

# Brownsville Navigation District of Cameron County, Texas

## Procurement Policy and Procedures



C201 – C212



PROCUREMENT POLICIES AND PROCEDURES  
TABLE OF CONTENTS

---

<b>C201 (LOCAL) POLICY STATEMENT</b>	<b>1</b>
POLICY STATEMENT .....	1
<b>C202 (LOCAL) PURPOSE</b>	<b>2</b>
PURPOSE.....	2
<b>C203 (LOCAL) DEFINITIONS</b>	<b>3</b>
APPROVED VENDOR.....	3
AUTHORIZED OFFICER .....	3
BOARD/BOARD OF COMMISSIONERS .....	3
BUDGET AMENDMENT .....	3
BUDGET CONTROL SYSTEM.....	3
COMPUTER ACCOUNTING SYSTEM .....	3
DEBARRED OR SUSPENDED VENDOR .....	3
DISTRICT .....	4
EMERGENCY PURCHASE.....	4
LEVEL 1 SUPERVISOR .....	4
LEVEL 2 SUPERVISOR .....	4
PLANNED PURCHASE.....	4
PROCUREMENT/ PURCHASE.....	4
PURCHASING AUDITOR.....	4
PURCHASE ORDER .....	4
PURCHASE ORDER SYSTEM .....	5
PURCHASE REQUISITION .....	5
PURCHASE REQUISITION WORKSHEET.....	5
PURCHASING CLERK.....	5
RECEIVING CLERK.....	5
REQUESTING PARTY .....	5

PROCUREMENT POLICIES AND PROCEDURES  
TABLE OF CONTENTS

<b>C204 (LOCAL) APPLICATION OF LAW</b>	<b>6</b>
44CFR: EMERGENCY MANAGEMENT AND ASSISTANCE .....	6
CHAPTER 60 TEXAS WATER CODE .....	6
CHAPTER 2254, TEXAS GOVERNMENT CODE .....	6
SUBCHAPTER D, TEXAS LOCAL GOVERNMENT CODE.....	6
SUBCHAPTER F, TEXAS LOCAL GOVERNMENT CODE.....	7
<b>C205 (LOCAL) APPROVAL AUTHORITY</b>	<b>8</b>
APPROVAL AUTHORITY .....	8
APPROVAL AUTHORITY FOR EMERGENCY PURCHASES .....	8
AUTHORIZED OFFICER .....	8
REPORTING REQUIREMENT .....	8
<b>C206 (LOCAL) PROCUREMENT PROCEDURES</b>	<b>9</b>
PROCUREMENT PROCEDURES.....	9
AMENDMENT OF PROCUREMENT PROCEDURES .....	9
<b>C206 (EXHIBIT) PROCUREMENT PROCEDURES</b>	<b>10</b>
EXHIBIT A - PROCUREMENT PROCEDURES .....	11
PROCUREMENT PROCEDURE FUNCTION.....	11
RESPONSIBILITIES .....	11
RECOGNITION OF NEED .....	11
PURCHASE REQUISITION .....	12
PURCHASING AUTHORITY AND QUOTATION REQUIREMENTS .....	12
PURCHASING ASSOCIATIONS AND COOPERATIVES .....	12
PURCHASES FROM FEDERAL, STATE AND LOCAL GOVERNMENTS	13
PURCHASES LESS THAN \$3,000.00 .....	13
PURCHASES FROM \$3,000.00 TO LESS THAN \$5,000.00 .....	13
PURCHASES FROM \$5,000.00 TO LESS THAN \$10,000.00 .....	13
PURCHASES OF \$10,000.00 TO LESS THAN \$25,000.00 .....	14
PURCHASES OF \$25,000 TO LESS THAN \$50,000.00 .....	14
DESIGNATION OF SIGNING AUTHORITY .....	14

PROCUREMENT POLICIES AND PROCEDURES  
TABLE OF CONTENTS

PURCHASES OF \$50,000.00 OR MORE .....	15
DEBARRED AND SUSPENDED VENDORS .....	15
APPLICATION OF LAW .....	15
EMERGENCY PURCHASES .....	16
SOLICITATION OF QUOTES .....	17
SOLE SOURCE STATEMENT .....	17
PURCHASE ORDER ACCOUNTABILITY .....	18
COMPLETION AND PROCESSING OF PURCHASE ORDERS .....	18
PURCHASE ORDER DISTRIBUTION .....	19
RECEIVING REPORT .....	19
RECEIVING REPORT DISTRIBUTION .....	19
MERCHANDISE TO BE DELIVERED TO THE DISTRICT .....	20
SERVICES PROVIDED TO THE DISTRICT AND MERCHANDISE TO BE PICKED UP BY THE REQUESTING PARTY .....	20
SUBSCRIPTIONS AND REGISTRATIONS .....	20
PREPAYMENT FOR GOODS OR SERVICES .....	20
PAYMENT CYCLE .....	21
PURCHASING AUDITOR .....	21
EXHIBIT B – PURCHASE REQUISITION WORKSHEET .....	22
EXHIBIT C – VENDOR REGISTRATION FORM .....	23
EXHIBIT D – SOLE SOURCE STATEMENT .....	24
<b>C207 (LOCAL) EXEMPTIONS</b> .....	<b>25</b>
EXEMPTIONS .....	25
SOLE SOURCE STATEMENT .....	26
PROFESSIONAL AND CONSULTING SERVICES .....	26
<b>C208 (LOCAL) VENDOR PROTEST PROCEDURE</b> .....	<b>27</b>
VENDOR RIGHTS OF PROTEST .....	27
PROTEST CIRCUMSTANCES .....	27
PROTEST FORM .....	28



PROCUREMENT POLICIES AND PROCEDURES  
TABLE OF CONTENTS

SUBMISSION.....	28
CONSIDERATION OF THE PROTEST.....	28
DETERMINATION BY DIRECTOR OF FINANCE.....	29
APPEAL TO PORT DIRECTOR AND CEO.....	29
REVIEW BY THE PORT DIRECTOR AND CEO.....	30
APPEAL TO THE BOARD OF COMMISSIONERS.....	30
FINAL ADMINISTRATIVE ACTION.....	30
DISCLOSURE.....	30
DOCUMENTATION.....	30
FEDERAL REVIEW.....	31
<b>C210 (LEGAL) TEXAS WATER CODE - CHAPTER 60, SUBCHAPTER N</b>	<b>32</b>
SEC. 60.401. APPLICATION OF SUBCHAPTER.....	32
SEC. 60.402. DEFINITIONS .....	33
SEC. 60.403. CONTRACTS: PURCHASES .....	34
SEC. 60.4035. CONTRACTS: EMERGENCY PURCHASES .....	35
SEC. 60.404. COMPETITIVE BIDDING REQUIREMENTS.....	36
SEC. 60.405. PROPOSAL PROCEDURES.....	37
SEC. 60.406. COMPETITIVE BIDDING AND PROPOSAL PROCEDURES REQUIRED FOR CERTAIN CONTRACTS .....	38
SEC. 60.407. OPENING BIDS .....	38
SEC. 60.408. CONTRACT AWARD .....	39
SEC. 60.409. PRICING METHOD .....	40
SEC. 60.410. CHANGES IN PLANS AND SPECIFICATIONS.....	40
SEC. 60.411. BOND REQUIREMENTS.....	41
SEC. 60.4115. NOTIFICATION OF SAFETY AND ENVIRONMENTAL RECORD OF CONTRACTOR .....	42
SEC. 60.412. EXEMPTIONS.....	43
SEC. 60.4125. ALTERNATIVE METHODS FOR CERTAIN PURCHASES OR CONTRACTS.....	44
SEC. 60.413. CRIMINAL PENALTY .....	45

PROCUREMENT POLICIES AND PROCEDURES  
TABLE OF CONTENTS

---

SEC. 60.414. APPLICATION OF OTHER LAW .....	45
<b>C210 (EXHIBIT) TEXAS WATER CODE - CHAPTER 60, SUBCHAPTER N RESOLUTION</b>	<b>46</b>
EXHIBIT A - RESOLUTION .....	47
<b>C211 (LEGAL) GOVERNMENT CODE - CHAPTER 2254</b>	<b>48</b>
SUBCHAPTER A. PROFESSIONAL SERVICES .....	48
SEC. 2254.001. SHORT TITLE.....	48
SEC. 2254.002 DEFINITIONS .....	49
SEC. 2254.003. SELECTION OF PROVIDER; FEES.....	50
SEC. 2254.0031. INDEMNIFICATION .....	50
SEC. 2254.004. CONTRACT FOR PROFESSIONAL SERVICES OF ARCHITECT, ENGINEER, OR SURVEYOR .....	51
SEC. 2254.005. VOID CONTRACT.....	51
SEC. 2254.006. CONTRACT NOTIFICATION .....	51
SEC. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF.....	52
SUBCHAPTER B. CONSULTING SERVICES.....	53
SEC. 2254.021. DEFINITIONS .....	54
SEC. 2254.022. INTERPRETATION OF SUBCHAPTER.....	55
SEC. 2254.023. APPLICABILITY OF SUBCHAPTER .....	56
SEC. 2254.024. EXEMPTIONS.....	57
SEC. 2254.025. EMERGENCY WAIVER .....	58
SEC. 2254.026. CONTRACT WITH CONSULTANT .....	59
SEC. 2254.027. SELECTION OF CONSULTANT.....	59
SEC. 2254.028. NOTICE OF INTENT: MAJOR CONSULTING SERVICES CONTRACT	60
SEC. 2254.029. PUBLICATION IN TEXAS REGISTER BEFORE ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT.....	61
SEC. 2254.030. PUBLICATION IN TEXAS REGISTER AFTER ENTERING INTO MAJOR CONSULTING SERVICES CONTRACT .....	61
SEC 2254.0301. CONTRACT NOTIFICATION .....	62
SEC. 2254.031. RENEWAL; AMENDMENT; EXTENSION.....	63
SEC. 2254.032. CONFLICTS OF INTEREST .....	64

---

PROCUREMENT POLICIES AND PROCEDURES  
TABLE OF CONTENTS

---

SEC. 2254.033. RESTRICTION ON FORMER EMPLOYEES OF A STATE AGENCY .....	64
SEC. 2254.034. CONTRACT VOID.....	65
SEC. 2254.035. DIVIDING CONTRACTS .....	65
SEC. 2254.036. ARCHIVES .....	66
SEC. 2254.037. REPORTS .....	66
SEC.2254.038. MIXED CONTRACTS .....	66
SEC. 2254.039. COMPTROLLER’S RULES .....	66
SEC. 2254.040. PROCUREMENT BY COMPTROLLER .....	67
SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES.....	68
SEC. 2254.101. DEFINITIONS .....	68
SEC. 2254.102. APPLICABILITY .....	69
SEC. 2254.103. CONTRACT APPROVAL; SIGNATURE.....	70
SEC. 2254.104. TIME AND EXPENSE RECORDS REQUIRED; FINAL STATEMENT....	72
SEC. 2254.105. CERTAIN GENERAL CONTRCT REQUIREMENTS .....	73
SEC. 2254.106. CONTRACT REQUIREMENTS: COMPUTATION OF CONTINGENT FEE; REIMBURSEMENT OF EXPENSES .....	74
SEC. 2254.107. MIXED HOURLY AND CONTINGENT FEE CONTRACTS; REIMBURSEMENT FOR SUBCONTRACTED WORK .....	76
SEC. 2254.108. FEE PAYMENT AND EXPENSE REIMBURSEMENT .....	77
SEC. 2254.109. EFFECT ON OTHER LAW .....	78
SUBCHAPTER D. OUTSIDE LEGAL SERVICES.....	79
SEC. 2254.151. DEFINITION.....	79
SEC. 2254.152. APPLICABILITY .....	79
SEC. 2254.153. CONTRACTS FOR LEGAL SERVICES AUTHORIZED.....	79
SEC. 2254.154. ATTORNEY GENERAL; COMPETITIVE PROCUREMENT .....	79
<b>C212 (LEGAL) TEXAS WATER CODE - CHAPTER 60, SUBCHAPTER O</b>	<b>80</b>
PURCHASE CONTRACTS.....	80
SEC. 60.451. DEFINITIONS .....	81
SEC. 60.452. APPLICABILITY OF SUBCHAPTER; OTHER LAW.....	83

---

PROCUREMENT POLICIES AND PROCEDURES

TABLE OF CONTENTS

---

SEC. 60.453. AUTHORITY TO ADOPT RULES .....	83
SEC. 60.454. PURCHASING CONTRACT METHODS.....	83
SEC. 60.455. RIGHT TO REJECT ALL BIDS .....	84
SEC. 60.456. NOTICE REQUIREMENTS .....	84
SEC. 60.457. DELEGATION.....	84
SEC. 60.458. PURCHASE CONTRACT AWARD CRITERIA .....	85
SEC. 60.459. EVALUATION OF BIDS AND PROPOSALS FOR CONTRUCTION SERVICES.....	85
SEC. 60.460. DESIGN-BUILD CONTRACTS FOR FACILITIES .....	86
SEC. 60.461. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT .	89
SEC. 60.462. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK	90
SEC. 60.463. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS .....	92
SEC. 60.464. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR .....	94



PROCUREMENT POLICIES AND PROCEDURES  
POLICY STATEMENT

---

**POLICY STATEMENT** It is the responsibility of the Brownsville Navigation District to represent the best interest of the District's various vendors and taxpayers. In order to fulfill this responsibility, the District has developed this *Procurement Policy and Procedures* to provide a fair and consistent treatment of its vendors, and to insure that public funds are expended in the most prudent manner.

Additionally, it is the responsibility of the District and its employees to comply with the purchasing limitations and procedures mandated by applicable state laws and the Board of Commissioners. In the event that the District should assume local sponsorship of any project, funded in whole or in part by the Government of the United States of America, it is necessary that the procurement policy utilized in expending such reimbursable funds comply with all Federal procurement laws and policies applicable to the particular project. It is beyond the scope of this policy to consider the many federal procurement laws and policies applicable to each of the numerous forms of Federal project funding available to the District.

The District will attempt to locate qualified vendors located within the boundaries of the District and give them every opportunity to compete for the District's purchases of goods and services.

PROCUREMENT POLICIES AND PROCEDURES  
PURPOSE

---

**PURPOSE**

The purpose of this policy is to:

- Define those provisions of the law of the State of Texas applicable to purchases made by the District.
- Establish the fiscal limits of purchasing authority delegated by the Board of Commissioners to the Port Director and CEO or the Deputy Port Director(s) (Level 1 Supervisor).
- Establish the procedure to be followed for approval and purchase of all goods or services that are required for the operations of the Brownsville Navigation District.

PROCUREMENT POLICIES AND PROCEDURES  
DEFINITIONS

---

<b>APPROVED VENDOR</b>	<b><u>Approved Vendor</u></b> - Any vendor until they have been found to be unsatisfactory. Those vendors found to be unsatisfactory will be placed on a listing that is maintained by the Director of Finance at the request of any District employee with purchasing authority under this Policy. The reason that the vendor is listed as unsatisfactory will be noted on the listing along with the name of the District employee who has requested that the vendor be placed on the list. The appropriate Level 1 Supervisor shall approve additions to the listing of unsatisfactory vendors. The Director of Finance will send a notice of their inclusion on the listing of unapproved vendors by mail to the vendor in question along with the reason for their inclusion. This notice will also detail the measures, if any, that the vendor can take to remove their name from the listing of unapproved vendors. The Level 1 Supervisor will approve the removal of vendors from the listing of unapproved vendors.
<b>AUTHORIZED OFFICER</b>	<b><u>Authorized Officer</u></b> – The employee of the District who has been authorized, in addition to the Port Director and CEO, in writing, by the Board of Commissioners to make emergency purchases under Policy C205.
<b>BOARD/BOARD OF COMMISSIONERS</b>	<b><u>Board/Board of Commissioners</u></b> – The Board of Navigation and Canal Commissioners of the Brownsville Navigation District.
<b>BUDGET AMENDMENT</b>	<b><u>Budget Amendment</u></b> – This is the increase or decrease of a budgeted item that is not offset by a compensating adjustment to a budgeted item in the same division. This adjustment may or may not affect the net income projected in the adopted budget. A budget amendment requires approval by the Board of Commissioners in open session.
<b>BUDGET CONTROL SYSTEM</b>	<b><u>Budget Control System</u></b> – This system utilizes a third-party software to track purchases by division and account number against the authorized budget for the current fiscal year.
<b>COMPUTER ACCOUNTING SYSTEM</b>	<b><u>Computer Accounting System</u></b> – The computerized accounting package in use by the Brownsville Navigation District, the Southware Accounting program.
<b>DEBARRED OR SUSPENDED VENDOR</b>	<b><u>Debarred or Suspended Vendor</u></b> – Any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

PROCUREMENT POLICIES AND PROCEDURES  
DEFINITIONS

---

<b>DISTRICT</b>	<b><u>District</u></b> – The Brownsville Navigation District.
<b>EMERGENCY PURCHASE</b>	<b><u>Emergency Purchase</u></b> – The purchase of goods or services that must be obtained in a case of public calamity; or goods or services necessary to preserve or protect the public health or safety; or goods or services made necessary by unforeseen damage to the property of the Brownsville Navigation District; or goods or services required to be purchased in response to directives from a federal or state agency responsible for domestic security during a period of heightened security. These items must be exempted by Section 60.412 of the Water Code.
<b>LEVEL 1 SUPERVISOR</b>	<b><u>Level 1 Supervisor</u></b> – The Port Director and CEO or the Deputy Port Director(s). In the absence of the Port Director and CEO, the Deputy Port Director shall assume the responsibilities and authority of the Port Director and CEO under the <i>Procurement Policies</i> .
<b>LEVEL 2 SUPERVISOR</b>	<b><u>Level 2 Supervisor</u></b> – Department Directors, including the Harbormaster and the Chief of Police. In the absence of a Level 1 Supervisor, a Level 2 Supervisor may assume the responsibilities and authority of the Port Director and CEO under the <i>Procurement Policies</i> , with the exception of the authority to make emergency purchases under C205(Local), which authority must be conferred by the Board of Commissioners in writing.
<b>PLANNED PURCHASE</b>	<b><u>Planned Purchase</u></b> – All purchases that are not emergency purchases.
<b>PROCUREMENT/ PURCHASE</b>	<b><u>Procurement/Purchase</u></b> – The terms procurement and purchase in this policy refer to all purchases of goods or services required for the operation of the Brownsville Navigation District. The terms do not include an installment or other payment made pursuant to a contract approved by the Board of Commissioners.
<b>PURCHASING AUDITOR</b>	<b><u>Purchasing Auditor</u></b> – The Director of Finance or a representative designated by the Director of Finance who will be responsible for monitoring the implementation of this policy.
<b>PURCHASE ORDER</b>	<b><u>Purchase Order</u></b> – The Purchase Order form currently in use by the Brownsville Navigation District. May be computer generated in part or in whole.

PROCUREMENT POLICIES AND PROCEDURES  
DEFINITIONS

---

<b>PURCHASE ORDER SYSTEM</b>	<b><u>Purchase Order System</u></b> – The system of control of purchases for the Brownsville Navigation District. This system includes the use of the Purchase Requisition Form, the Purchase Order form, signature authority levels, and the Inventory and Sales module of the Southware Accounting program.
<b>PURCHASE REQUISITION</b>	<b><u>Purchase Requisition</u></b> - The Purchase Requisition form currently in use by the Brownsville Navigation District. May be computer generated in part or in whole.
<b>PURCHASE REQUISITION WORKSHEET</b>	<b><u>Purchase Requisition Worksheet</u></b> – The worksheet prepared to record the oral quotes solicited and/or to summarize the written quotes received in relation to a Purchase Requisition.
<b>PURCHASING CLERK</b>	<b><u>Purchasing Clerk</u></b> – The District employee(s) assigned by the Director of Finance the duties and responsibilities of processing Purchase Orders.
<b>RECEIVING CLERK</b>	<b><u>Receiving Clerk</u></b> – The District employee(s) assigned the responsibility for receiving merchandise delivered to the District.
<b>REQUESTING PARTY</b>	<b><u>Requesting Party</u></b> – The District employee with the appropriate level of purchasing authority who has properly completed a Purchase Requisition, or his/her designated representative.

PROCUREMENT POLICIES AND PROCEDURES  
APPLICATION OF LAW**44CFR: EMERGENCY  
MANAGEMENT AND  
ASSISTANCE**

**44 CFR § 13.35** – Subawards to debarred and suspended parties – The District may not award a contract or make any purchase from a vendor who is on the Suspended and Debarred Parties list when federal funds are used in whole or in part.

**CHAPTER 60 TEXAS  
WATER CODE**

**Chapter 60, Texas Water Code** - All purchases made by the District shall be made in accordance with the provisions of Subchapter N, Chapter 60 of the Water Code in effect on the date of the purchase, or a corresponding section of a subsequently enacted or amended state law applying to navigation districts. A copy of Subchapter N, Chapter 60 of the Water Code can be found in Policy C210 (LEGAL).

The Resolution of the Board of Commissioners of the Brownsville Navigation District adopting the provisions of Subchapter N can be found in Policy C210(EXHIBIT A). Also provided, however, that no provision of Subchapter N, or amendment thereto, resulting in Subchapter N's being less restrictive than the provisions of this policy shall serve to change this policy, without action by the Board of Commissioners.

Nothing in this policy shall be interpreted as adopting Subchapter O (Purchase Contract), Chapter 60 of the Water Code. However, nothing in this shall be interpreted as to prevent the adoption of Subchapter O (Purchase Contracts) by the Board of Commissioners in regard to a particular project. A copy of Subchapter O (Purchase Contracts) can be found in Policy C212 (LEGAL)).

**CHAPTER 2254,  
TEXAS  
GOVERNMENT  
CODE**

**Chapter 2254, Texas Government Code** – The District shall comply with the provisions of Chapter 2254, Texas Government Code, in the procurement of professional and consulting services. A copy of Chapter 2254, Texas Government Code (Professional and Consulting Services) can be found in Policy C211 (LEGAL).

**SUBCHAPTER D,  
LOCAL  
GOVERNMENT  
CODE**

**Subchapter D, Texas Local Government Code** – The District shall, whenever practicable, take advantage of the purchasing programs that have been or may be established by the Texas State Comptroller under Section 271.082 of the Local Government Code which perform purchasing services for local governments. The District's intention to participate in any such established purchasing program shall be evidenced by a Resolution of the Board of Commissioners to be filed with the appropriate commission, in compliance with Section 271.083 of the Local Government Code. Purchases that are made through a purchasing program established by the Texas State Comptroller under Subchapter D of the Local Government Code are deemed to be in compliance with all competitive bidding requirements.



PROCUREMENT POLICIES AND PROCEDURES  
APPLICATION OF LAW

**SUBCHAPTER F,  
LOCAL  
GOVERNMENT  
CODE**

**Subchapter F, Texas Local Government Code** – The District shall, whenever practicable, take advantage of the cooperative purchasing programs that have been or may be established by organizations of government under Section 271.102 of the Local Government Code which perform purchasing services for local governments. Purchases that are made through a cooperative purchasing program established under Subchapter F of the Local Government Code are deemed to be in compliance with all competitive bidding requirements.

PROCUREMENT POLICIES AND PROCEDURES  
PROCUREMENT PROCEDURES

**APPROVAL  
AUTHORITY**

The approval of purchases of various dollar values shall be made by the individuals shown below:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>A. Less than \$25,000.00</li> <li>B. \$25,000.00 and greater</li> </ul> | <ul style="list-style-type: none"> <li>Level 1 Supervisor</li> <li>The Board of Commissioners during open session</li> </ul> |
|--|--|

**APPROVAL  
AUTHORITY FOR  
EMERGENCY  
PURCHASES**

The Port Director and CEO is authorized to make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts in an amount that exceeds \$25,000.00 if necessary:

- A. To preserve or protect the public health and safety of the residents of the District;
- B. To preserve the property of the District in the case of a public calamity;
- C. To repair unforeseen damage to the property of the District; or
- D. To respond to security directives issued by:
  - 1. The federal Department of Homeland Security, including the Transportation Security Administration;
  - 2. The United States Coast Guard;
  - 3. The federal Department of Transportation;
  - 4. Another federal or state agency responsible for domestic security.

In the absence of the Port Director and CEO, the Deputy Port Director(s) shall assume the authority of the Port Director and CEO to make emergency purchases under this item.

**AUTHORIZED  
OFFICER**

The Board of Commissioners may authorize another officer of the District, in writing, to make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts that exceed the amounts authorized for routine purchases or contracts under this policy if necessary:

- A. To preserve or protect the public health and safety of the residents of the District;
- B. To preserve the property of the District in the case of a public calamity;
- C. To repair unforeseen damage to the property of the District; or
- D. To respond to security directives issued by:
  - 1. The federal Department of Homeland Security, including the Transportation Security Administration;
  - 2. The United States Coast Guard;
  - 3. The federal Department of Transportation;
  - 4. Another federal or state agency responsible for domestic security.

**REPORTING  
REQUIREMENT**

The Port Director and CEO or authorized officer shall notify the Board of Commissioners of any emergency purchase made under this policy not later than 48 hours after the purchase is made.

PROCUREMENT POLICIES AND PROCEDURES  
PROCUREMENT PROCEDURES

---

**PROCUREMENT  
PROCEDURES**

The procedures to be followed for approval and purchase of all goods and services by the District are hereby initially established as shown in Policy C206 (EXHIBIT A).

**AMENDMENT OF  
PROCUREMENT  
PROCEDURES**

The Port Director and CEO is authorized to amend Policy C206 (EXHIBIT A) as necessary (e.g. to correspond with changes in organizational structure) without affecting the validity of the other provisions of this policy.

PROCUREMENT POLICIES AND PROCEDURES  
PROCUREMENT PROCEDURES

---

**Exhibit A:** Procurement Procedures – 11 pages

**Exhibit B:** Purchase Requisition Worksheet – 1 page

**Exhibit C:** Vendor Registration Form – 1 page

**Exhibit D:** Sole Source Statement – 1 page

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

---

<b>PROCUREMENT PROCEDURE FUNCTION</b>	This <i>Procurement Procedure</i> document will function as the reference document for all purchases.
<b>RESPONSIBILITIES</b>	<p>The Level 2 Supervisor of each Department will be responsible to the Port Director and CEO for the purchases made by his department, including, but not limited to:</p> <p>Implementation and adherence to District procedures and/or directives from proper authority for the function of the purchasing system.</p> <p>Receipt, storage, security and issue of all supplies and equipment according to District procedures and/or directives from proper authority.</p> <p>Coordination with other departments to insure a cohesive effort in an efficient and economical operation of the District.</p> <p>Proper documentation of all purchases initiated by his department.</p> <p>The Level 2 Supervisor assigned to each Divisional Budget will be responsible for implementing a budget control system to assure that the divisional budgets are not exceeded. Should the Level 2 Supervisor discover a need for a budget amendment or budget adjustment, the Director of Finance must be immediately notified so that appropriate steps may be taken.</p>
<b>RECOGNITION OF NEED</b>	<p>An employee at any level may recognize a need and initiate the purchase.</p> <p>If the employee has Level 1 or Level 2 authority, he shall follow the procedure outlined below.</p> <p>If the employee does not have Level 1 or Level 2 authority, he shall report the need to his supervisor for action.</p>

**PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES**

(EXHIBIT A)

**PURCHASE  
REQUISITION**

The Requesting Party shall complete the Purchase Requisition with the detail appropriate for the purchase, entering all data required, including a description of the item(s) requested and their intended use, the expense code, and the source of supply. An estimate of the cost of the items shall be included where the actual price is not known to the Requesting Party. The line-item budget amounts for the expense codes before and after the purchase shall be indicated on the Purchase Requisition where indicated. Purchase Orders with negative line-item budget amounts will not be processed until corrective action has been initiated.

The unit price of each item shall be indicated on the purchase requisition. This unit price shall be ascertained by following the quotation procedures specified below for the appropriate dollar amount of the total Purchase Requisition.

Purchase Requisitions shall be accounted for by a six-digit number. The first two digits correspond to the division the supervisor initiating the Purchase Requisition is assigned to. (In the case of a supervisor that is assigned to multiple divisions, the supervisor may elect to use one for all of their Purchase Requisitions.) The last four numbers shall be the numerical sequence within the divisions issued Purchase Requisitions, to begin with 0001.

The signature of the employee with the appropriate purchasing authority on the completed Purchase Requisition shall serve to validate the Purchase Requisition.

Once completed, the Purchase Requisition shall be submitted to the Purchasing Clerk for processing. The Requesting Party is encouraged to keep a file copy of the Purchase Requisition. The Purchasing Clerk will review each Purchase Requisition to assure that all required elements have been included. Purchase Requisitions that require correction will be returned to the Requesting Party.

**PURCHASING  
AUTHORITY AND  
QUOTATION  
REQUIREMENTS**

All purchases are subject to the purchasing authority and quotation requirements as follows.

**PURCHASING  
ASSOCIATIONS AND  
COOPERATIVES**

All purchases made through the cooperative purchasing programs authorized under Subchapter D or Subchapter F of the Local Government Code are deemed to comply with competitive bidding requirements under the law and the solicitation of quotations required in this policy, as long as the procedures established by the cooperative program are followed. Purchase Requisitions and Purchase Orders will still be required as described in Item IV of these Procedures.



PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

---

<b>PURCHASES FROM FEDERAL, STATE AND LOCAL GOVERNMENTS</b>	Purchases of surplus equipment and materials from Federal, State and Local governments and agencies of less than \$25,000 are deemed to comply with the solicitation of quotations required in this policy. Purchase Requisitions and Purchase Orders will be required as described in Item IV of these Procedures and approval authority will be required as appropriate to the dollar amount of the purchase.
<b>PURCHASES LESS THAN \$3,000.00</b>	<b>Purchases less than \$3,000.00 (Open market, Level 1 approval)</b> For planned purchases of less than \$3,000.00, a Level 1 or Level 2 Supervisor, or his authorized representative, shall complete a Purchase Requisition. A Purchase Requisition shall be prepared as specified above, and shall be approved by a District employee with Level 1 authority. The Purchase Requisition shall then be submitted to the Purchasing Clerk for processing. Such purchases may be made in the open market, preferably from a vendor maintaining a place of business within the District's geographic limits, after the Requesting Party has made such inquiry as he/she deems necessary to insure that the price obtained is the most advantageous to the District. Neither written nor verbal quotations are required for purchases less than \$3,000.00.
<b>PURCHASES FROM \$3,000.00 TO LESS THAN \$5,000.00</b>	<b>Purchases from \$3,000.00 to less than \$5,000.00 (Oral quotes, Level 1 approval)</b> For planned purchases of \$3,000.00 or more but less than \$5,000.00, a Level 1 or Level 2 Supervisor, or his authorized representative, shall complete a Purchase Requisition. The Purchase Requisition shall be prepared as specified above, and shall be approved by a District employee with Level 1 authority. The Requesting Party shall solicit <b>oral</b> quotations from at least three suppliers, preferably those maintaining a place of business within the District's geographic limits. The information obtained shall be listed on the Purchase Requisition Worksheet. The Purchase Requisition shall then be submitted to the Purchasing Clerk for processing.
<b>PURCHASES FROM \$5,000.00 TO LESS THAN \$10,000.00</b>	<b>Purchases from \$5,000.00 to less than \$10,000.00 (Written quotes, Level 1 approval)</b> For planned purchases of \$5,000.00 or more but less than \$10,000.00, the Level 1 or Level 2 Supervisor, or his authorized representative, shall complete a Purchase Requisition. The Purchase Requisition shall be prepared as specified above, and shall be approved by a District employee with Level 1 authority. The Requesting Party shall solicit <b>written</b> quotations from at least three suppliers, preferably those maintaining a place of business within the District's geographic limits. The information obtained shall be listed on the Purchase Requisition Worksheet and the written quotations shall be attached to it. The Purchase Requisition shall then be submitted to the Purchasing Clerk for processing.

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

**PURCHASES OF  
\$10,000.00 TO LESS  
THAN \$25,000.00****Purchases of \$10,000.00 to less than \$25,000.00  
(Sealed quotes)**

For planned purchases of \$10,000.00 or more but less than \$25,000.00, the Level 1 or Level 2 Supervisor, or his authorized representative, shall complete a Purchase Requisition. The Purchase Requisition shall be prepared as specified above, and shall be approved by a District employee with Level 1 authority. The Requesting Party shall solicit **sealed, written** quotations from at least three suppliers, preferably those maintaining a place of business within the District's geographic limits. Sealed quotations for a particular purchase shall be opened at a pre-designated time by the Director of Finance, or his/her designated representative, and witnessed by a District employee with Level 1 authority. The information obtained shall be listed on the Purchase Requisition Worksheet and the written quotations shall be attached to it. The Purchase Requisition shall then be submitted to the Purchasing Clerk for processing.

**PURCHASES OF  
\$25,000.00 TO LESS  
THAN \$50,000.00****Purchases of 25,000.00 to less than \$50,000.00  
(Sealed quotes, Board approval)**

For planned purchases of \$25,000.00 to less than \$50,000.00, the Level 1 or Level 2 Supervisor, or his authorized representative, shall complete a Purchase Requisition. The Purchase Requisition shall be prepared as specified above, and shall be approved by a District employee with Level 1 authority. The Requesting Party shall solicit **sealed, written** quotations from at least three suppliers, preferably those maintaining a place of business within the District's geographic limits. Sealed quotations for a particular purchase shall be opened at a pre-designated time by the Director of Finance, or his/her designated representative, and witnessed by a District employee with Level 1 authority. The information obtained shall be listed on the Purchase Requisition Worksheet and the written quotations shall be attached to it. The Level 1 Supervisor shall then place an item on the agenda for the next Board of Commissioners meeting to request that the Board of Commissioners award the purchase. The Purchase Requisition shall then be submitted to the Purchasing Clerk for processing.

In soliciting quotations from suppliers, the Requesting Party must assure that there is a comprehensive effort to include as many eligible suppliers in the process as possible. Utilization of electronic means of solicitation should be a part of the process, and the practice of creating and using bidder lists is encouraged.

**DESIGNATION OF  
SIGNING  
AUTHORITY**

The Port Director and CEO is authorized to designate a District employee with Level 2 authority to approve Purchase Requisitions requiring Level 1 approval authority in the event that he and the Deputy Port Director(s) are out of the office at the same time.

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

**PURCHASES OF  
\$50,000.00 OR MORE**

**Purchases of \$50,000.00 or more  
(Sealed quotes, Board approval)**

For purchases of \$50,000.00 or more, the Level 1 Supervisor shall place an item on the agenda for the next Board of Commissioners meeting to request authority to solicit sealed competitive bids or sealed proposals as appropriate under law. The Port Director and CEO is authorized to proceed with the advertising requirements pending Board approval; however, the bids or proposals will not be opened until the Board has approved the solicitation of bids or proposals. Bids for purchases of \$50,000.00 or more which have received Board approval as itemized in this section, will be opened by the Director of Finance, or his/her designated representative, and witnessed by a District employee with Level 1 authority.

**DEBARRED AND  
SUSPENDED  
VENDORS**

In the event that a purchase is to be made in whole or in part from Federal funds, the District must assure that the vendor selected is not on the list of parties that are debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. The requesting party must request a SAMs Exclusion Report from the Director of Finance. The SAMs Exclusion Report, if clear, must be attached to the contract or to the purchase order, as appropriate. If the SAMs Exclusion Report is not clear, the contract may not be awarded and/or the purchase order may not be processed for that vendor.

**APPLICATION OF  
LAW**

Subchapter N of Chapter 60 of the Water Code, see Policy C210(LEGAL) and Chapter 2254, Texas Government Code, see Policy C211(LEGAL), shall be followed.

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

**EMERGENCY  
PURCHASES**

**Emergency Purchases**

The Port Director and CEO or an authorized officer of the District may make emergency purchases or contracts or emergency amendments to existing purchase orders or contract in an amount that exceeds the amount authorized for routine purchases or contracts if the purchases are for:

- A. An item that must be purchased in a case of a public calamity if it is necessary to make the purchase promptly to relieve the necessity of the public or to preserve the property of the District;
- B. An item necessary to preserve or protect the public health or the safety of the residents of the District;
- C. An item made necessary by unforeseen damage to the property of the District;
- D. Any item necessary to secure the District during a period of heightened security as determined by:
  1. The federal Department of Homeland Security, including the
  2. Transportation Security Administration;
  3. The United States Coast Guard
  4. The United States Bureau of Customs and Border Protection;
  5. The Federal Bureau of Investigation;
  6. The federal Department of Transportation, including the Maritime Administration; or
  7. Another federal, state, or local agency.

The Port Director and CEO or the authorized officer of the District shall notify the Board of Commissioners of any purchase made under this section no later than 48 hours after the purchase is made.

Emergency Purchases must meet the criteria outlined in the Policy C207(LOCAL) EXEMPTIONS. A Purchase Requisition must be completed and submitted for processing within two working days following the date of the emergency purchase. This Purchase Requisition and the resulting Purchase Order are to be prepared following the procedures for a planned purchase. The box "Emergency Purchase" on the Purchase Requisition is to be marked.

Competitive quotation and bidding requirements are waived for emergency purchases. Signature authority must still be met. Emergency purchases of \$25,000.00 and greater must be reported to the Board of Commissioners in open session at their next meeting for ratification.

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

---

**SOLICITATION OF  
QUOTES**

It is the responsibility of the Requesting Party to solicit oral or written quotes from approved vendors as is appropriate to the level of the purchase. The results of this solicitation shall be recorded on the Purchase Requisition Worksheet. Recognizing that the District cannot compel vendors to respond to requests for quotes, the fact that three quotes have not been obtained shall not prevent the completion of a particular purchase. In this event, the Requesting Party is responsible to make a good faith effort to obtain three quotes from vendors who are in the business of providing the subject goods and/or services. The Requesting Party should make every attempt to locate vendors within the boundaries of the District before soliciting quotes from vendors outside of the District's boundaries. Proper documentation of these efforts, to include contact names, phone numbers, dates of contact, and the results of the contact, shall be recorded on the Purchase Requisition Worksheet.

Once the appropriate quotations have been obtained, the Requesting Party will select the approved vendor with whom the purchase will be made. Vendor selection should be made on the basis of cost, service, and/or product availability, in addition to the vendor's physical location.

Bid packets and advertising for bids or proposals shall be the responsibility of the Requesting Party.

It is expressly prohibited for District employees to disclose a quote received from one vendor to any other prospective vendor. It is expressly prohibited for a District employee to request that a vendor provide a lower quote once a quote has been received from another vendor. Once the quotes have been solicited and received from vendors, the Requesting Party may attempt to negotiate a lower price or better terms with the vendor providing the lowest quote. All requests for this information shall be handled as requests for Public Information.

**SOLE SOURCE  
STATEMENT**

If an item that is classified as exempt under item G above is purchased, the requester shall sign a statement as to the existence of only one source for the purchase and the District shall enter the statement into the records of that purchase. A sample of this form can be found in Policy C206(EXHIBIT D).

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

**PURCHASE ORDER  
ACCOUNTABILITY**

All purchases of goods and/or services for the District must be made within the Purchase Order System.

Purchase Order numbers shall be controlled by the computer accounting system. Each Purchase Order shall be accounted for by number.

The Purchasing Clerk shall place the Purchase Order Number assigned on the Purchase Requisition.

**COMPLETION AND  
PROCESSING OF  
PURCHASE ORDERS**

The Purchasing Clerk shall determine if the selected vendor has an established vendor account with the District. New vendor numbers shall be requested from the Accounting Department by the use of a New Vendor Form, to be completed by the Requesting Party. The vendor number for the vendor selected by the Requesting Party shall be placed on the Purchase Requisition Form in the indicated space.

The Purchasing Clerk shall enter the information provided in the Purchase Requisition into the computer accounting system and shall process the Purchase Orders.

The Purchasing Clerk may combine multiple Purchase Requisitions into a single Purchase Order from one vendor. Signature authority and competitive quotation requirements for the several Purchase Requisitions combined under this item will be based on the total of the Purchase Order.

Each Purchase Requisition shall represent a purchase from a single vendor.

The Purchasing Clerk will enter the Purchase Requisition information into the computer accounting system, and the computer accounting system will issue a Purchase Order number to the transaction. This number will be written in the appropriate space on the Purchase Requisition.

Once the Purchase Order number has been assigned, the Vendor and Requesting Party copies of the Purchase Order will be returned to the Requesting Party. Once the Purchase Order has been received, the Requesting Party may place the order with the vendor.



PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

---

**PURCHASE ORDER  
DISTRIBUTION**

The Purchase Order shall be produced by the Purchasing Clerk in four parts, an original white, and a yellow, pink and white copy. These copies shall be distributed as follows:

**Original Purchase Order** – The original of the Purchase Order shall be provided to the Vendor. If the order was placed telephonically, the Purchase Order shall be noted, "**CONFIRMATION ONLY, DO NOT DUPLICATE**".

**Yellow Copy of the Purchase Order** – The yellow copy of the Purchase Order shall be provided to the Requesting Party.

**Pink Copy of the Purchase Order** – The pink copy of the Purchase Order shall be retained by the Purchasing Clerk in a numerical file with the original Purchase Requisition, the Purchase Requisition Worksheet and the adopted minutes of the Board of Commissioners meeting (as appropriate).

**White Copy of the Purchase Order** – The white copy of the Purchase Order shall be provided to the Accounts Payable Clerk and shall become a part of the voucher packet for payment of the invoice when it is received along with the Receiving Report.

**RECEIVING REPORT**

The Receiving Report as described below is to be used to notify Accounts Payable of the receipt of the purchased goods or services. Other acceptable forms of notification of the receipt of goods or services include, but are not limited to, a signed sales receipt, a signed packing list, or a signed invoice. It is preferable that these alternate forms of notification be attached to the Receiving Report provided by the Purchasing Clerk. This report shall be submitted promptly upon receipt of the goods or services.

**RECEIVING REPORT  
DISTRIBUTION**

Once the vendor number and the purchase order number have been noted on it, a copy of the completed Purchase Requisition shall be made on green paper and returned to the Requesting Party with the Vendor and Requesting Party copies of the Purchase Order. The Requesting Party is responsible for the distribution of the Receiving Report as follows:

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

**MERCHANDISE TO  
BE DELIVERED TO  
THE DISTRICT**

The Receiving Report for merchandise to be delivered to the District shall be forwarded to the Receiving Clerk for the building to which the merchandise is to be delivered. Upon receipt of the merchandise, the Receiving Clerk shall check the merchandise delivered against the merchandise ordered. He/she shall note any discrepancies or shortages, note the delivery date and initial the Receiving Report. The original Receiving Report shall then be submitted to the Accounts Payable Clerk. A copy of any Receiving Report showing discrepancies or shortages shall be submitted to the Requesting Party for follow-up and resolution with the Vendor. The Requesting Party will handle all adjustments for incorrect shipments or damaged goods received under their Purchase Orders.

**SERVICES  
PROVIDED TO THE  
DISTRICT AND  
MERCHANDISE TO  
BE PICKED UP BY  
THE REQUESTING  
PARTY**

Where the Purchase Requisition is for services to be provided to the District or the Requesting Party will pick up the merchandise from the Vendor or otherwise make arrangements for the direct procurement of the merchandise, the Receiving Report shall be retained by the Requesting Party. Upon completion of the service or receipt of the merchandise, the Requesting Party shall note any discrepancies or shortages, note the completion or delivery date (as appropriate) and initial the Receiving Report. The original Receiving Report shall then be submitted to the Accounts Payable Clerk. A copy of any Receiving Report showing discrepancies or shortages shall be retained by the Requesting Party for follow-up and resolution with the Vendor.

**SUBSCRIPTIONS AND  
REGISTRATIONS**

In the case of services to be provided to the District, purchases of subscriptions, registrations or other similar purchases, the Receiving Report shall be retained by the Requesting Party. The Requesting Party shall then make appropriated notations on the Receiving Report to indicate their instructions and approval for payment for the subscription, registration or other purchase, attaching appropriate documentation of the cost of the subscription, registration or other purchase and shall submit the original of the Receiving Report to the Accounts Payable Clerk.

**PREPAYMENT FOR  
GOODS OR  
SERVICES**

On occasion, when it is in the best interests of the District to do so, a Vendor may be selected that requires payment prior to or upon delivery. In this case, prepayment of a purchase may be requested. The Requesting Party shall note this request on the Purchase Requisition and shall provide adequate documentation to substantiate the cost of the goods or services to be prepaid. A notation shall be included on the Purchase Requisition as to the date that the prepayment check shall be required. The Requesting Party shall date and initial the Receiving Report and shall submit it to the Director of Finance for approval and further processing. It is the responsibility of the Requesting Party to provide a receipt for the prepayment to the Accounts Payable Clerk.

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - PROCUREMENT PROCEDURES

(EXHIBIT A)

---

**PAYMENT CYCLE**

The normal cycle for payment of vendor invoices is that checks for those invoices that have been entered into the Accounts Payable System by Tuesday afternoon will be ready for distribution on Friday after 2:00 PM. However, due to the large volume of documents that flow through the Accounts Payable System, any request for a check to be ready on a specific day must be cleared through the Director of Finance or his designee. This is the only person authorized to commit to a particular payment on a particular day. No other employee can make a commitment to a vendor for payment of invoices; those questions must be referred to the Director of Finance. In cases where discounts are involved when payments are made within certain deadlines, the Requesting Party shall coordinate with the Director of Finance to take advantage of these discounts whenever possible.

In the event that a single payment to be issued to a vendor will exceed \$25,000.00, this payment must be approved by the Board of Commissioners during open session of a Board meeting, prior to its delivery to the vendor. Exceptions to this requirement are utility payments, credit card statements for American Express and Elan VISA, inter-fund transfers and transfers to the BRG of their operating funds.

**PURCHASING  
AUDITOR**

The Purchasing Auditor shall verify that all District requisitions and purchases comply with this policy.

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT B - PURCHASE REQUISITION WORKSHEET

---

**Brownsville Navigation District  
Procurement Policies and Procedures  
Purchase Requisition Worksheet**

*This worksheet must be completed for every purchase of \$1,250.00 or more. This worksheet is to be attached to the original purchase requisition and submitted to the Purchasing Clerk.*

Date:	Purchase Requisition Number:
Description and Number of Items:	

Vendor:	
Contact Person:	Phone Number:
Quoted Price:	Delivery Charges:
Notes:	

Vendor:	
Contact Person:	Phone Number:
Quoted Price:	Delivery Charges:
Notes:	

Vendor:	
Contact Person:	Phone Number:
Quoted Price:	Delivery Charges:
Notes:	

These quotes were solicited under the terms and provisions of the *Brownsville Navigation District Procurement Policy and Procedures*.

---

Signature of Person Obtaining Quotes

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT C - VENDOR REGISTRATION FORM**Brownsville Navigation District  
Procurement Policies and Procedures  
Vendor Registration Form**

*Please complete this form to give the District your contact information for use during an RFP process or to open or update a vendor account.*

Date:	Name of Person Providing Information:
If you are currently participating in an RFP process for the District, please indicate the RFP title:	
If you are interested in receiving a notice when an RFP is available, please indicate your areas of interest:	
<input type="checkbox"/> Construction Contracts	<input type="checkbox"/> Security Services
<input type="checkbox"/> Property/Liability Insurance	<input type="checkbox"/> Bank Depository
<input type="checkbox"/> Group Insurance	<input type="checkbox"/> Other:
<input type="checkbox"/> Salvage Offerings	
<input type="checkbox"/> Uniform Service	

Vendor Name:	Web Site:
Contact Person:	Fax Number:
Phone Number:	E-Mail Address:
Mailing Address:	Physical Address:

Form of Business (Individual/Sole Proprietor/Partnership/ Taxpayer Identification Number: Corporation/Other)	
--	--

Please return this form by fax to (956) 831-5106 or by email to [vendor@portofbrownsville.com](mailto:vendor@portofbrownsville.com)

\_\_\_\_\_  
Signature of Person Providing Information

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT D - SOLE SOURCE STATEMENT

---

**Brownsville Navigation District  
Procurement Policies and Procedures  
Sole Source Statement**

The item(s) on the attached Purchase Requisition are being purchased without the solicitation of competitive pricing as required by the Procurement Policies and Procedure of the Brownsville Navigation District. The item(s) can be obtained from only one source, and therefore qualify as an Exemption under Section 60.412, Subchapter N, Chapter 60, Texas Water Code and Policy C207(Local) of the Brownsville Navigation District.

This purchase qualifies as a Section 60.412 Exemption for the following reason:

- ☐ It is an item for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies.
- ☐ It is for films, manuscripts or books.
- ☐ It is for public utilities services.
- ☐ It is for captive replacement parts or components for equipment.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Approved: \_\_\_\_\_

Date: \_\_\_\_\_

PROCUREMENT POLICIES AND PROCEDURES  
EXEMPTIONS

---

**EXEMPTIONS**

Those contracts or purchase orders for the purchase of items exempted from competitive bidding requirements and proposal procedures by Section 60.412, Subchapter N, Chapter 60, of the Water Code shall similarly be exempted from the competitive bidding requirements of this policy if the purchase is made for the following reasons:

- A. An item that must be purchased in a case of a public calamity if it is necessary to make the purchase promptly to relieve the necessity of the public or to preserve the property of the District;
- B. An item necessary to preserve or protect the public health or the safety of the residents of the District;
- C. An item made necessary by unforeseen damage to the property of the District;
- D. Personal or professional services;
- E. Any work performed and paid for by the day as the work progresses;
- F. Any land or right-of-way;
- G. An item that can be obtained only from one source, including:
  - 1. Items for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies;
  - 2. Films, manuscripts or books;
  - 3. Public utilities services; and
  - 4. Captive replacement parts or components for equipment;
- H. Any item necessary to secure the District during a period of heightened security as determined by:
  - 1. The federal Department of Homeland Security, including the Transportation Security Administration;
  - 2. The United States Coast Guard
  - 3. The United States Bureau of Customs and Border Protection;
  - 4. The Federal Bureau of Investigation;
  - 5. The federal Department of Transportation; including the Maritime Administration; or
  - 6. Another federal, state, or local agency; or

PROCUREMENT POLICIES AND PROCEDURES  
EXEMPTIONS

---

- I. An item from the United States, including any agency thereof, or from this state, including an agency of this state.

**SOLE SOURCE  
STATEMENT**

If an item that is classified as exempt under item G above is purchased, the requester shall sign a statement as to the existence of only one source for the purchase and the District shall enter the statement into the records of that purchase.

**PROFESSIONAL AND  
CONSULTING  
SERVICES**

The District shall comply with Chapter 2254, Government Code, in procuring professional and consulting services. A copy of Chapter 2254, Government Code (Professional and Consulting Services) can be found in Policy C211(LEGAL).



PROCUREMENT POLICIES AND PROCEDURES  
VENDOR PROTEST PROCEDURE**VENDOR RIGHTS OF  
PROTEST**

The purpose of this Vendor Protest Procedure is to provide step-by-step instructions for a formal protest during solicitation, evaluation, or award of a contract by the Brownsville Navigation District.

Any protesting party - actual or prospective bidder, offeror, or contractor, who believes it has been aggrieved in connection with the solicitation, evaluation, or award of a contract - may formally protest to the Brownsville Navigation District's Director of Finance. Formal protests must conform to the requirements of these Vendor Protest Procedures and shall be resolved in accordance with the procedure set out below. Copies of the protest must be mailed or delivered by the protesting party to the District's Director of Finance and all respondents who have submitted bids, proposals or offers for the contract involved. Names and addresses of such respondents may be obtained by sending a written request for the information to the Director of Finance of the District.

**PROTEST  
CIRCUMSTANCES**

A protesting party may protest a contract under the following circumstances:

- The solicitation, evaluation, or award was made under a publicly-advertised solicitation process, and the protesting party submitted a bid or proposal that was not selected; or
- The solicitation, evaluation or award was for a sole source contract or emergency procurements of a contract, and the protesting party was therefore unable to submit a bid or proposal.

The only types of issues that will be considered an appropriate basis for a protest are:

- An alleged violation of state or federal laws;
- An alleged violation of District policies or procedures; or
- An alleged failure of the District to follow the terms or processes set out in the applicable Solicitation.

This Vendor Protest Procedure does not apply to contracts for:

- The award of grants;
- Activities permitted with respect to the Promotion and Development Fund under Subchapter H, Chapter 60, Texas Water Code;
- Subcontracts supporting the performance of a contract;
- Items procured pursuant to the Interagency Cooperation Act, Chapter 771, Texas Government Code or Interlocal Cooperation Act, Chapter 791, Texas Government Code; or
- Items procured under processes administered by the Texas Comptroller's Office, the Department of Information Resources, or other Texas state agencies.

PROCUREMENT POLICIES AND PROCEDURES  
VENDOR PROTEST PROCEDURE

---

**PROTEST FORM**

A formal protest must be in writing, sworn, and contain:

- A specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- A specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above;
- A precise statement of the relevant facts;
- An identification of the issue(s) to be resolved;
- Argument and authorities in support of the protest; and
- Proof that copies of the protest have been mailed or delivered to all respondents who have submitted bids, proposals or offers for the contract involved. A certification that copies were supplied to all interested parties with a list of the addresses the protest was sent to will be accepted as proof of delivery of copies.

**SUBMISSION**

Protests regarding the manner in which bids or proposals were solicited must be filed no less than five business days before the opening of the bid or proposal.

Protests regarding the evaluation of bids, qualifications or proposals must be filed no later than five business days prior to the Board of Commissioners meeting at which the award appears on the agenda.

Protests made after the Board's decision to award a contract must be received no later than five calendar days after the date of award.

A protest that is not filed timely will not be considered.

**CONSIDERATION OF  
THE PROTEST**

In the event of a timely protest, which is received prior to an award having been made, the District will not proceed further with the solicitation or award of the contract unless the Port Director and CEO, after consultation with the Deputy Port Director and/or the Director of Finance, makes a written determination that the award of contract without delay is necessary to protect substantial interests of the District.

The Director of Finance has the authority, prior to appeal to the District Port Director and CEO, or his or her designee, to settle and resolve the protest concerning the solicitation or award of a contract.

The Director of Finance may solicit written responses to the protest from respondents who have submitted bids, proposals or offers for the contract involved and from other interested parties. Upon written request, the protesting party shall be given notice of the request and any written responses received.

The Director of Finance may consult with legal counsel concerning the protest and shall refer all questions regarding legal issues to legal counsel.

PROCUREMENT POLICIES AND PROCEDURES  
VENDOR PROTEST PROCEDURE

**DETERMINATION BY DIRECTOR OF FINANCE** If the protest is not resolved by mutual agreement, the Director of Finance will issue a written determination on the protest.

- If the Director of Finance determines no violation of rules, policies, terms of solicitation, or statutes occurred, he or she will inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter will set forth the reasons for the determination.
- In instances in which the contract has not been awarded, if the Director of Finance determines that a violation of the rules, policies, terms of solicitation, or statutes has occurred, he or she will inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract involved by letter. The letter will set forth the reasons for the determination and the appropriate remedial action.
- In instances in which the contract has been awarded, if the Director of Finance determines that a violation of the rules, policies, terms of solicitation, or statutes has occurred, he or she will inform the protesting party and each respondent who submitted a bid, proposal or offer for the contract by letter. The letter will set forth the reasons for the determination and may conclude that the contract awarded is void, may set aside the award, may order advertising with a revised solicitation, or may recommend that the District Board of Commissioners do the same or take other remedial action.

**APPEAL TO PORT DIRECTOR AND CEO** The determination of the District's Director of Finance on a protest may be appealed by the protesting party to the Port Director and CEO, or his or her designee.

- An appeal of the determination of the Director of Finance must be written and must be received by the Port Director and CEO, or his or her designee, no later than 10 working days after the date of the determination.
- The appeal shall be limited to review of the determination.
- A copy of the appeal must be mailed or delivered by the appealing party to the Port Director and CEO, or his or her designee, and each respondent who submitted a bid, proposal or offer for the contract and the appeal must contain a certified statement that such copies have been provided.
- Failure of the protesting party to appeal the determination of the District's Director of Finance within 10 working days after the date of the determination renders the determination of the Director of Finance the final administrative action of the District.

The Port Director and CEO, or his or her designee, may consult with legal counsel concerning the protest and shall refer all questions regarding legal issues to legal counsel.

PROCUREMENT POLICIES AND PROCEDURES  
VENDOR PROTEST PROCEDURE**REVIEW BY THE  
PORT DIRECTOR  
AND CEO**

The Port Director and CEO, or his or her designee, shall review the protest petition, any requests filed, written responses made to the protest petition from any respondent who submitted a bid, proposal or offer for the contract or other interested parties, the determination of the Director of Finance and the appeal. After review, the Port Director and CEO shall issue a written decision on the appealed protest.

In the event that the protesting party wishes to appeal the Port Director and CEO's written decision to the Board of Commissioners, that party shall have 5 working days from the date of the Port Director and CEO's written decision to file a written appeal with the Port Director and CEO, or his or her designee. Failure to appeal the determination of the Port Director and CEO within 5 working days after the date of the Port Director and CEO's written decision renders the Port Director and CEO's written decision final.

**APPEAL TO THE  
BOARD OF  
COMMISSIONERS**

When a protesting party appeals the written decision of the Port Director and CEO, or his or her designee, to the Board of Commissioners, the following provisions apply:

- Copies of the documents required to be submitted to document the appeal of the determination shall be forwarded to the Board of Commissioners.
- All interested parties who wish to make an oral presentation at the open meeting at which the Board of Commissioners is scheduled to consider the protest shall notify the District's Director of Finance at least 48 hours in advance of the open meeting.
- The Board of Commissioners may consider oral presentations and written documents presented by staff and interested parties, including the protesting party and any respondent who submitted a bid, proposal or offer for the contract. The Chairman of the Board of Commissioners shall set the order and length of time allowed for presentations.
- The Board of Commissioners' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

**FINAL  
ADMINISTRATIVE  
ACTION**

A decision issued by the Board of Commissioners in an open meeting, or in writing by the Port Director and CEO, or his or her designee, or in writing by the Director of Finance that is not appealed in a timely manner, shall be the final administrative action of the District.

**DISCLOSURE**

The Director of Finance will disclose information regarding the protest and any appeal to the awarding agency.

**DOCUMENTATION**

The Director of Finance will maintain all documentation of the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the District.

PROCUREMENT POLICIES AND PROCEDURES  
VENDOR PROTEST PROCEDURE

---

**FEDERAL REVIEW**

A protester must exhaust all administrative remedies with the District before pursuing a protest with the Federal agency. Federal agency review of protests will be limited to violations of Federal law or regulations and the standards of this Procurement Policy and violation of the District's protest procedures for failure to review a complaint or protests. Protests received by the Federal agency other than those specified above will be referred to the District.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

---

**SEC. 60.401.  
APPLICATION OF  
SUBCHAPTER**

- (a) This subchapter applies to a port authority district only if the port commission of that district or port authority by resolution adopts this subchapter.
- (b) A district may adopt this subchapter for a particular purchase or period or for all purchases and contracts.
- (c) Except as specifically provided by this subchapter, a district that adopts this subchapter is not subject to the purchasing requirements of other laws governing purchases by navigation districts and port authorities.
- (d) Chapter 2267, Government Code, does not apply to this subchapter.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by:  
Acts 2011, 82nd Leg., R.S., Ch. 1129, Sec. 3.08, eff. September 1, 2011.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

---

**SEC. 60.402.**  
**DEFINITIONS**

In this chapter:

- (1) "Port authority" means a port authority created or operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.
- (2) "Port commission" means the governing body of a navigation district or port authority.
- (3) "Current funds" means funds in the treasury of a district or port authority that are available in the current tax year, revenue that may be anticipated with reasonable certainty to come into the treasury during the current tax year, and emergency funds.
- (4) "Bond funds" means money in the treasury of a district or port authority received from the sale of bonds, and proceeds of bonds that have been voted but have not been issued and delivered.
- (5) "Item" means any service, equipment, goods, or other tangible or intangible personal property, including insurance and high technology items.
- (6) "High technology item" means a service, equipment, or goods of a highly technical nature, including data processing equipment and software and firmware used in conjunction with data processing equipment; telecommunications, radio, and microwave systems; electronic distributed control systems including building energy management systems; and technical services related to those items.
- (7) "Public works contracts" means a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property.
- (8) "Purchase" means the acquisition of an item by a port authority, a contract for construction, or performance of services.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

**SEC. 60.403.**  
**CONTRACTS:**  
**PURCHASES**

- (a) A port commission, an authorized designated officer of the port commission, the executive director of the district or the port authority, or an authorized representative of the executive director may make routine purchases or contracts in an amount not to exceed \$50,000.
- (b) Before a purchase is made, a purchase order or other form of pre-commitment approval must be signed by the executive director of the district or the port authority or an authorized representative of the executive director. For routine contracts or purchases, the pre-commitment approval may be in the form of a list of approved routine purchases or contracts signed by the executive director. The signed list shall remain on file in the offices of the district or port authority.
- (c) One original, photocopy, or electronic copy of the purchase order shall be delivered to the person from whom the purchase is made and one original, photocopy, or electronic copy shall be retained on file in the district or port authority in accordance with Subtitle C, Title 6, Local Government Code.
- (d) If any other type of purchase of the district or port authority is subject to the approval of a county auditor, the list of routine purchases or contracts must be approved by the county auditor before the purchases or contracts may be made.
- (e) A district may establish an electronic requisition system to perform some or all of the functions required by Subsections (b), (c), and (d). An electronic requisition system established under this subsection must electronically transmit data to and receive data from the financial system of the district in a manner that meets professional, regulatory, and statutory requirements and standards, including those relating to purchasing, auditing, and accounting.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1995, 74th Leg., ch. 632, Sec. 1, eff. June 14, 1995; Acts 1997, 75th Leg., ch. 262, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 588, Sec. 7, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330, Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 415, Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1027, Sec. 12, eff. June 17, 2011.



PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

**SEC. 60.4035.  
CONTRACTS:  
EMERGENCY  
PURCHASES**

- (a) Notwithstanding the competitive bidding requirements and proposal procedures of this subchapter and Subchapter O and the requirements of Sections 60.408(a), (b), (c), (d), and (e), the executive director of a district or an officer of a district authorized in writing by the port commission may make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts in an amount that exceeds the amount authorized under Section 60.403(a) for routine purchases or contracts if necessary:
- (1) to preserve or protect the public health and safety of the residents of the district;
  - (2) to preserve the property of the district in the case of a public calamity;
  - (3) to repair unforeseen damage to the property of the district; or
  - (4) to respond to security directives issued by:
    - (A) the federal Department of Homeland Security, including the Transportation Security Administration;
    - (B) the United States Coast Guard;
    - (C) the federal Department of Transportation, including the Maritime Administration; or
    - (D) another federal or state agency responsible for domestic security.
- (b) The executive director of a district or the authorized officer of the district shall notify the port commissioners of any purchase made under Subsection (a) not later than 48 hours after the purchase is made.

Added by Acts 2003, 78th Leg., ch. 588, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 415, Sec. 2, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1191, Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91, Sec. 26.007, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027, Sec. 13, eff. June 17, 2011.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

**SEC. 60.404.  
COMPETITIVE  
BIDDING  
REQUIREMENTS**

- (a) If the materials, supplies, machinery, equipment, or other items to be purchased or contracted for are valued at an amount greater than the amount authorized under Section 60.403(a) for routine purchases or contracts, notice shall be published as provided by this section.
- (b) A notice of proposed purchase must be published once a week for two consecutive weeks in a newspaper with general circulation in each county in which the district or port authority is located. The first notice must be published not later than the 14th day before the date the bids are to be opened. If there is no newspaper of general circulation in a county in which the district or port authority is located, the notice for that county must be given by posting the notice in a prominent place in the courthouse of that county for not less than 14 days before the date the bids are to be opened.
- (c) The notice must include:
  - (1) the specifications as prescribed by Subsection (d) of this section or the location at which those specifications may be obtained;
  - (2) the time and place for receiving and opening bids;
  - (3) the name and position of the official or employee to whom the bids are to be sent;
  - (4) whether the purchase will be made on a lump-sum or unit-pricing basis or a combination of a lump-sum basis and a unit-pricing basis;
  - (5) if a unit-pricing basis is to be used, the information required by Section 60.409(b) of this code; and,
  - (6) the type of bonds required of the bidder.
- (d) The specifications must:
  - (1) describe in detail the item to be acquired;
  - (2) require that bids be sealed;
  - (3) require the attachment to the bid of a certified check, cashier's check, or bidders bond, if security is required in connection with the bid; and
  - (4) indicate whether a small business development program adopted by the port commission of the port authority or district applies to the purchase and, if so, where a copy of the program requirements may be obtained.
- (e) A certified check or cashier's check required under Subsection (d)(3) of this section must be drawn on a bank that is a member of the Federal Deposit Insurance Corporation. A bidders bond required by that subsection must be acceptable to and payable to the district or port authority in an amount that is five percent of the total amount of the bid, conditioned that the successful bidder will enter into a contract and give bond if required by the specifications or law.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 1059, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 757, Sec. 22, eff. Sept. 1, 1993; Acts 1995, 74<sup>th</sup> Leg., ch. 632, Sec. 2, eff. June 14, 1995; Acts 2003, 78th Leg., ch. 588, Sec. 9, eff. June 20, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 415, Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1191, Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91, Sec. 26.008, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027, Sec. 14, eff. June 17, 2011.

**SEC. 60.405.  
PROPOSAL  
PROCEDURES**

- (a) Insurance or high technology items may be purchased under the procedure provided by this section.
- (b) Quotations shall be solicited through a request for proposals from as many sources as are reasonably available. The request for proposals must specify the relative importance of price and all other factors of evaluation.
- (c) Public notice of the request for proposal must be made in the same manner as provided by Section 60.404 of this code.
- (d) The award of the contract shall be made to the responsible offerer whose proposal is determined to be the lowest evaluated offer resulting from negotiation giving consideration to evaluation factors set forth in the request for proposals.
- (e) If provided in the request for proposals, information in proposals may not be disclosed to competing offerers until the contract is awarded. After a contract is awarded, proposals shall be open for public inspection, except that information contained in a proposal identified as a trade secret or as confidential shall be kept confidential.
- (f) A port commission may adopt rules relating to negotiations to be conducted with responsible offerers submitting proposals. Offerers must be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. Revisions may be permitted after submission of a proposal and before award of the contract.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

**SEC. 60.406.  
COMPETITIVE  
BIDDING AND  
PROPOSAL  
PROCEDURES  
REQUIRED FOR  
CERTAIN  
CONTRACTS**

- (a) Except as otherwise provided by Section 60.4035 or 60.412, before a district or port authority may purchase one or more items under a contract that will require an expenditure of more than the amount authorized under Section 60.403(a) for routine purchases or contracts, the port commission of that district or port authority must comply with the competitive bidding requirements or proposal procedures provided by this subchapter or Subchapter O. All bids must be sealed.
- (b) The competitive bidding and proposal requirements provided by this subchapter and Subchapter O apply only to contracts for which payment will be made from current funds or bond funds.
- (c) In applying the competitive bidding procedures and proposal procedures, all separate, sequential, or component purchases of items ordered or purchased from the same supplier by the same officer, entity, or department, purchased with the intent of avoiding the requirements of this subchapter or Subchapter O, shall be treated as if they are part of a single purchase and a single contract.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 632, Sec. 3, eff. June 14, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 415, Sec. 4, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1191, Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91, Sec. 26.009, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027, Sec. 15, eff. June 17, 2011.

**SEC. 60.407. OPENING  
BIDS**

- (a) An official of the district or port authority shall open the bids on the date specified in the notice. If an error is discovered in the original specifications or the nature of the item to be purchased requires an extension, the date may be extended.
- (b) Opened bids shall be kept on file and available for public inspection.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

---

**SEC. 60.408.**

**CONTRACT AWARD**

- (a) The bids shall be presented to the port commission in session.
- (b) The port commission may award the contract to the responsible bidder submitting the lowest and best bid, or the port commission may reject any or all bids.
- (c) If two responsible bidders submit the lowest and best bid, the port commission shall decide between the two bids by drawing lots in a manner prescribed by rule by the chairman of the port commission.
- (d) A contract may not be awarded to a bidder who does not submit the lowest dollar bid meeting specifications unless, before the award, each person with a lower bid is given notice of the proposed award and an opportunity to appear before the port commission and present evidence concerning his responsibility.
- (e) A contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts shall be awarded at a regularly scheduled or specially called meeting of the port commission.
- (f) A contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts must be in writing, executed for the district or port authority by the district's or port authority's executive or designated officer or by an authorized designated employee of the district or port authority, and filed with the proper officer of the district or port authority.
- (g) Before a contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts takes effect or is binding on a district or port authority, the appropriate financial officer of the district or port authority must certify that funds are or will be available to meet the contract when due.
- (h) One original, photocopy, or electronic copy of a contract, requisition, or purchase order valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts must be delivered to the contractor and one original, photocopy, or electronic copy shall be retained on file with the district or port authority in accordance with Subtitle C, Title 6, Local Government Code.
- (i) A purchase or contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts that is not in compliance with this subchapter is void and unenforceable.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by:  
Acts 2009, 81st Leg., R.S., Ch. 1191, Sec. 6, eff. June 19, 2009.  
Acts 2011, 82nd Leg., R.S., Ch. 1027, Sec. 16, eff. June 17, 2011.

**SEC. 60.409. PRICING  
METHOD**

- (a) A purchase may be proposed on a lump-sum or unit-price basis or a combination of a lump-sum basis and a unit-price basis.
- (b) If a district or port authority uses unit pricing in its notice, the information furnished bidders shall specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.

**SEC. 60.410.  
CHANGES IN PLANS  
AND  
SPECIFICATIONS**

- (a) A port commission may change the plans, specifications, proposal, or quantities of items purchased after a contract has been awarded, but the total contract price may not be changed unless the cost can be paid from available funds.
- (b) If a change order involves an increase or decrease in cost less than or equal to the amount authorized in Section 60.403(a) for routine purchases or contracts, a port commission may grant general authority to an employee to approve the change order. However, the original contract price may not be increased by more than 25 percent or decreased by 18 percent or more without the consent of the contractor.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1330, Sec. 6, eff. June 15, 2007.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

**SEC. 60.411. BOND  
REQUIREMENTS**

(a) If a contract is for the construction of public works or a contract amount exceeds \$50,000, the bid specifications or request for proposal may require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the total contract price. A district or port authority may require that the bond be executed with a surety company:

- (1) authorized to do business in this state; and
- (2) listed on the United States Department of Treasury List of Approved Sureties.

(b) Not later than the 10th day after the date of the signing of a contract or issuance of a contract or purchase order, the bidder or proposal offerer shall furnish a performance bond to the district or port authority, if required by a district or port authority, for the full amount of the contract if the contract exceeds \$50,000.

(c) If a contract is for \$50,000 or less, a district or port authority may provide in the bid notice or request for proposal that money will not be paid to the contractor until completion and acceptance of the work or fulfillment of the purchase obligation to the district or port authority.

(d) Bidders or proposal offerers for contracts subject to Chapter 2253, Government Code, are required to furnish a bond as provided by that article, except that a district or port authority may require that the bond be executed with a surety company listed on the United States Department of Treasury List of Approved Sureties.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 170, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1191, Sec. 7, eff. June 19, 2009.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

**SEC. 60.4115.  
NOTIFICATION OF  
SAFETY AND  
ENVIRONMENTAL  
RECORD OF  
CONTRACTOR**

- (a) A person that enters into a contract with a district or port authority shall provide, at the request of the district or port authority, notice to the district or authority of any citation, notice of violation or penalty, or other similar document regarding a serious safety or environmental violation that the person received from an agency or department of this state or of the federal government. The notice must include:
  - (1) a general description of the conduct that resulted in the citation, violation, penalty, or similar sanction; and
  - (2) the document from the agency or department that provided notice to the person of the citation, violation, penalty, or similar sanction.
- (b) A district or port authority may terminate a contract with a person if the district or authority determines that the person failed to give notice as required by Subsection (a) or misrepresented conduct that resulted in a citation, notice of violation or penalty, or similar sanction. The district or port authority shall compensate the person for services performed before the termination of the contract.
- (c) This section applies to all purchasing methods available to a district or port authority.

Added by Acts 2003, 78th Leg., ch. 588, Sec. 10, eff. June 20, 2003.



PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

**SEC. 60.412.**  
**EXEMPTIONS**

- (a) A contract for a purchase is exempt from the competitive bidding requirements and proposal procedures of this subchapter and Subchapter O if a contract is for the purchase of:
  - (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 district or port authority;
  - (2) an item necessary to preserve or protect the public health or the safety of the residents of the district or port authority;
  - (3) an item made necessary by unforeseen damage to the property of the district or port authority;
  - (4) a personal or professional service;
  - (5) any work performed and paid for by the day as the work progresses;
  - (6) any land or right-of-way;
  - (7) an item that can be obtained only from one source, including:
    - (A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies;
    - (B) films, manuscripts, or books;
    - (C) public utility services; and
    - (D) captive replacement parts or components for equipment;
  - (8) any item necessary to secure a district or port authority during a period of heightened security as determined by:
    - (A) the federal Department of Homeland Security, including the Transportation Security Administration;
    - (B) the United States Coast Guard;
    - (C) the United States Bureau of Customs and Border Protection;
    - (D) the Federal Bureau of Investigation;
    - (E) the federal Department of Transportation, including the Maritime Administration; or
    - (F) another federal, state, or local agency; or
  - (9) an item from the United States, including any agency thereof, or from this state, including an agency of this state.
- (b) If an item exempt under Subsection (a)(7) of this section is purchased, the person making the purchase must sign a statement as to the existence of only one source for the purchase and a district or port authority must enter the statement into the records of that purchase.
- (c) A district or port authority shall comply with Chapter 2254, Government Code, in procuring professional services.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

---

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 588, Sec. 11, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 426, Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1191, Sec. 8, eff. June 19, 2009.

**SEC. 60.4125.  
ALTERNATIVE  
METHODS FOR  
CERTAIN  
PURCHASES OR  
CONTRACTS**

- (a) Notwithstanding the other provisions of this subchapter or any other law, a district or port authority may make a purchase or enter into a contract valued at more than the amount authorized in Section 60.403(a) for routine purchases or contracts by any method available to a school district, including all procedures and limitations, under Subchapter B, Chapter 44, Education Code, that, in the opinion of the port commission, provides the best value to the district or port authority.
- (b) Repealed by Acts 2003, 78th Leg., ch. 307, Sec. 2.
- (c) Subsection (a) does not apply to contracts when the district or port authority is constructing a project for another political subdivision of the state.
- (d) If a purchase or contract made under Subsection (a) is subject to a small business development program adopted by the port commission of the port authority or district, the purchase solicitation must indicate that fact and must also indicate where a copy of the program requirements may be obtained.

Added by Acts 2001, 77th Leg., ch. 738, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 307, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 588, Sec. 12, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1330, Sec. 7, eff. June 15, 2007.

PROCUREMENT POLICIES AND PROCEDURES  
WATER CODE – CHAPTER 60 SUBCHAPTER N

---

**SEC. 60.413.**  
**CRIMINAL PENALTY**

- (a) Except as provided by Subsection (b) of this section, a district or port authority officer or employee commits an offense if the person knowingly or intentionally violates a provision of this subchapter. An offense under this subsection is a Class C misdemeanor.
- (b) A district or port authority officer or employee commits an offense if the person makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding or proposal procedure requirements of Section 60.404 or 60.405 of this code. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987.

**SEC. 60.414.**  
**APPLICATION OF**  
**OTHER LAW**

If a district or port authority is subject to the requirements of Subchapter B, Chapter 271, Local Government Code, those requirements are in addition to the requirements of this subchapter.

Added by Acts 1987, 70th Leg., ch. 353, Sec. 1, eff. Aug. 31, 1987. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 91, Sec. 26.010, eff. September 1, 2011.

**Exhibit A:** Resolution of the Board of Commissioners adopting Subchapter N, Chapter 60 of the Texas Water Code – 1 page

PROCUREMENT POLICIES AND PROCEDURES  
EXHIBIT A - RESOLUTION

---

**Brownsville Navigation District  
Procurement Policies and Procedures  
Resolution**

**WHEREAS**, the members of this Board wish to adopt a policy to be followed for the procurement of various goods and services needed to operate, maintain, and improve the Port; and

**WHEREAS**, the members of this Board wish to incorporate the provisions of the law of the State of Texas into such policy;

**NOW THEREFORE:**

BE IT RESOLVED BY THE BOARD OF NAVIGATION AND CANAL COMMISSIONERS OF THE BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS, THAT:

The provisions of Subchapter N, Chapter 60 of the Water Code be adopted.

\* \* \* \* \*

I, Donald L. Foust, Secretary of the Board of Navigation and Canal Commissioners of the BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS, do certify that the attached and foregoing is a true and correct copy of a Resolution adopted by said Board at a special meeting held on the 21st day of December, 1987, at 8:10 O'clock A.M., and that the same has not been altered, amended or rescinded.

**TO CERTIFY WHICH WITNESS MY HAND AND THE SEAL** of said District on this, the 21st day of December, A.D., 1987.

---

**SUBCHAPTER A. PROFESSIONAL SERVICES**

**SEC. 2254.001. SHORT TITLE**     This subchapter may be cited as the Professional Services Procurement Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.002**  
**DEFINITIONS**

In this subchapter:

- (1) "Governmental entity" means:
  - (A) a state agency or department;
  - (B) a district, authority, county, municipality, or other political subdivision of the state;
  - (C) a local government corporation or another entity created by or acting on behalf of a political subdivision in the planning and design of a construction project; or
  - (D) a publicly owned utility.
- (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; or
  - (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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 244, Sec. 1, eff. Sept. 1, 1997;

Acts 1999, 76th Leg., ch. 1542, Sec. 1, eff. Sept. 1, 1999;

Acts 2001, 77th Leg., ch. 1409, Sec. 8, eff. Sept. 1, 2001.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 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.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213, Sec. 14, eff. September 1, 2007.

**SEC. 2254.0031.  
INDEMNIFICATION**

A state governmental entity may require a contractor selected under this subchapter to indemnify or hold harmless the state from claims and liabilities resulting from the negligent acts or omissions of the contractor or persons employed by the contractor. A state governmental entity may not require a contractor to indemnify or hold harmless the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.37, eff. Sept. 1, 1999.



PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.004.  
CONTRACT FOR  
PROFESSIONAL  
SERVICES OF  
ARCHITECT,  
ENGINEER, OR  
SURVEYOR**

- (a) In procuring architectural, engineering, or land surveying services, a governmental entity shall:
  - (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
  - (2) then attempt to negotiate with that provider a contract at a fair and reasonable price.
- (b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:
  - (1) formally end negotiations with that provider;
  - (2) select the next most highly qualified provider; and
  - (3) attempt to negotiate a contract with that provider at a fair and reasonable price.
- (c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 119, Sec. 1, eff. Sept. 1, 1997.

**SEC. 2254.005. VOID  
CONTRACT**

A contract entered into or an arrangement made in violation of this subchapter is void as against public policy.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**SEC. 2254.006.  
CONTRACT  
NOTIFICATION**

A state agency, including an institution of higher education as defined by Section 61.003, Education Code, shall provide written notice to the Legislative Budget Board of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency enters into the contract.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 13, eff. Sept. 1, 1999.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.007.  
DECLARATORY OR  
INJUNCTIVE RELIEF**

- (a) This subchapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date a contract is awarded.
- (b) This section does not apply to the enforcement of a contract entered into by a state agency as that term is defined by Section 2151.002. In this subsection, "state agency" includes the Texas Building and Procurement Commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213, Sec. 13, eff. September 1, 2007.

---

SUBCHAPTER B. CONSULTING SERVICES

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

C211  
(LEGAL)

---

**SEC. 2254.021.**  
**DEFINITIONS**

In this subchapter:

- (1) "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.
- (2) "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000, or \$25,000 for an institution of higher education other than a public junior college.
- (3) "Consultant" means a person that provides or proposes to provide a consulting service. The term includes a political subdivision but does not include the federal government, a state agency, or a state governmental entity.
- (4) "Political subdivision" means:
  - (A) a county;
  - (B) an incorporated or unincorporated municipality;
  - (C) a public junior college;
  - (D) a public school district or other educational or rehabilitative district;
  - (E) a metropolitan or regional transit authority;
  - (F) an airport authority;
  - (G) a river authority or compact;
  - (H) a regional planning commission, a council of governments, or a similar regional planning agency created under Chapter 391, Local Government Code;
  - (I) the Edwards Aquifer Authority or a district governed by Title 4, Water Code;
  - (J) a soil and water conservation district;
  - (K) a county or municipal improvement district;
  - (L) a county road or road utility district;
  - (M) a county housing authority;
  - (N) an emergency services or communications district;
  - (O) a fire prevention district;
  - (P) a public health or hospital authority or district;
  - (Q) a mosquito control district;
  - (R) a special waste district;
  - (S) a rural rail transportation district; or
  - (T) any other local government or special district of this state.
- (5) "State agency" has the meaning assigned by Section 2151.002.
- (6) "State governmental entity" means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of

---

which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education, other than a public junior college, as defined by Section 61.003, Education Code. The term does not include a political subdivision.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1995, 74th Leg., ch. 76, Sec. 5.44(a), eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 165, Sec. 17.19(11), eff. Sept. 1, 1997;

Acts 1997, 75th Leg., ch. 1035, Sec. 3, eff. June 19, 1997;

Acts 2003, 78th Leg., ch. 1266, Sec. 1.02, eff. June 20, 2003.

**SEC. 2254.022.  
INTERPRETATION  
OF SUBCHAPTER**

(a) This subchapter shall be interpreted to ensure:

- (1) the greatest and fairest competition in the selection by state agencies of consultants; and
- (2) the giving of notice to all potential consultants of the need for an opportunity to provide consulting services.

(b) This subchapter does not:

- (1) discourage state agencies from using consultants if the agencies reasonably foresee that the use of consultants will produce a more efficient and less costly operation or project;
- (2) prohibit the making of a sole-source contract for consulting services if a proposal is not received from a competent, knowledgeable, and qualified consultant at a reasonable fee, after compliance with this subchapter; or
- (3) require or prohibit the use of competitive bidding procedures to purchase consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 4, eff. June 19, 1997.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.023.  
APPLICABILITY OF  
SUBCHAPTER**

This subchapter applies to consulting services that a state agency acquires with money:

- (1) appropriated by the legislature;
- (2) derived from the exercise of the statutory duties of a state agency;  
or
- (3) received from the federal government, unless a federal law or regulation conflicts with the application of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.024.  
EXEMPTIONS**

- (a) This subchapter does not apply to or discourage the use of consulting services provided by:
- (1) practitioners of professional services described in Subchapter A;
  - (2) private legal counsel;
  - (3) investment counselors;
  - (4) actuaries;
  - (5) medical or dental services providers; or
  - (6) other consultants whose services are determined by the governing board of a retirement system trust fund to be necessary for the governing board to perform its constitutional fiduciary duties, except that the governing board shall comply with Section 2254.030.
- (b) If the governor and comptroller consider it more advantageous to the state to procure a particular consulting service under the procedures of Chapters 2155-2158, instead of under this subchapter, they may make a memorandum of understanding to that effect and each adopt the memorandum by rule. Procurement of a consulting service described in a memorandum of understanding under this subsection is subject only to Chapters 2155-2158.
- (c) The comptroller by rule may define circumstances in which a state agency may procure, without complying with this subchapter, certain consulting services that will cost less than a minimum amount established by the comptroller. The comptroller must determine that noncompliance in those circumstances is more cost-effective for the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 165, Sec. 17.19(1), eff. Sept. 1, 1997.

Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 3.14, eff. September 1, 2007.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

C211  
(LEGAL)

---

**SEC. 2254.025.  
EMERGENCY  
WAIVER**

- (a) The governor, after receipt of a request complying with this section, may grant a limited waiver of the provisions of this subchapter for a state agency that requires consulting services before compliance with this subchapter can be completed because of an unforeseen emergency.
- (b) A state agency's request for a waiver must include information required by the governor, including:
  - (1) information about the nature of the emergency;
  - (2) the reason that the state agency did not foresee the emergency;
  - (3) the name of the consultant with whom the agency intends to contract; and
  - (4) the amount of the intended contract.
- (c) As soon as possible after the governor grants a limited waiver, a state agency shall comply with this subchapter to the extent that the requirements of this subchapter are not superfluous or ineffective because of the waiver. The agency shall include with information filed with the secretary of state for publication in the Texas Register a detailed description of the emergency on which the request for waiver was predicated.
- (d) The governor shall adopt rules to administer this section.
- (e) In this section, "unforeseen emergency" means a situation that suddenly and unexpectedly causes a state agency to need the services of a consultant. The term includes the issuance of a court order, an actual or imminent natural disaster, and new state or federal legislation. An emergency is not unforeseen if a state agency was negligent in foreseeing the occurrence of the emergency.
- (f) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 5, eff. June 19, 1997.



PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.026.  
CONTRACT WITH  
CONSULTANT**

A state agency may contract with a consultant only if:

- (1) there is a substantial need for the consulting services; and
- (2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 6, eff. June 19, 1997.

**SEC. 2254.027.  
SELECTION OF  
CONSULTANT**

In selecting a consultant, a state agency shall:

- (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and
- (2) if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 7, eff. June 19, 1997.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

**SEC. 2254.028.**  
**NOTICE OF INTENT:**  
**MAJOR**  
**CONSULTING**  
**SERVICES**  
**CONTRACT**

- (a) Before entering into a major consulting services contract, a state agency shall:
- (1) notify the Legislative Budget Board and the governor's Budget and Planning Office that the agency intends to contract with a consultant;
  - (2) give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Sections 2254.026 and 2254.027; and
  - (3) obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary.
- (b) A major consulting services contract that a state agency enters into without first obtaining the finding required by Subsection (a)(3) is void.
- (c) Subsection (a) does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 a finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 8, eff. June 19, 1997;

Acts 2003, 78th Leg., ch. 1266, Sec. 1.03, eff. June 20, 2003.

Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 6.10, eff. June 17, 2011.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

**SEC. 2254.029.  
PUBLICATION IN  
TEXAS REGISTER  
BEFORE ENTERING  
INTO MAJOR  
CONSULTING  
SERVICES  
CONTRACT**

- (a) Not later than the 30th day before the date it enters into a major consulting services contract, a state agency shall file with the secretary of state for publication in the Texas Register:
- (1) an invitation for consultants to provide offers of consulting services;
  - (2) the name of the individual who should be contacted by a consultant that intends to make an offer;
  - (3) the closing date for the receipt of offers; and
  - (4) the procedure by which the state agency will award the contract.
- (b) If the consulting services sought by a state agency relate to services previously provided by a consultant, the agency shall disclose that fact in the invitation required by Subsection (a). If the state agency intends to award the contract for the consulting services to a consultant that previously provided the services, unless a better offer is received, the agency shall disclose its intention in the invitation required by Subsection (a).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 9, eff. June 19, 1997.

**SEC. 2254.030.  
PUBLICATION IN  
TEXAS REGISTER  
AFTER ENTERING  
INTO MAJOR  
CONSULTING  
SERVICES  
CONTRACT**

Not later than the 20th day after the date of entering into a major consulting services contract, the contracting state agency shall file with the secretary of state for publication in the Texas Register:

- (1) a description of the activities that the consultant will conduct;
- (2) the name and business address of the consultant;
- (3) the total value and the beginning and ending dates of the contract; and
- (4) the dates on which documents, films, recordings, or reports that the consultant is required to present to the agency are due.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 10, eff. June 19, 1997;

Acts 1999, 76th Leg., ch. 1467, Sec. 1.30, eff. Sept. 1, 1999.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC 2254.0301.**  
**CONTRACT**  
**NOTIFICATION**

- (a) A state agency shall provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the entity enters into the contract.
- (b) This section does not apply to a university system or institution of higher education. In this subsection, "institution of higher education" and "university system" have the meanings assigned by Section 61.003, Education Code.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 14, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 6.11, eff. June 17, 2011.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.031.  
RENEWAL;  
AMENDMENT;  
EXTENSION**

- (a) A state agency that intends to renew a major consulting services contract shall:
  - (1) file with the secretary of state for publication in the Texas Register the information required by Section 2254.030 not later than the 20th day after the date the contract is renewed if the renewal contract is not a major consulting services contract; or
  - (2) comply with Sections 2254.028 and 2254.029 if the renewal contract is a major consulting services contract.
- (b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.
- (c) A state agency that intends to amend or extend a major consulting services contract shall:
  - (1) not later than the 20th day after the date the contract is amended or extended, file the information required by Section 2254.030 with the secretary of state for publication in the Texas Register if the contract after the amendment or extension is not a major consulting services contract; or
  - (2) comply with Sections 2254.028 and 2254.029 if the contract after the amendment or extension is a major consulting services contract.
- (d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 11, eff. June 19, 1997;

Acts 1999, 76th Leg., ch. 1467, Sec. 1.31, eff. Sept. 1, 1999;

Acts 2003, 78<sup>th</sup> Leg., ch. 1266, Sec. 1.04, eff. June 20, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

C211  
(LEGAL)

---

**SEC. 2254.032.  
CONFLICTS OF  
INTEREST**

- (a) An officer or employee of a state agency shall report to the chief executive of the agency, not later than the 10th day after the date on which a private consultant submits an offer to provide consulting services to the agency, any financial interest that:
  - (1) the officer or employee has in the private consultant who submitted the offer; or
  - (2) an individual who is related to the officer or employee within the second degree by consanguinity or affinity, as determined under Chapter 573, has in the private consultant who submitted the offer.
- (b) This section applies to all consulting services contracts and renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**SEC. 2254.033.  
RESTRICTION ON  
FORMER  
EMPLOYEES OF A  
STATE AGENCY**

- (a) An individual who offers to provide consulting services to a state agency and who has been employed by that agency or by another agency at any time during the two years preceding the making of the offer shall disclose in the offer:
  - (1) the nature of the previous employment with the agency or the other agency;
  - (2) the date the employment was terminated; and
  - (3) the annual rate of compensation for the employment at the time of its termination.
- (b) A state agency that accepts an offer from an individual described in Subsection (a) shall include in the information filed under Section 2254.030 a statement about the individual's previous employment and the nature of the employment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

C211  
(LEGAL)

---

**SEC. 2254.034.  
CONTRACT VOID**

- (a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void.
- (b) A contract entered into with a private consultant who did not comply with Section 2254.033 is void.
- (c) If a contract is void under this section:
  - (1) the comptroller may not draw a warrant or transmit money to satisfy an obligation under the contract; and
  - (2) a state agency may not make any payment under the contract with state or federal money or money held in or outside the state treasury.
- (d) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1999, 76th Leg., ch. 1467, Sec. 1.32, eff. June 19, 1999.

**SEC. 2254.035.  
DIVIDING  
CONTRACTS**

- (a) A state agency may not divide a consulting services contract into more than one contract to avoid the requirements of this subchapter.
- (b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.036.  
ARCHIVES**

- (a) On request, a state agency shall, after the agency's contract with a consultant has ended, supply the Legislative Budget Board and the governor's Budget and Planning Office with copies of all documents, films, recordings, or reports compiled by the consultant under the contract.
- (b) Copies of all documents, films, recordings, or reports compiled by the consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years.
- (c) The Texas State Library shall list each document, film, recording, and report given to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 12, eff. June 19, 1997.

**SEC. 2254.037.  
REPORTS**

As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall report to the Legislative Budget Board and the governor's Budget and Planning Office on any actions taken in response to the recommendations of any consultant with whom the state agency contracts during the previous biennium.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1997, 75th Leg., ch. 1035, Sec. 13, eff. June 19, 1997.

**SEC. 2254.038. MIXED  
CONTRACTS**

This subchapter applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

**SEC. 2254.039.  
COMPTROLLER'S  
RULES**

- (a) The comptroller shall adopt rules to implement and administer this subchapter. The comptroller's rules may not conflict with or cover a matter on which this subchapter authorizes the governor to adopt rules.
- (b) The comptroller shall give proposed rules to the governor for review and comment before adopting the rules.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by:  
Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 3.15, eff. September 1, 2007.



PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

---

**SEC. 2254.040.**  
**PROCUREMENT BY**  
**COMPTROLLER**

- (a) The comptroller may, on request of a state agency, procure for the agency consulting services that are covered by this subchapter.
- (b) The comptroller may require reimbursement for the costs it incurs in procuring the services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 1999, 76th Leg., ch. 426, Sec. 16, eff. June 18, 1999.

Acts 2007, 80th Leg., R.S., Ch. 937, Sec. 1.75, eff. September 1, 2007.

---

SUBCHAPTER C. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES

**SEC. 2254.101.**  
**DEFINITIONS**

In this subchapter:

- (1) "Contingent fee" means that part of a fee for legal services, under a contingent fee contract, the amount or payment of which is contingent on the outcome of the matter for which the services were obtained.
- (2) "Contingent fee contract" means a contract for legal services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained.
- (3) "State governmental entity":
  - (A) means the state or a board, commission, department, office, or other agency in the executive branch of state government created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;
  - (B) includes the state when a state officer is bringing a *parens patriae* proceeding in the name of the state; and
  - (C) does not include a state agency or state officer acting as a receiver, special deputy receiver, liquidator, or liquidating agent in connection with the administration of the assets of an insolvent entity under Article 21.28, Insurance Code, or Chapter 36, 66, 96, or 126, Finance Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

**SEC. 2254.102.**  
**APPLICABILITY**

- (a) This subchapter applies only to a contingent fee contract for legal services entered into by a state governmental entity.
- (b) The legislature by this subchapter is providing, in accordance with Section 44, Article III, Texas Constitution, for the manner in which and the situations under which a state governmental entity may compensate a public contractor under a contingent fee contract for legal services.
- (c) This subchapter does not apply to a contract:
  - (1) with a state agency to collect an obligation under Section 2107.003(b), (c), or (c-1); or
  - (2) for legal services entered into by an institution of higher education under Section 153.006, Education Code.
- (d) This subchapter does not apply to a contract for legal services entered into by the Teacher Retirement System of Texas if the services are paid for from money that is not appropriated from the general revenue fund, including funds of a trust administered by the retirement system.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

Amended by:

Acts 2003, 78th Leg., ch. 1266, Sec. 1.13, eff. June 20, 2003.

Acts 2005, 79th Leg., Ch. 1359, Sec. 31, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1386, Sec. 3, eff. September 1, 2007.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

C211  
(LEGAL)

**SEC. 2254.103.**  
**CONTRACT**  
**APPROVAL;**  
**SIGNATURE**

- (a) A state governmental entity that has authority to enter into a contract for legal services in its own name may enter into a contingent fee contract for legal services only if:
  - (1) the governing body of the state governmental entity approves the contract and the approved contract is signed by the presiding officer of the governing body; or
  - (2) for an entity that is not governed by a multimember governing body, the elected or appointed officer who governs the entity approves and signs the contract.
- (b) The attorney general may enter into a contingent fee contract for legal services in the name of the state in relation to a matter that has been referred to the attorney general under law by another state governmental entity only if the other state governmental entity approves and signs the contract in accordance with Subsection (a).
- (c) A state governmental entity, including the state, may enter into a contingent fee contract for legal services that is not described by Subsection (a) or (b) only if the governor approves and signs the contract.
- (d) Before approving the contract, the governing body, elected or appointed officer, or governor, as appropriate, must find that:
  - (1) there is a substantial need for the legal services;
  - (2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the state governmental entity or by the attorneys and supporting personnel of another state governmental entity; and
  - (3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.
- (e) Before entering into a contingent fee contract for legal services in which the estimated amount that may be recovered exceeds \$100,000, a state governmental entity that proposes to enter into the contract in its own name or in the name of the state must also notify the Legislative Budget Board that the entity proposes to enter into the contract, send the board copies of the proposed contract, and send the board information demonstrating that

---

the conditions required by Subsection (d)(3) exist. If the state governmental entity finds under Subsection (d)(3) that the state governmental entity does not have appropriated funds available to pay the estimated amounts required under a contract for the legal services providing only for the payment of hourly fees, the state governmental entity may not enter into the proposed contract in its own name or in the name of the state unless the Legislative Budget Board finds that the state governmental entity's finding with regard to available appropriated funds is correct.

- (f) A contingent fee contract for legal services that is subject to Subsection (e) and requires a finding by the Legislative Budget Board is void unless the board has made the finding required by Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

**SEC. 2254.104. TIME  
AND EXPENSE  
RECORDS  
REQUIRED; FINAL  
STATEMENT**

- (a) The contract must require that the contracting attorney or law firm keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract.
- (b) The contracting attorney or law firm shall permit the governing body or governing officer of the state governmental entity, the attorney general, and the state auditor each to inspect or obtain copies of the time and expense records at any time on request.
- (c) On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the contracting state governmental entity with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Subsection (a). The complete written statement required by this subsection is public information under Chapter 552 and may not be withheld from a requestor under that chapter under Section 552.103 or any other exception from required disclosure.
- (d) This subsection does not apply to the complete written statement required by Subsection (c). All time and expense records required under this section are public information subject to required public disclosure under Chapter 552. Information in the records may be withheld from a member of the public under Section only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of the state governmental entity determines that withholding the information is necessary to protect the entity's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure under this subsection shall be segregated from information that is subject to required public disclosure.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

---

**SEC. 2254.105.**  
**CERTAIN GENERAL**  
**CONTRACT**  
**REQUIREMENTS**

The contract must:

- (1) provide for the method by which the contingent fee is computed;
- (2) state the differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed;
- (3) state how litigation and other expenses will be paid and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, state whether the amount recovered for purposes of the contingent fee computation is considered to be the amount obtained before or after expenses are deducted;
- (4) state that any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with this subchapter; and
- (5) state that the amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with this subchapter.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254**SEC. 2254.106.  
CONTRACT  
REQUIREMENTS:  
COMPUTATION OF  
CONTINGENT FEE;  
REIMBURSEMENT  
OF EXPENSES**

- (a) The contract must establish the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work. The contract may establish the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons. The highest hourly rate for a named person or under a rate schedule may not exceed \$1,000 an hour. This subsection applies to subcontracted work performed by an attorney, law clerk, or paralegal who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm as well as to work performed by a contracting attorney or by a partner, shareholder, or employee of a contracting attorney or law firm.
- (b) The contract must establish a base fee to be computed as follows. For each attorney, law clerk, or paralegal who is a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, multiply the number of hours the attorney, law clerk, or paralegal works in providing legal or support services under the contract times the reasonable hourly rate for the work performed by that attorney, law clerk, or paralegal. Add the resulting amounts to obtain the base fee. The computation of the base fee may not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.
- (c) Subject to Subsection (d), the contingent fee is computed by multiplying the base fee by a multiplier. The contract must establish a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery. The multiplier may not exceed four without prior approval by the legislature.
- (d) In addition to establishing the method of computing the fee under Subsections (a), (b), and (c), the contract must limit the amount of the contingent fee to a stated percentage of the amount recovered. The contract may state different percentage limitations for different ranges of possible recoveries and different percentage limitations in the event the matter is settled, tried, or tried and appealed. The percentage limitation may not exceed 35 percent without prior approval by the legislature. The contract must state that the amount of the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed



---

under Subsections (a), (b), and (c).

- (e) The contract also may:
  - (1) limit the amount of expenses that may be reimbursed; and
  - (2) provide that the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter.
- (f) Except as provided by Section 2254.107, this section does not apply to a contingent fee contract for legal services:
  - (1) in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or
  - (2) under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed \$100,000.
- (g) This section applies to a contract described by Subsection (f) for each individual recovery under the contract that actually exceeds \$100,000, and the contract must provide for computing the fee in accordance with this section for each individual recovery that actually exceeds \$100,000.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254

C211  
(LEGAL)

---

**SEC. 2254.107. MIXED  
HOURLY AND  
CONTINGENT FEE  
CONTRACTS;  
REIMBURSEMENT  
FOR  
SUBCONTRACTED  
WORK**

- (a) This section applies only to a contingent fee contract:
- (1) under which the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly rate basis without regard to the outcome of the matter; or
  - (2) under which reimbursable expenses are incurred for subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm.
- (b) Sections 2254.106(a) and (e) apply to the contract without regard to the expected or actual amount of recovery under the contract.
- (c) The limitations prescribed by Section 2254.106 on the amount of the contingent fee apply to the entire amount of the fee under the contingent fee contract, including the part of the fee the amount and payment of which is not contingent on the outcome of the matter.
- (d) The limitations prescribed by Section 2254.108 on payment of the fee apply only to payment of the contingent portion of the fee.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

PROCUREMENT POLICIES AND PROCEDURES  
GOVERNMENT CODE – CHAPTER 2254**SEC. 2254.108. FEE  
PAYMENT AND  
EXPENSE  
REIMBURSEMENT**

- (a) Except as provided by Subsection (b), a contingent fee and a reimbursement of an expense under a contract with a state governmental entity is payable only from funds the legislature specifically appropriates to pay the fee or reimburse the expense. An appropriation to pay the fee or reimburse the expense must specifically describe the individual contract, or the class of contracts classified by subject matter, on account of which the fee is payable or expense is reimbursable. A general reference to contingent fee contracts for legal services or to contracts subject to this subchapter or a similar general description is not a sufficient description for purposes of this subsection.
- (b) If the legislature has not specifically appropriated funds for paying the fee or reimbursing the expense, a state governmental entity may pay the fee or reimburse the expense from other available funds only if:
- (1) the legislature is not in session; and
  - (2) the Legislative Budget Board gives its prior approval for that payment or reimbursement under Section 69, Article XVI, Texas Constitution, after examining the statement required under Section 2254.104(c) and determining that the requested payment and the contract under which payment is requested meet all the requirements of this subchapter.
- (c) A payment or reimbursement under the contract may not be made until:
- (1) final and unappealable arrangements have been made for depositing all recovered funds to the credit of the appropriate fund or account in the state treasury; and
  - (2) the state governmental entity and the state auditor have received from the contracting attorney or law firm the statement required under Section 2254.104(c).
- (d) Litigation and other expenses payable under the contract, including expenses attributable to attorney, paralegal, accountant, expert, or other professional work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm, may be reimbursed only if the state governmental entity and the state auditor determine that the expenses were reasonable, proper, necessary, actually incurred on behalf of the state governmental entity, and paid for by the contracting attorney or law firm. The contingent fee may not be paid until the state auditor has reviewed the relevant time and expense records and verified that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the

---

state governmental entity under the contract.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

**SEC. 2254.109.**  
**EFFECT ON OTHER**  
**LAW**

- (a) This subchapter does not limit the right of a state governmental entity to recover fees and expenses from opposing parties under other law.
- (b) Compliance with this subchapter does not relieve a contracting attorney or law firm of an obligation or responsibility under other law, including under the Texas Disciplinary Rules of Professional Conduct.
- (c) A state officer, employee, or governing body, including the attorney general, may not waive the requirements of this subchapter or prejudice the interests of the state under this subchapter. This subchapter does not waive the state's sovereign immunity from suit or its immunity from suit in federal court under the Eleventh Amendment to the federal constitution.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.03, eff. Sept. 1, 1999.

---

SUBCHAPTER D. OUTSIDE LEGAL SERVICES

- SEC. 2254.151.  
DEFINITION** In this subchapter, "state agency" means a department, commission, board, authority, office, or other agency in the executive branch of state government created by the state constitution or a state statute.
- SEC. 2254.152.  
APPLICABILITY** This subchapter does not apply to a contingent fee contract for legal services.  
Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.
- SEC. 2254.153.  
CONTRACTS FOR  
LEGAL SERVICES  
AUTHORIZED** Subject to Section 402.0212, a state agency may contract for outside legal services.  
Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.
- SEC. 2254.154.  
ATTORNEY  
GENERAL;  
COMPETITIVE  
PROCUREMENT** The attorney general may require state agencies to obtain outside legal services through a competitive procurement process, under conditions prescribed by the attorney general.  
Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.18, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

**PURCHASE  
CONTRACTS**

Subchapter O, Purchase Contracts, consisting of Sections. 60.451 to 60.465, was added by Acts 2003, 78th Leg., ch. 307, § 1. For another Subchapter O, Financial Disclosure by Members of Governing Body, consisting of Sections. 60.451 and 60.452, added by Acts 2003, 78th Leg., ch. 249, § 6.05, see § 60.451 et seq., ante.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

**SEC. 60.451.**  
**DEFINITIONS**

In this subchapter:

- (1) "Architect" has the meaning assigned by Section 1051.001, Occupations Code.
- (2) "Contractor" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the facility at the contracted price.
- (3) "Construction manager-agent" means a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the district regarding construction, rehabilitation, alteration, or repair of a facility.
- (4) "Construction manager-at-risk" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the district regarding construction during and after the design of the facility.
- (5) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.
- (6) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.
- (7) "Design criteria package" means a set of documents prepared by a district that provides sufficient information to permit a design-build firm to prepare a response to a district's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the district considers necessary to describe the project and may include, as appropriate:
  - (A) the legal description of the site;
  - (B) survey information concerning the site;
  - (C) interior space requirements;
  - (D) special material requirements;
  - (E) material quality standards;
  - (F) conceptual criteria for the project;
  - (G) special equipment requirements;

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

- (H) cost or budget estimates;
  - (I) time schedules;
  - (J) quality assurance and quality control requirements;
  - (K) site development requirements;
  - (L) applicable codes and ordinances;
  - (M) provisions for utilities;
  - (N) geotechnical baseline reports;
  - (O) parking requirements; or
  - (P) any other requirements, as applicable.
- (8) "District" means a navigation district or port authority created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.
- (9) "Engineer" has the meaning assigned by Section 1001.002, Occupations Code.
- (10) "Facility" means real property, including buildings, associated structures, utilities, docks, wharves, channels, dredge material placement areas, marine terminal improvements, railroads on or adjacent to the marine terminal, roads and bridges on or adjacent to the marine terminal, and improved or unimproved land. The term also includes roads or bridges that are incidental to a larger project.
- (11) "Fee" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means the payment a construction manager-agent or construction manager-at-risk receives for the manager's overhead and profit in performing the manager's services.
- (12) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.



PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

**SEC. 60.452.  
APPLICABILITY OF  
SUBCHAPTER;  
OTHER LAW**

- (a) This subchapter does not apply to a contract solely for professional services rendered, including services of an architect, attorney, or fiscal agent.
- (b) If a district elects to make a procurement under this subchapter, this subchapter prevails over any other law relating to a purchase contract for goods and services by the district that is in conflict with or inconsistent with this subchapter.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 1, 2003.

**SEC. 60.453.  
AUTHORITY TO  
ADOPT RULES**

The commission of a district may adopt rules and procedures for the acquisition of goods or services.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

**SEC. 60.454.  
PURCHASING  
CONTRACT  
METHODS**

Notwithstanding any other provision of this chapter or other law, a district contract valued at \$25,000 or more in the aggregate for each 12-month period may be made by the method below that, in the opinion of the district's commission, provides the best value for the district:

- (1) a design-build contract to construct, rehabilitate, alter, or repair facilities;
- (2) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager-agent or construction manager-at-risk;
- (3) competitive sealed proposals;
- (4) a job order contract for the construction, repair, rehabilitation, or alteration of a facility;
- (5) a request for proposals, if the contract is for services other than construction services;
- (6) competitive sealed bids;
- (7) a catalog purchase as provided by Subchapter B, Chapter 2157, Government Code;
- (8) an interlocal contract as provided by Chapter 791, Government Code; or
- (9) the reverse auction procedure as defined by Section 2155.062(d), Government Code.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

**SEC. 60.455. RIGHT  
TO REJECT ALL  
BIDS**

A district that requests bids or proposals under any of the methods provided by this subchapter may reject any and all bids or proposals submitted.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

**SEC. 60.456. NOTICE  
REQUIREMENTS**

For a contract entered into by a district under any of the methods provided by this subchapter, the district shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in each county in which the district is located once each week for two consecutive weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in any county in which the district is located, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the district is located or the county in which the greatest amount of the district's territory is located. In a two-step procurement process, the time and place the second-step bids, proposals, or responses will be received are not required to be published separately.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

**SEC. 60.457.  
DELEGATION**

- (a) The commission of a district may, as it considers appropriate, delegate its authority under this subchapter regarding an action authorized or required by this subchapter to be taken by a district to a designated person, representative, or committee. In procuring construction services, the district shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications, or in an addendum to the request. If the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the commission in an open meeting is advisory only.
- (b) A commission may not delegate the authority to act regarding an action authorized or required by this subchapter to be taken by the commission of a district.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

**SEC. 60.458.  
PURCHASE  
CONTRACT AWARD  
CRITERIA**

Except as provided by this subchapter, in determining to whom to award a contract, the district may consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the district's needs;
- (5) the vendor's past relationship with the district;
- (6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses, the district's small business development program, or another contracting program approved by the district, if any;
- (7) the total long-term cost to the district to acquire the vendor's goods or services; and
- (8) any other relevant factor specifically listed in the request for bids or proposals

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

**SEC. 60.459.  
EVALUATION OF  
BIDS AND  
PROPOSALS FOR  
CONSTRUCTION  
SERVICES**

- (a) The commission of a district that is considering a construction contract using a method specified by Section 60.454 must, before advertising, determine which method provides the best value for the district.
- (b) The district shall base its selection among offerors on criteria authorized to be used under Section 60.458. The district shall publish in the request for bids, proposals, or qualifications the specific criteria that will be used to evaluate the offerors and the relative weights given to the criteria.
- (c) The district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date of the award of the contract.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

**SEC. 60.460. DESIGN-BUILD CONTRACTS FOR FACILITIES**

- (a) A district may award a design-build contract for the construction, rehabilitation, alteration, or repair of a facility provided that the contracting district and the design-build firm follow the procedures provided by this section.
- (b) The district shall designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the district's engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect as provided by Section 2254.004, Government Code.
- (c) The district shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The district shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with the applicable law. An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code.
- (d) The district shall evaluate statements of qualifications and select a design-build firm in two phases:
  - (1) In phase one, the district shall prepare a request for qualifications and evaluate each offerors experience, technical competence, and capability to perform, the past performance of the offerors team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the district that each engineer or architect who is a member of its team was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004, Government Code. The district shall qualify a maximum of five offerors to submit additional information and, if the district chooses, to interview for final selection.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

- (2) In phase two, the district shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The district may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, construction cost, engineering and architectural design, or other factors as appropriate. The district shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. The district shall select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.
- (e) Following selection of a design-build firm under Subsection (d), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the district or the district's engineer or architect before or concurrently with construction.
- (f) The district shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those services for which it contracts in accordance with Section 2254.004, Government Code.
- (g) The design-build firm shall supply a signed and sealed set of as-built construction documents for the project to the district at the conclusion of construction.
- (h) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this subchapter that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

- (i) The district shall pay an unsuccessful design-build firm that submits a response to the district's request for additional information on engineering or architectural design under Subsection (d)(2) the stipulated amount of up to one-half of one percent of the final contract price for any reasonable costs incurred in preparing that proposal. After payment of the stipulated amount, the district may make use of any design contained in the proposal, including the technologies, techniques, methods, processes, and information contained in the design. The use by the district of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the district and does not confer liability on the recipient of the stipulated amount under this section. The methodology for computing the stipulated amount must be stated in the request for additional information under Subsection (d)(2).
- (j) The district may use a design-build firm to assist the district in obtaining a permit necessary for a facility, but the district is responsible for obtaining the permit.
- (k) A successful design-build firm shall not be eligible for another design-build contract with the district for a period of 12 months after the date the successful design-build firm's contract has been completed if:
  - (1) the successful design-build firm's contract value exceeds \$5 million; or
  - (2) the design-build firm is awarded design-build contracts by a district that total more than \$5 million in a 12-month period.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

**SEC. 60.461.  
CONTRACTS FOR  
FACILITIES:  
CONSTRUCTION  
MANAGER-AGENT**

- (a) A district may award a contract to a construction manager-agent for the construction, rehabilitation, alteration, or repair of a facility provided that the construction manager-agent and the district follow the procedures prescribed by this section.
- (b) A district may, under the contract between the district and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. A construction manager-agent represents the district in a fiduciary capacity.
- (c) Before or concurrently with selecting a construction manager-agent, the district shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect as provided by Section 2254.004, Government Code. The district's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the district's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable laws.
- (d) A district shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004, Government Code.
- (e) A district contracting with a construction manager-agent shall procure, in accordance with applicable law, and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.
- (f) The district or the construction manager-agent shall procure in accordance with Section 2254.004, Government Code, and in any manner authorized by this chapter, all of the testing of construction materials, the inspection services, and the verification testing services necessary for acceptance of the facility by the district.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

**SEC. 60.462.  
CONTRACTS FOR  
FACILITIES:  
CONSTRUCTION  
MANAGER-AT-RISK**

- (a) A district may award a contract to a construction manager-at-risk for the construction, rehabilitation, alteration, or repair of a facility provided that the construction manager-at-risk and the district follow the procedures prescribed by this section.
- (b) Before or concurrently with selecting a construction manager-at-risk, the district shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect in accordance with Section 2254.004, Government Code. The district's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk.
- (c) The district shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those services for which it contracts in accordance with Section 2254.004, Government Code.
- (d) The district shall select the construction manager-at-risk in either a one-step or two-step process. The district shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, and estimated budget, the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that may assist the district in its selection of a construction manager-at-risk. The district shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offerors experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the district may request, as part of the offerors proposal, proposed fees and prices for fulfilling the general conditions.
- (e) If a two-step process is used, the district may not request fees or prices in step one. In step two, the district may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.



PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

- (f) At each step, the district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the district shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date of opening the proposals, the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.
- (g) The district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.
- (h) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the request for proposals or qualifications. The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

**SEC. 60.463.  
SELECTING  
CONTRACTOR FOR  
CONSTRUCTION  
SERVICES THROUGH  
COMPETITIVE  
SEALED PROPOSALS**

- (a) In selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, a district shall follow the procedures prescribed by this section.
- (b) The district shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect as provided by Section 2254.004, Government Code.
- (c) The district shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials, and the verification testing services necessary for acceptance of the facility by the district. The district shall select those services for which it contracts in accordance with Section 2254.004, Government Code, and shall identify them in the request for proposals.
- (d) The district shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.
- (e) The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date of opening the proposals, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.
- (f) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

---

- (g) In determining best value for the district, the district is not restricted to considering price alone, but may consider any other factor stated in the selection criteria.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.

PROCUREMENT POLICIES AND PROCEDURES  
TEXAS WATER CODE – CHAPTER 60, SUBCHAPTER O

**SEC. 60.464. JOB  
ORDER CONTRACTS  
FOR FACILITIES  
CONSTRUCTION OR  
REPAIR**

- (a) A district may award job order contracts for the construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks.
- (b) The district may establish contractual unit prices for a job order contract by:
  - (1) specifying one or more published construction unit price books and the applicable divisions or line items; or
  - (2) providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.
- (c) The district shall advertise for, receive, and publicly open sealed proposals for job order contracts.
- (d) The district may require offerors to submit, in addition to information on rates, other information, including experience, past performance, and proposed personnel and methodology.
- (e) The district may award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.
- (f) An order for a job or project under the job order contract must be signed by the district's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.
- (g) The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.
- (h) The base term of a job order contract is for the period and with any renewal options that the district sets forth in the request for proposals. If the district fails to advertise that term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.
- (i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with applicable law.

Added by Acts 2003, 78th Leg., ch. 307, § 1, eff. June 18, 2003.