commissioner's Court may give preference to the bidder who provides and requires reasonable health insurance coverage.

Additionally, in determining who is a responsible bidder, the Commissioner's Court may take into account the safety record of the bidder, but only if the Commissioner's Court has adopted a written definition and criteria for accurately determining the safety record of a bidder and the County has given notice to prospective bidders in the bid specifications that the safety record of the bidder may be considered in determining the responsibility of the bidder.

Likewise, the Commissioner's Court after publishing notice in the paper and entering an order adopting a rule, may adopt a rule which permits the County to refuse to enter into any contract or other transaction with a person who owes a debt to the County. If the County provides such notice and then adopts such a rule, the County has the right to refuse to award a contract to a bidder who is the low bidder if that bidder is indebted to the County. The indebtedness may be in the form of delinquent taxes, fines, fees or delinquencies arising from other written agreements with the County.

As stated previously, the County has a fair amount of discretion in determining who is a responsible bidder and what is the lowest and best bid. However, the County's decisions in this regard cannot be arbitrary or capricious. The Commissioner's decision must have a reasonable basis. In the event a bidder who has the lowest dollar bid were to file a lawsuit against the County, in an attempt to prevent the County to award a contract to a bidder who did not submit the lowest dollar bid, the unsuccessful bidder would have to prove to the Court that the Commissioner's Court decision was an uninformed decision made arbitrarily and capriciously and had no reasonable basis in fact. As the Attorney General has stated, the Commissioner's Court is required to make an informed, nonarbitrary decision. The Attorney General has stated that the Commissioner's Court has the discretion to make these types of determinations in the absence of fraud or an abuse of discretion.

It is my recommendation that whatever factors are going to be considered by the Commissioner's Court in determining who is a responsible bidder, who provides the lowest and best and how the

determination of the lowest and best bid will be made, should be listed in the specifications. The statute requires that some of these considerations must be listed (for example, safety record). The statutes are silent as to some of the other considerations that the Commissioner's Court may take into account. My suggestion would be to list whichever of the above-described considerations the Commissioner's Court would intend to use so that no unsuccessful low dollar bidder can claim that it was unaware that the County would consider quality, availability, adaptability, capacity, character, responsibility, integrity, etc.

Another option available to the County is "local preference". The applicable law is Local Government Code Section 271.905. A County when going out for bid in purchasing personal property, which gets bids from in-county and out-of-county bidders can award the contract to the in-county bidder, even if it is not the low bidder if: (1) the bid is within 3% of the out-of-county bidder, and (2) Commissioner's Court determines in writing that the local bidder offers the County the best combination of contract price and additional economic development opportunities, including employment of local residents and increased local tax revenue.

There is a question in my mind as to how this would apply to a contract for services—as opposed to personal property purchases—or even a proposed contract for personal property and services combined? The Statute authorizes the local preference may be given for purchases of real property or personal property not affixed to real property. It doesn't say anything about services. My recommendation is that the local preference not be used by the County for the provision of services.

At one time there was a statute (Article 6702-1) that said that an out of state bidder had to beat a Texas bidder on road projects. That statute has been repealed. But it did apply to services as well as personal property. Thus, since 271.905 does not mention "services", I don't think that the County can use the local preference exemption for services—only personal property or real property.

Mixed personal property and services is a tougher question, that I just can't find an answer to. Since 271.905 does not specifically mention "services", the safest approach would be to not use the local preference option for a contract that included both personal property and services. But I think that could lead to a rather absurd result and render 271.905 relatively meaningless. For example, the county wants to buy some culverts. They go out for bid. The bid includes the delivery of the culverts to the county. The "delivery" would be "services"—under a strict interpretation. But that would mean that the county could buy culverts using the local preference if the county picked up the culverts themselves. The same would be true for asphalt or concreted or fence posts or barb wire or signage or lumber etc. I can't imagine that that is what the legislature had in mind.

A good rule of thumb in determining whether the local preference option is available would be if the contract was principally for a personal property purchase (not lease) and the "services" aspect of the contract was incidental or secondary. For example, buying asphalt and building a road. The asphalt is personal property. The building of the road is "services". But I wouldn't consider the building of the road as incidental or secondary—it would be the primary purpose of the contract.

In any event, the local preference is optional—not mandatory. There is no requirement in the statute that the option to exercise the preference must be stated in the bid specs. However, it would require the written finding of the court regarding economic development and taxes as mentioned above.

You have also inquired about discretionary exemptions available to the Commissioner's Court and modifications and change orders to a contract either once the contract has been awarded or even after the contract has been signed. I will address both issues.

Chapter 262.024 of the Local Government Code contains several discretionary exemptions. In order for the Commissioner's Court to avail itself to one or more of the discretionary exceptions, the Commissioner's Court must enter an Order granting such an exemption. Obviously, the item would have to be appropriately posted in the Agenda and then voted on affirmatively by Commissioner's Court and entered into the Minutes.

The discretionary exemptions are as follows:

- 1) An item that must be purchased in case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or preserve the property of the County.
- 2) An item necessary to preserve or protect the public health or safety of the residents of the County.
- 3) An item necessary because of unforeseen damage to public property
- 4) A personal or professional service.
- 5) Any individual work performed and paid for by the day as the work progresses provided that no individual is compensated under this Section for more than 20 working days in any 3-month period.
- 6) Any land or right-of-way.
- 7) An item that can be obtained from only one source.
- 8) An item of food.
- 9) Personal property sold at an auction by a State licensed auctioneer or a going out of business sale held in compliance with Chapter 17 of the Business and Commerce Code or by another political subdivision of the State or an entity of the Federal Government.
- 10) Any work performed under a contract for community and economic development made by a County under Local Government Code Section 381.004.
- 11) Vehicle and equipment repairs.

I will attempt to give you an example of some of the situations that might give rise to the County having the ability to utilize many of these discretionary exemptions.

The public calamity discretionary exemption would arise in the event of a flood, a hurricane, a tornado, a hail storm, a riot, a fire, or any other event that creates an unexpected situation that places the citizens of the County or property owned by the County at risk for additional harm. Generally, if the damage to the property or equipment is due to ordinary wear and tear and something that would have reasonably been anticipated to fail, this discretionary exemption is not available. The determinative factor is whether or not replacement or repair should have been reasonably anticipated. For example, the roof on a building that has exceeded its expected life

that begins to leak, would not be an unexpected event nor would it be considered a “public calamity”. On the other hand, a hurricane in the Gulf of Mexico that passes over Victoria and damages that same roof, would be considered a public calamity and then Commissioner’s Court would make the decision as to whether the purchase needed to be made promptly in order to preserve the property of the County.

The public health and safety exemption deals with items such as ambulances, squad cars, a County dump, mosquito spraying, quarantines, etc. I can envision that a drainage project could possibly fall in the health and safety category if the purchase of the equipment or item was necessary for drainage. Virtually any property purchased for use by the Sheriff’s Office or by the hospital would fit under this category.

The unforeseen damage to public property discretionary exemption would have a fair amount of overlap with the public calamity discretionary exemption. The application of the unforeseen damage to public property would be a water leak in the jail that was unanticipated and caused significant damage and needed to have an immediate repair. The same might be true for an air conditioning system that failed. The question is whether or not the damage was reasonably “unforeseen”. In this connection, again, the Commissioner’s Court has considerable discretion but must have a reasonable basis for determining that the damage was unforeseen.

Personal or professional services would include architects, engineers, attorneys, physicians, accountants, construction management consultant. Many times, it is difficult to determine whether a particular contract is for a personal or a professional service. The Attorney General and Courts have opined that a professional service would need to require special skill and technical learning. For example, one Attorney General Opinion stated that a skilled carpenter may be a professional service but that needs to be determined on a case by case basis. The third-party administrator under the insurance code could be a professional service. Personal services are different. One Attorney General Opinion has determined that a contract for janitorial services could possibly be one for personal services if the named individuals are subject to the contract. And presumably the “skilled carpenter” referred to above, could be classified as “personal services” if a particular carpenter was named in the contract. My recommendation is that outside of attorneys, architects, accountants, engineers, and physicians, it is probably best for the Commissioner’s Court to consult with an attorney and seek an opinion regarding whether the particular contract in question could be considered professional services or, for that matter, a personal service. Also, remember that the Professional Services Procurement Act prohibits a county from employing professionals on a bid basis. They must be selected based upon demonstrated competence and qualifications. Government Code 271.008

Additionally, under certain circumstances, the renewal or extension of a lease or an equipment maintenance agreement can be exempt from the bid laws if the Commissioner’s Court grants the exemption and the lease or the equipment maintenance agreement has gone through the competitive bidding procedure within the preceding year and the extension does not exceed one year. This discretionary exemption is only available one time, before competitive bidding is required again.

The County may also avail itself to the sole source discretionary exemption, the County must receive a signed statement from the County official who makes the purchase for the County as to the existence of only one source and must enter that statement in its Minutes.

Again, these are discretionary exemptions from the competitive bid laws. Many times the question as to whether a particular contract would fit into an exception will be a close call. In those instances, it makes sense to contact an attorney and get a written opinion.

Chapter 262.031 allows for changes in plans and specifications. The Act provides that if it becomes necessary to make changes in plans, specifications or proposals after a contract is made or if it becomes necessary to increase or decrease the quantity of items purchased, the Commissioner's Court can make the changes. However, the new total contract price may not be increased unless the change can be paid from available funds.

If the change order involves an increase or a decrease in the cost of \$50,000 or less, the Commissioner's Court may grant general authority to an employee to approve the change orders. However, the original contract price may not be increased by more than 25% unless the change order is necessary to comply with a Federal or State statute, rule, regulation or judicial decision that was enacted, adopted or rendered after the contract was made. Additionally, the original contract price may not be decreased by 18% or more without the consent of the contractor.

Further, after the award of a contract but before the contract is actually made, the County official who makes purchases for the County may negotiate modification of the contract if the modification is in the best interest of the County and does not substantially change the scope of the contract or cause the contract amount to exceed the next lowest bid. For the modified contract to be effective, the Commissioner's Court must approve the modified contract. See Chapter 262.0305 of the Local Government Code.

Thus, there are three requirements to make a modification. First, it has to be in the best interest of the County. Second, it cannot substantially change the scope of the contract. And, third, the new contract price cannot exceed the next lowest bid. What amounts to a substantial change in the contract will have to be determined on a case by case basis. In such instances, the County would be best served by consulting with an attorney and securing an opinion as to whether or not the change in question is "substantial".

Clearly, if the proposed change is one that would permit the next lowest bidder to complain that it would have been the low bidder had the bid specifications contained the modification, the County runs a risk that the change would be considered to be "substantial" and, therefore, not permitted.

I hope this thumbnail description of what type of matters the Commissioner's Court may take into consideration in determining who is a responsible bidder and what is the lowest and best price. If you would like any more detailed information, please let me know.

Very truly yours,

A handwritten signature in black ink that reads "Kevin D. Cullen". The signature is written in a cursive style with a large, looping initial 'K' and a distinct 'D'.

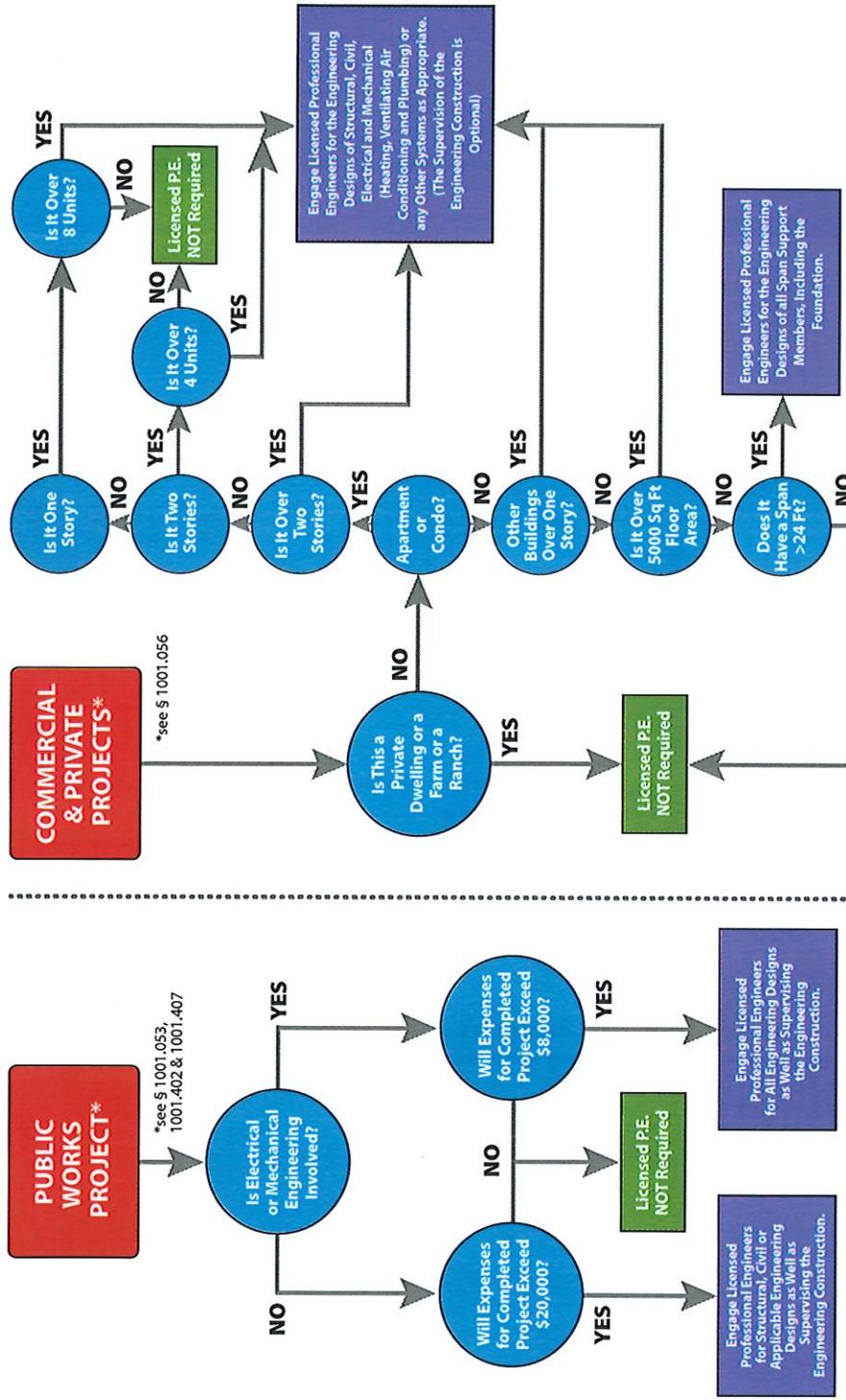
Kevin D. Cullen
KDC:ld

APPENDIX F

Texas Board of Profession Engineers (TBPE) – When is a professional engineer required on a project?

**Texas Board of Architectural Examiners (TBAE) –
When to engage an architect or approved engineer for
design and construction observation?**

When is a Professional Engineer required on a project?

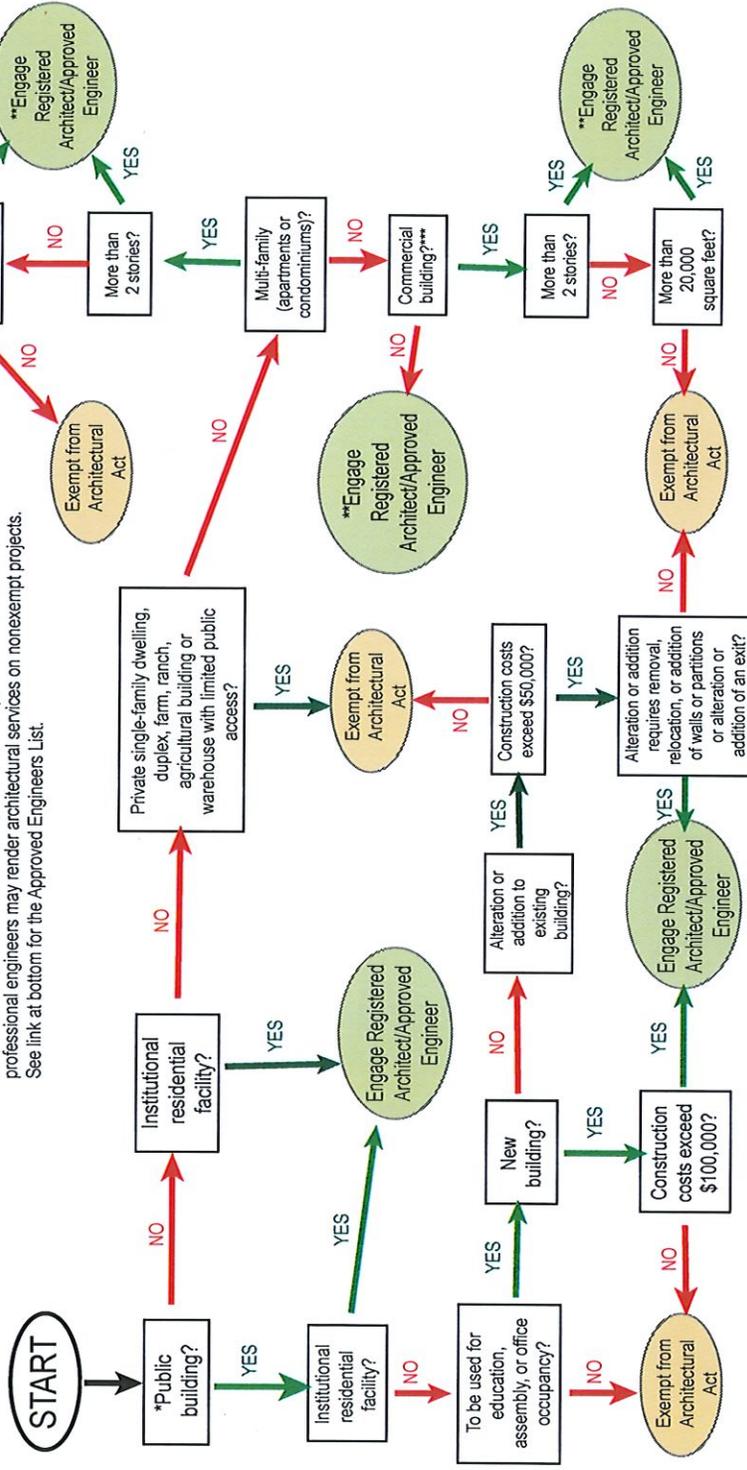


This flowchart is intended for guidance purposes only and the Texas Engineering Practice Act and Rules govern final interpretation. Local codes and ordinances may be more restrictive as long as not in conflict with the Texas Engineering Practice Act and Rules.

Visit <http://engineers.texas.gov/downloads.htm> for a copy of the Texas Engineering Practice Act and Board Rules and download this diagram.

When to Engage an Architect or Approved Engineer for Design and Construction Observation

Note: An unlicensed person who wishes to offer or perform design services pursuant to any of the exemptions must not use any form of the word "architect" in connection with the offer or performance of design services. Pursuant to HB 2284 (82nd Texas Legislature, effective September 1, 2011), a limited number of professional engineers may render architectural services on nonexempt projects. See link at bottom for the Approved Engineers List.



* "Public Building" means any building that is owned by a State agency, a political subdivision of the State, or any other public entity in Texas.
 ** If a project involves only the alteration of an existing building and the alteration does not involve a substantial structural or exitway change to the building, the project is exempt from the architectural act.
 *** "Commercial building" means an enclosed structure primarily used for the purchase, sale, or exchange of commodities or services.

List of Approved Engineers, pursuant to HB 2284: <https://www.tbae.texas.gov/Content/documents/Home/ApprovedEngineerList.pdf>
 More copies of this flowchart: <https://www.tbae.texas.gov/Content/documents/LawsEnforcement/ArchRequiredFlowChart.pdf>
 Verify the registration status of a TBAE registrant: <https://www.tbae.texas.gov/PublicInformation/FindDesignProfessional>

APPENDIX G

Texas Board of Architectural Examiners (TBAE) – Rules and Regulations of the Board Regulating the Practice of Architecture

*Please see Administrative Services for a copy
of this document.*

APPENDIX H

**Texas Board of Professional Engineers and Land Surveyors
(TBPELS) – Texas Engineering and Land Surveying
Practice Acts and Rules concerning Practice and Licensure**

*Please see Administrative Services for a copy
of this document.*