

# Purchasing & Procurement 101

*TCAA Riley Fletcher  
Basic Municipal Law  
Seminar 2024*

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# Purchasing & Procurement 101

TML Made-Easy Paper

Web of  
statutes

Broad  
Applicability  
[no instruction manual]

Lack of  
Case Law

# Chapter 252: Purchasing and Contracting Authority of Municipalities

## Broad Applicability

- Applies to Expenditures => \$50,000 from one or more city funds
- May use:
  - Competitive Sealed Bidding or Competitive Sealed Proposals
  - Reverse Auction
  - Tex. Gov't Code ch. 2269
- Permits use of Competitive Sealed Proposals for goods or services
- Prior to bid, if not CSB, Council or Delegee must determine best value

## Ch. 252 Competitive Sealed Proposals

- **Best Value Considerations:**
  - **Purchase Price**
  - **Reputation – of Goods or Services**
  - **Quality of Goods or Services**
  - **Extent to Which Both Meet City's Needs**
  - **Past Relationship**
  - **Impact to City's Ability to Comply with HUB Laws and Rules**
  - **Long-term Cost to City**
  - **Any Relevant Criteria**
- **Must Specify Relative Importance of Price & Other Factors**

# Chapter 252 – Procedures, Etc.

## Procedures

- Public Notice
  - Advertising Requirements
- RFB/RFP Methodology
  - Best Value
  - Lowest Responsible
- No post-bid modifications

## ETC.

- Consider Safety record (but not experience modifier - 2023 change)
- Permits Unit Price Contract
- Change Orders - 25% limit +/-
- Lease-Purchase Real Property
  - limit to appraised FMV

# Ch. 252: Purchasing and Contracting Authority of Municipalities

## Limited Exemptions

Public  
Calamity

Preserve or  
Protect  
Public Health  
& Safety

Unforeseen  
Damage to  
Property

Single  
source

## Ch. 271: Purchasing and Contracting Authority of Municipalities, Counties and Certain Other Local Governments

### *Applies to Multiple Types of Governmental Entities*

- §271.152 & .153: Waiver of Immunity and Limitations on Damages
- § 271.904: Anti-Indemnity for Engineers & Architects
- § 271.908: Private Development Agreements

# Ch. 2251: Payment for Good & Services

## Prompt Pay Act - Governs Timeliness

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Payment by City due 30 days after:

- Date goods are received
- Date performance is completed
- Date an invoice is received

If governing body meets only once a month or less - Payment due by the 45th day following

Vendor & Subcontractor  
Payments due 10 days after  
Receipt from City

Interest = prime plus 1%

Bona Fide Dispute Exception



# Ch. 2252: Contracts with Gov't Entity

## §2252.032 Retainage

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- 10% Max on Contracts < \$5M
- 5% Max on Contracts > \$5M
- Downstream Cannot Exceed Upstream
- Limits on City's Right to Withhold
  - Bona Fide Dispute
  - Nonconforming Work or Unpaid Subs
- Contractor Apply for Release
- May Offer Offset for Nonconforming Work Items
- City Not Required to Accept
- No Impact on Contract Rights

## §2253: Performance and Payment Bonds

*Applies to City owned Public Works Contracts*

Payment Bond for  
Contracts => \$50k

Performance Bond for  
Contracts => \$100k

- Corporate Surety
- Licensed by TDI
- Cannot Specify a Surety

# Ch. 2254: Professional Services Procurement Act

- Accounting
- Architecture
- Landscape  
architecture
- Land surveying
- Medicine
- Optometry
- Professional  
engineering
- Real estate appraising
- Professional nursing
- Forensic scientist

## *Qualification Based Awards*

- Demonstrated  
Competence
- Fair & Reasonable Price

# Ch. 2254: Professional Services Procurement Act Cont.

## *Design Professionals & Lawyers*

- A/E or Land Surveyor - must select the most highly qualified
- Contract made in violation of §2254 is VOID
- §2254.101 et. seq. Contingent Fee Legal Services

## Ch. 2258: Prevailing Wage Rates

Any worker employed on a public work contract be paid at least the general prevailing daily wage rate for work of a similar character performed in the same locality

- Includes overtime & respective overtime rates
- US Dept. of Labor

## Ch. 2269: Contracting and Delivery Procedure for Construction Project Methods

- Best-value competitive bidding
- Competitive sealed proposal
- Construction manager-agent
- Construction manager-at-risk
- Design-build
- Job order

# Ch. 2269 – Construction Procurement

- **Prevails Over Other Law Relating to Public Work Contract**
- **Delegation or Council Determination Required for Use**
- **Facility – Any Improvement to Real Property**
- **Production of Documents Relating to Evaluation Required**
- **CSP – Price must be at least 50%**
  - **Can Lower to 36.9% if City Determines in Public Interest**

**Questions?**