



# **SMITH COUNTY, TEXAS**

## **PURCHASING**

### **POLICIES AND PROCEDURES MANUAL**

*Manual Revisions Adopted by Commissioners Court*

*May 14, 2019*

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## INTRODUCTION

This manual has been adopted by the Smith County Commissioners Court for the use of Smith County employees and officials, and is designed to assist them in complying with the laws governing County purchasing procedures. Any changes in the contents of this manual shall be made only by the governing body.

County purchasing procedures are governed by Chapter 262 of the Texas Local Government Code; and these statutes, including interpretations of them made by Texas courts, are the ultimate authority on the validity of purchasing procedures. Because the procedures described in this manual are based on state law, this manual contains language taken directly from statutes. If any policy or procedure in this manual is contradictory to Texas State Law then Texas State Law shall govern.

The mission of the Smith County Purchasing Department is to procure goods and services in the most efficient and cost effective manner possible. This is accomplished by standardization, competitive bidding on the basis of adequate specifications, and cooperative purchasing; all in compliance with the Texas Local Government Code (LGC), other relevant laws and best business practices.

The Smith County Purchasing Department is a member of the administrative services team of Smith County. The County Purchasing Director is charged with the responsibility of assuring fair and equitable treatment to all vendors without regard to political pressure or discrimination on the basis of race, color, religion, national origin, handicap, or sex.

It is the duty of this department to furnish supplies, equipment, and services to the various departments and elected officials in the required quality and quantity, at the best possible price.

These tasks are accomplished by standardization and competitive bidding on the basis of adequate specifications, whenever practicable.

The Purchasing Department is committed to promoting effective, professional, and consistent procurement in Smith County, as well as supporting the public precept that tax dollars be wisely spent.

## DEFINITIONS

**Advertisement or Advertised** - A public notice run in a newspaper of general circulation containing information about an invitation for bid or a request for proposal.

**Auditor** - Smith County Auditor and his/her designated representatives.

**Bidders List** - A list of vendors who have signified in writing an interest in submitting bids for particular categories or services.

**Change Order** - A document used in construction contracts that changes the contract by increasing or decreasing the cost or the time for performance or changes the goods or services to be delivered.

**Commissioners Court** – Smith County Commissioners Court consisting of the County Judge and four Precinct Commissioners, as indicated in Texas Constitution, art. V, § 18.

**Competitive Bidding** – The formal process of soliciting sealed bids from vendors as governed by Local Government Code § 262.023.

**Contract** – Any formal, written agreement executed by the county and a vendor containing the terms and conditions under which the goods or services are to be furnished to the county.

County – Shall mean Smith County, Texas

**Department** – Any county, precinct, district offices, and subdivisions thereof.

**Employee** – Any county, precinct or district employee elected, appointed, or hired by Smith County, Texas.

**Goods** – Includes any personal property to be purchased by the county, including equipment, supplies, material, and component or repair parts.

**Lease** – A contract for the use of personal property for a period of time in return for a specified compensation. All leases must be approved by the Commissioners Court and signed by the County Judge.

**Lowest Responsible Bid** – The offer from the responsible bidder who submits the lowest and best bid meeting all requirements of the specifications, terms, and conditions of the invitation for bid. It expressly is understood that the lowest responsible bid includes any related costs to the county in a total cost concept. The term “responsible” refers to the financial and practical ability of the bidder to perform the contract and take into consideration the past performance of the vendor.

**Modification** – A document used to change the terms and/or conditions of a contract.

**Payment Bond** – A guarantee that promises payment to subcontractors and suppliers on a contract during performance. It must be submitted prior to any work. It is normally one hundred percent (100%) of the contract price and is in the form of a financial guarantee provided by a surety, but can be cashier’s or certified checks, or U.S. currency. It is normally maintained until expiration of any required warranty. If the contractor fails to pay subcontractors and suppliers, then the payment bond is “called” for the amount of non-payment.

**Performance Bond** – A guarantee that promises that the contract will be performed as required. It must be submitted prior to any work. Normally it is one hundred percent (100%) of the contract price and is in the form of a financial guarantee provided by a surety, but can be cashier’s or certified checks, or U.S. currency. It is normally maintained until expiration of any required warranty. If the contractor fails to perform and complete the contract as required, then the performance bond is “called” for the amount required to complete the contract. A surety that provides a bond may be permitted to “take over” a failed or defaulted contract.

**Pre-Bid/Proposal Conference** – A conference conducted by the Purchasing Department for the benefit of those wishing to submit a bid or proposal for services/supplies required by the County. This is held in order to allow bidders/proposers to ask questions about the proposed contract and particularly the contract specifications.

**Professional Service** - Services directly related to profession practices as defined by the Professional Services Procurement Act, including those services within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, and professional engineering.

**Professional Services Procurement Act** – As defined in Government Code 2254, there are three (3) kinds of professional Services specified and allowable in this act.

**Prompt Payment Act** – Texas Government Code 2251.021(B) TIME FOR PAYMENT BY GOVERNMENTAL ENTITY, states a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of: (1) the date the governmental entity receives the goods under the contract; (2) the date the performance of the services under the contract is completed; or (3) the date the governmental entity receives an invoice for the goods or services contained therein.

**Proprietary Information** – Information in bids or proposals to which a vendor claims ownership or exclusive rights and which are protected from disclosure in the Texas Public Information Act (Texas Government Code, Chapter 552). Generally, this is information that “if released, would give advantage to a competitor or bidder.” (Texas Government Code § 552.104).

**Purchase Order** – A written order issued by the Purchasing Agent, or designee, authorizing the purchasing office to enter into a contract with a vendor to purchase goods or services.

**Purchase Requisition** – A request by a department to the Purchasing Agent for the purchasing department to enter into a contract with a vendor to purchase particular goods or services.

**Purchasing** – The act, function, and responsibility for the acquisition of goods and services including construction.

**Purchasing Act** –The provisions of the County Purchasing Act, Texas Local Government Code § 262.021, *et seq.*

**Purchasing Agent** – In Smith County, the Purchasing Agent and/or designee is employed by the Smith County Commissioners Court pursuant to Texas Local Government Code § 262.0115.

**Request for Offer (RFO)** – An RFO provides a method of negotiating prices, terms, and conditions with catalogue vendors. It assumes that negotiation for “best value” will occur with catalogue vendors, instead of making selections for goods and services based on the published prices, terms and conditions in the catalogues.

**Request for Proposal (RFP)** – A document requesting an offer be made by a vendor which allows for negotiations after a proposal has been received but before award of the contract for goods and services procured in compliance with TEX, LOC, GOV'T CODE ANN, section 262.0295 or

262.030. All proposals are confidential information and will be open to the public after the award has been made.

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

**Sealed Bids** – Competitive Bids required to be advertised in a newspaper of general circulation and submitted to the purchasing office in a sealed envelope within the specified time period, pursuant to Texas Local Government Code, Chapter 262.

**Services** – Includes all work or labor performed for the county on an independent contractor basis, including maintenance, construction, manual, clerical, or professional services.

**Sole source good or service** – A good or service that can be obtained from only one source that is purchased in compliance with Texas Local Government Code § 262.024 (a)(7) and (c).

**Solicitation** – A document, such as an Invitation for Bid, Request for Proposal, Request for Offers, or Request for Qualifications, issued by the purchasing office. The document contains the terms and conditions for a contract and seeks (solicits) a bid or proposal for goods or services needed by the County.

**Specifications** – A concise description of a good or service that the County seeks to buy, including the requirements the vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection, or preparing any items for delivery, or preparing or installing it for use.

**Vendor** – One who sells a good or service.

### **PURCHASING AUTHORITY Purchasing Laws**

It is the policy of Smith County, acting through its duly appointed Purchasing Director, to comply fully with all purchasing laws and amendments of the State of Texas.

#### **Authority**

Sec. 262.0115. PURCHASING AGENTS IN COUNTIES WITH POPULATION OF MORE THAN 100,000. (a) In a county with a population of more than 100,000, the Commissioners Court may employ a person to act as county purchasing agent. However, this section does not apply to a county that has appointed a purchasing agent under Section 262.011 and that has not abolished the position as authorized by law.

(b) A purchasing agent employed under this section serves at the pleasure of the commissioners court.

(c) The commissioners court may employ other persons necessary to assist the purchasing agent in performing the agent's functions.

(d) Under the supervision of the commissioners court, the purchasing agent shall carry out the functions prescribed by law for a purchasing agent under Section 262.011 and for the county auditor in regard to county purchases and contracts and shall administer the procedures prescribed by law for notice and public bidding for county purchases and contracts.

(e) A county that has established the position of county purchasing agent under this section may abolish the position at any time. On the abolition of the position, the county auditor shall assume the functions previously performed by the purchasing agent.

These policies and procedures are adopted by the County Purchasing Director and approved by the Commissioners Court acting in its capacity as the governing body of Smith County, Texas.

Smith County adopts these policies and procedures under the authority of Texas Local Government Code, Chapter 262.

### **Effective Date**

These policies and procedures will become effective upon approval by Commissioners Court.

## **PURCHASING POLICY**

These policies and procedures are adopted by the Smith County Purchasing Agent and the Smith County Commissioners Court acting in its capacity as the governing body of Smith County, Texas. Smith County adopts these policies and procedures under the authority of Texas Local Government Code, Chapter 262. The Smith County Commissioners Court has directed the Purchasing Agent to provide a centralized purchasing structure.

### ***The County Purchasing Policy is to:***

- Seek the best quality, lowest priced goods and services available that meet the needs and delivery requirements of Smith County Personnel;
- Provide all responsible vendors and contractors with equitable access to servicing the needs of Smith County and its personnel through the competitive bidding of goods and services;
- Comply with all federal and state laws that apply to county purchasing and with the policies and procedures in this manual;
- Manage all county assets and inventory so that replacement costs are minimized and Smith County can account for those assets; and
- Dispose of all surplus, salvage, seized, and abandoned property in a manner that provides the most benefit to the taxpayers of the county and complies with the law.
- County purchasing will be conducted in a manner that will promote and foster public confidence in the integrity of the county procurement process.
- Protect the interest of Smith County taxpayers without regard to any undue influence or political pressure.

The Purchasing Agent must purchase or lease all goods and services, including maintenance and repair, for all departments.

In addition, the responsibilities of the Purchasing Agent shall be to:

1. Encourage and support compliance with Texas Purchasing Laws;
2. Work in conjunction with the auditor and other county officials in the development of efficient financial processes;
3. Promote local business participation in Smith County procurement processes; and
4. Provide the business community a central professional link to county business.

Any commitment to acquire goods or services without an authorized purchase order is prohibited. Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment. All such purchases may be considered the personal responsibility of the person obligating such an expenditure, with no responsibility whatsoever to the County. Employees must never purchase goods or services for their own personal benefit.

Departments must be cognizant of budget balances and refrain from trying to process requisitions in excess of their balances unless the proper transfer of funds has been accomplished. Purchase requisitions for which there is not adequate funding will not be processed.

Departments should plan purchases in order to keep emergency purchase requisitions to a minimum.

Departments must ensure that all employees involved in making departmental purchase requests have read and understand the procedures in this manual.

Each county department is responsible for receiving goods and services. Departments should make Purchasing aware of any shortage, late delivery, damaged merchandise, or any other problem relating to the vendor's performance.

Departments must provide the Purchasing Department ample time to process any purchase requests:

1. On all purchases that are less than \$50,000, departments should allow a one to two week time frame.
2. On all purchases that are over \$50,000, departments should allow a six to eight (8-12) week time frame.

The Purchasing Department is committed to processing all purchase requisitions within a reasonable time frame.



## COUNTY PURCHASING ACT

The Purchasing Act applies to all departments: all district, county, precinct officials, employees and subdivisions of all district, county and precinct offices.

The County Purchasing Act provides a general legal and procedural framework that emphasizes price (rather than total cost and value), openness, control, and accountability rather than efficiency. It is the duty of the county's chief procurement official to review and to recommend periodic modifications for improvements that will enhance the efficiency and effectiveness of the procurement function.

In Texas counties there are usually ONLY TWO entities that have the authority to sign procurement documents: the commissioners' court as a voting body only, and the county purchasing agent. The commissioners' court must approve all contracts exceeding the statutory limit and the purchasing agent must approve all contracts under the statutory limit.

*Other officials typically do not have procurement authority unless specifically authorized by commissioners' court under authority of the Purchasing Act or other government code.*

The Purchasing Act specifically states (Section 262.011(d)): "The county purchasing agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used, by the county or a subdivision, officer, or employee the county, except purchases and contract required by law to be made on competitive bid. A person other than the county purchasing agent may not make the purchase of the supplies, materials, or equipment or make the contract for repair."

(e)"The county purchasing agent shall supervise all purchases made on competitive bid and shall see that all purchased supplies, materials, and equipment are delivered to the proper county officer or department in accordance with the purchase contract."

(f)"A purchase made by the purchasing agent shall be paid for by a warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. The county auditor may not draw and the county treasurer may not honor a warrant for a purchase unless the purchase is made by the purchasing agent or on competitive bid as provided by law."

(i)"On July 1 of each year, the county purchasing agent shall file with the county auditor and each of the members of the board that appoints the county purchasing agent an inventory of all property on hand and belonging to the County and each department and employee..."

(j)"To prevent unnecessary purchases, the county purchasing agent, with approval of the commissioners court, shall transfer county supplies, materials, and equipment from a subdivision, department, officer, or employee of the county that are not needed or used to another" office. The purchasing agent shall furnish to the Auditor a list of transferred goods.

If any contract is entered into with one of the above mentioned professionals on the basis of a competitive bid, it is contrary to state law and is void.

**Additional PURCHASING LAWS** that govern county purchasing include but are not limited to the following:

- Public Property Finance Act, (TEX. LOC. GOV'T CODE ANN., ch. 271, subch. B)
- Services and Products of Severely Disabled, (TEX. HUM. RES. CODE ANN., sec. 122.014)
- Interlocal Cooperation Agreement, (TEX. GOV'T CODE ANN., ch. 791)
- Prompt Payment Act, (TEX. GOV'T CODE ANN., ch. 2251)
- Bidders from other States and 5% Retainage, (TEX. GOV'T CODE ANN., ch. 2252)
- Public Works Performance and Payment Bonds, (TEX. GOV'T CODE ANN., ch. 2253)
- Wage Rate for Construction Projects, (TEX. REV. CIV. STAT. ANN., Art. 5159a)
- Sales tax exemption for incorporated purchases (TEX. TAX CODE ANN. § 151.131)
- Worker's Compensation Compliance (Workers Compensation Rule 110.110)
- Professional Services Procurement Act (TEX. GOV'T CODE ANN., ch. 2254)

Counties must also comply with a host of other procurement and financial requirements, including federal procurement requirements which flow through to states and localities receiving federal funds (grants).

#### **VIOLATIONS OF THE ACT VIOLATION AND PENALTY**

Any person who knowingly violates or authorizes the violation of the Purchasing Act, and any County or precinct employees failing to use the Purchasing Agent for purchases including an agent or employee of the County or of a department of the County commits a crime punishable by Chapter 262, Texas Local Government Code

The following purchasing strategies that are made with the intention of avoiding formal competitive bidding are in violation of the law: (§ 262.023)

- **COMPONENT PURCHASES:** purchasing a series of component parts of an item that normally would be purchased as a whole.
- **SEPARATE PURCHASES:** purchasing goods and services in a series of separate purchases, which in normal purchasing practices, would have been purchased in one purchase.
- **SEQUENTIAL PURCHASES:** purchases made over a period of time that in normal purchasing practices, would be made as one purchase.

**CAUTION:** Intentionally separating purchases/invoices to avoid the statutory limit competitive bidding is a violation of the Purchasing Act. (Texas Local Government Code § 262.034 & § 262.035)

A final conviction of a county officer or employee for this violation results in the immediate removal from office or employment of that person. For four years after the date of the final conviction, the removed officer or employee is ineligible:

1. to be a candidate for or to be appointed or elected to a public office in this state;
2. to be employed by the county with which the person served when the offense occurred; and
3. to receive any compensation through a contract with that county.

Any commitment to acquire goods or services without an authorized purchase order is prohibited. Anyone obligating an expenditure of funds for goods or services prior to securing a purchase order may be held personally responsible for the payment.

### **PROFESSIONAL SERVICES PROCUREMENT ACT**

Professional services are defined in the Professional Services Procurement Act as:

1. those within the scope of the practice of accounting, architecture, optometry, medicine, land surveying, professional engineering, or real estate appraiser as defined by the laws of the State of Texas;
2. those performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, land surveyor, professional engineer, or state licensed real estate appraiser in connection with his professional employment or practice.

The Act states that contracts for the procurement of these professional services may not be awarded on the basis of bids. Instead, services must be awarded on the basis of demonstrated competence and qualifications.

To ensure vendors a fair and equal opportunity to do business with county, and to ensure that the services of the most qualified professional is obtained, commissioners court should direct that professional services be procured using a Request for Qualifications (RFQ) process.

The county shall rank firms based on their qualifications and then enter into negotiations with the most qualified firm based on a fair and reasonable price. If the county is unable to negotiate a satisfactory contract with the most highly qualified vendor, negotiations will formally end with that person or firm. The next most highly qualified vendor will then be asked to negotiate. Negotiations are continued in this sequence until a contract is finalized.

If any contract is entered into with one of the above mentioned professionals on the basis of a competitive bid, it is contrary to state law and is void

### **BEST VALUE PROCUREMENT POLICY**

The Texas Legislature added the ability for County's to utilize best value analysis for any type of procurement where it has been determined it is in the best interest of the County. The Request for Proposal (RFP) method is used where the evaluation is made by established weighted evaluation factors.

Local Government Code Chapter 262 Purchasing and Contracting Authorities of Counties

Sec. 262.030 ALTERNATIVE COMPETITIVE PROPOSAL PROCEDURE FOR CERTAIN GOODS AND SERVICES. (a) Except for Subsection (d) of this section, the competitive proposal procedure provided by this section may be used for the purchase of insurance, high technology items, and the following special services:

- (1) landscape maintenance;
- (2) travel management; or
- (3) recycling.

(b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

(c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

(d) A county in which a purchasing agent has been appointed under Section 262.011 or employed under Section 262.0115 may use the competitive proposal purchasing method authorized by this section for the purchase of insurance or high technology items. **In addition, the method may be used to purchase other items when the county official who makes purchases for the county determines, with the consent of the commissioners court, that it is in the best interest of the county to make a request for proposals.**

(e) As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

*(Adopted by Smith County Commissioners 05/11)*

### **MWBE POLICY**

Smith County is wholly committed to developing, establishing, maintaining, and enhancing minority business involvement in the total procurement process. It is the policy of Smith County to involve qualified minority/women-owned businesses to the greatest extent feasible in the

County's procurement of goods, equipment, services and construction projects. The County, its contractors, their suppliers and sub-contractors, vendors of goods, equipment, services, and professional services, shall not discriminate on the basis of race, color, religion, national origin, age, handicap, or sex in the award and/or performance of contracts. However, competition and quality of work remain the ultimate standards in contractor, sub-contractor, vendor service, professional service, and supplier utilization. All vendors, suppliers, professionals and contractors doing business or anticipating doing business with Smith County shall support, encourage and implement steps toward our common goal of establishing equal opportunity for all citizens of Smith County.

As an added commitment to minority/women-owned businesses, the Smith County Commissioners Court approved this program which consists of documenting the utilization of MWBE's and asking all vendors and contractors to make a "Good Faith effort" in utilizing such businesses.

*(Adopted by Smith County Commissioners Court 11/08)*

**Historically Underutilized Business Policy (HUB) Tex. Gov. Code Chapter  
2161  
34 Tex. Admin. Code § 20.14 et seq**

Smith County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. Further, Smith County is wholly committed to developing, establishing, maintaining, and enhancing minority business involvement in the County's total procurement process. It is the policy of Smith County to involve qualified historically underutilized businesses to the greatest extent feasible in the County's procurement processes. The County, its contractors, their suppliers and sub-contractors, vendors of goods, equipment, services, and professional services, shall not discriminate on the basis of race, color, religion, national origin, age, handicap, or sex in the award and/or performance of contracts. However, competition and quality of work remain the ultimate standards in contractor, sub-contractor, vendor service, professional service, and supplier utilization. All vendors, suppliers, professionals and contractors doing business or anticipating doing business with Smith County shall support, encourage and implement steps toward our common goal of establishing equal opportunity for all businesses regardless of size, economic, social or ethnic status. Smith County affirms the good faith efforts of firms/businesses that recognize and practice similar business standards.

**Definitions:**

*Historically Underutilized businesses (HUBs)* – also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his or her identification as a member of certain groups, including women, Black Americans, Mexican Americans and other Americans of Hispanic origin, Asian Americans and American Indians.

***Certified HUBs*** – includes business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies as recognized by Smith County.

**Policy Guidelines:**

- A. HUB Certification** – Smith County will recognize the State of Texas HUB Certification Process in conjunction with the implementation of this policy. Smith County reserves the right to review the certification status of any vendor applying at any time. This review will determine the validity of the applicable vendor’s certification as HUB.
  
- B. HUB Target Goals** – The Smith County Commissioners Court may establish HUB target goals in compliance with State and Federal Law. It is not the intent of this policy to require the Smith County Commissioners Court to award a contract to other than the lowest possible bidder or best value bidder as required by law. Any Target Goals should consider the diversity of Smith County’s population and the availability of HUB firms within the specific category of goods or services to be procured.
  
- C. HUB Program** – Smith County will include a HUB Policy Statement in all specifications. The County may consider the bidder’s responsiveness to the HUB Policy in the evaluation process. Failure to demonstrate a good faith effort to comply with Smith County’s HUB Policy may result in a bid or proposal being disqualified.

**Administration Guidelines:**

- A.** The Smith County Purchasing Department shall serve as the County’s HUB Office. Smith County will encourage HUB Vendors to participate in all facets of the procurement process by:
  - 1. Identifying HUB Vendors on the County’s online vendor database.
  - 2. Seeking communication links with HUB vendors to involve them in the procurement process.
  - 3. Continuing to advertise bids on the County’s website and in newspapers including newspapers that target socially/economically disadvantaged communities; where possible.
  - 4. Providing copies of bid specifications to minority Chambers/Community Business Alliances.
  - 5. Including a link for HUB vendors to register through the State of Texas and on the County’s website.
  - 6. Monitoring the HUB policy to include good faith efforts, registered HUB Vendors and reviewing documentation submitted by HUB firms.
  - 7. Providing statistical reports of the HUB Policy implementation, registered vendors and good faith efforts.

*(Adopted By CC 09/04/12)*

### **COOPERATIVE PURCHASING PROGRAM**

A local government may participate in a cooperative purchasing program with another local government or a local cooperative organization (§271.102).

A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the signing local government will

1. Designate a person to act in all matters relating to the program;
2. Make payments provided in the agreement;
3. be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery.

A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

### **STATE CONTRACT AND CATALOG PURCHASES**

The General Services Commission Cooperative Purchasing Program offers an opportunity to purchase goods and services from state term contracts and the QISV catalogue. Local Government Code Sections 271.081 – 271.083 provide the legal authority for participation. A local government that purchases an item under a state contract satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.

The Qualified Information Systems Vendor (QISV) Program was created to provide a timely means for the purchase of automation and telecommunications products and services. Once approved by the GSC as a QISV, a vendor is allowed to sell directly to Smith County through an approved catalogue of products and services. The QISV program meets all competitive bidding requirements.

Smith County should utilize the Request for Offer (RFO) process to negotiate published catalogue prices. An RFO provides a method of negotiating prices, terms, and conditions with catalogue vendors. It assumes that negotiation for "best value" will occur with catalogue vendors, instead of making selections for goods and services based on the published prices, terms and conditions in the catalogues.

Smith County requires evaluation of three qualified information system vendor (QISV) proposals, when possible, prior to purchases of automated information system purchases valued at more than

\$2,000 unless the best value may be obtained from another purchasing method authorized under Texas Government Code, Chapter 2155. If it is not possible to evaluate three QISV proposals, a statement should be attached to the purchasing file as to the reasons for that fact.

### **STATE PURCHASING PROGRAMS**

There are three types of purchasing programs that allow local governments to purchase goods and services using contracts previously competed by the State of Texas or other governments.

1. ***State Term Contracts*** (authorized by sections 271.081 through 271.083 of the Texas Local Government Code). The County may purchase from vendors on the same terms and conditions as the State. The State has entered into term contracts after using competitive bidding procedures. The TPASS manages this program for the State.
2. ***Texas Multiple Award Schedule (TXMAS)*** (authorized by section 2155.502 of the Texas Government Code). The County may purchase goods and services from a schedule of multiple award contracts developed by the TPASS. The schedule is adapted from General Services Administration (GSA) Federal Supply Service contracts. TXMAS contracts take advantage of the most favored customer (MFC) pricing and under certain circumstances; the County may negotiate a lower price for the goods or services offered on a scheduled contract.
3. ***Department of Information Resources (DIR)*** – (authorized by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code). The County may purchase computer-related equipment through the DIR and its contracted vendors. The Purchasing Agent acts for Smith County in all matters related to purchase of goods and services from a vendor under any contract based on any State Purchasing program. Smith County is responsible for making payments directly to these vendors.

County departments must submit a requisition and retrieve a purchase order by the Purchasing Agent before any goods are delivered or services are rendered by the above State Purchasing Programs.

### **EXEMPTIONS AND EMERGENCY PURCHASES**

Goods and services can be exempt from competitive procurement process if the commissioners court orders the purchase exempt. Section 262.024 of the Texas Local Government Code lists all the circumstances when exemptions are available for purchases made out of current funds, bond funds, or through time warrants. The following is a list of these circumstances:

1. In case of public calamity, to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county.
2. An item necessary to preserve or protect the public health or safety of the residents of the county.



3. An item necessary because of unforeseen damage to public property,
  4. A personal or professional service,
  5. Any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;
  6. Any land or right-of-way,
  7. Single Source vendor, including:
    - a. Items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;
    - b. Films, manuscripts, or books,
    - c. Electric power, gas, water, and other utility services; and
    - d. Captive replacement parts or components for equipment
  8. An item of food,
  9. Personal property sold,
    - a. At an auction by a state licensed auctioneer;
    - b. At a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or
    - c. By a political subdivision of this state, a state agency of this state, or a entity of the federal government.
  10. Any work performed under a contract for community and economic development made by the county.
- (a) The renewal or extension of a lease or of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners Court by order grants the exemption and if:
- 1.) The lease or agreement has gone through the competitive bidding procedure within the preceding year;
  - 2.) The renewal or extension does not exceed on year; and
  - 3.) The renewal or extension is the first renewal or extension of the lease or agreement.

- (b) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.
- (c) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the Commissioners Court. Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection. The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by Commissioners Court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of a least one year or until audited by the county auditor.

If an “**EMERGENCY**” purchase order is needed, approval must be obtained first. *Improper planning cannot be considered a true emergency. Care should be taken that emergency purchases do not result from improper planning.*

When an emergency situation exists, the Purchasing Director must be contacted to ensure compliance with the Purchasing Act. In a declaration of a local state of disaster, the County Judge would be the authority to approve purchases. Emergency, as used in the Purchasing Act and this manual, is different from emergency as used in Chapter 63 of the Smith County Policies, Procedures, and Regulations Manual which defines a local state of disaster.

- 1) Emergency items less than \$50,000 will be handled in the same manner as an expedited purchase requisition.
- 2) Emergency items greater than \$50,000 must be placed on the Commissioners Court agenda.

### **PROCEDURES FOR PURCHASES UNDER \$50,000**

The purpose of this procedure is to provide guidance for the regulations that apply to purchase of material, equipment, supplies, repairs, and services that are not required by law to be bid.

The general practice of the county shall be to accept the lowest responsible bid or price quotation as specified and on *equal* product standards.

If the County receives two or more quotes or bids from responsible bidders that are identical in amount, as the lowest and best bid, the County shall select only one bidder by casting lots.

*These regulations and procedures apply to all purchases less than \$50,000.00.*

- A. From \$1.00 to \$ \$999.99 – If the County is purchasing personal property costing at least \$1.00 but less than \$ \$1,000.00 over an aggregate twelve (12) month period, the county must solicit previously approved vendors and purchase from that vendor.
- B. From \$1,000.00 to \$4,999.99 – If the County is purchasing personal property costing at least \$1,001.00 but less than \$5,000.00 over an aggregate twelve (12) month period, the county must solicit vendors by phone, to supply the particular item(s). In the procurement of these item(s), the county must document price quoted from at least three (3) previously established vendors.
- C. From \$5,000.00 to \$9,999.99 – If the County is purchasing personal property costing at least \$5,000.00 but less than \$10,000.00 over an aggregate twelve (12) month period, the county must solicit vendors through written quotations, to supply the particular item(s). In the procurement of these item(s), the county must obtain written price quotations from at least three (3) previously established vendors.
- D. From \$10,000.00 to \$49,999.99 – If the County is purchasing personal property costing at least \$10,000.00 but less than \$50,000.00 over an aggregate twelve (12) month period, the county must solicit vendors through written quotations, to supply the particular item(s). The originator will send their request to the Purchasing Department, the Purchasing Department will send out Request for Quotation forms with the specifications, date needed, quantity, etc. The opening will be stated and held in the Purchasing Department. The low bidder meeting or exceeding minimum specifications will be awarded the item(s) quoted.

*Items B, C & D above are subject to audit and these quotes should be written down and the documentation kept by the County. Written quotations from the vendors must be sent to the Purchasing Department for retention.*

*The only exceptions to automated purchase orders are the requests for payment processed directly by the Auditor's Office for the following goods or services:*

- *Utilities,*
- *Employee reimbursement requests*
- *LEOSE expenditures*
- *Collections office refunds*
- *Rental deposit returns*
- *Commitments*
- *Sub-court reporters and transcripts*
- *JP Holdings*

- *Attorney's vouchers,*
- *Foster programs,*
- *Specified court related expenditures,*
- *Risk Management claims*
- *Purchases not required by statute to be processed by the Purchasing Agent*

## **Open Purchase orders**

Open or blanket purchase orders are used for *contracted* recurring bid items such as asphalt or small on the spot purchases.

This policy applies to open purchase orders that do not exceed \$50,000.00 over a twelve- (12) month period (twelve month period within current tax year); unless the request is for items on bid contract.

Procedure to process open purchase orders:

- A. The requesting department should submit a requisition for requested \$ amount.
- B. A purchase order will be issued if requisition is approved to the respective vendor.
- C. It is the responsibility of requesting department to manage the amount available on the open purchase order. If the dollar amount listed is not enough, then the purchase order must be closed and the department should start this procedure over to request a new open purchase order. Departments should not spend more than the amount available on the purchase order at any time. Change orders will not be issued to increase open purchase orders.

The Purchasing Agent has the right to reject any open purchase order requests to ensure compliance with procurement laws. Departments that do not manage open purchase orders may be disqualified from utilizing this process.

## **Purchase Authorization**

Each department must furnish the Purchasing Agent with a list, if other than the elected or appointed official, of employees authorized to sign a requisition for purchase. It is the department's responsibility to insure that all authorized personnel have read and understand the policies and procedures of this manual.

## **The Requisitioning Process**

Requisitioning is the formal request for a purchase to be made. It is the first step after the need for goods or services is recognized. The user department's purchase requisition authorizes the purchasing office to enter into a contract with a vendor to purchase goods or services.

Purchase requisitions should fully describe to the purchasing office what to buy, when it is required, and where the goods are to be delivered or the services to be performed. Counties should establish a system where adequate budget funds are encumbered first and then precede with the purchase of the requested goods and services.

After the purchasing office receives a purchase requisition, it determines the appropriate purchasing procedures based on the cost of the purchase, the goods and services to be purchased, the existing contracts for goods and services and other relevant factors.

A requisition must be submitted to the Purchasing Department for any supplies, parts, repairs or other purchases to be made. *Requisitions must be submitted electronically; unless in an emergency situation.* The Purchasing Agent or designee will review and approve all requisitions for budgetary compliance before issuing a purchase order. The issuance of a purchase order will encumber available funds and provide budgetary control.

Items that are currently not bid items are subject to the procurement of three price quotes prior to the issuance of a purchase order. (*See quotations section*).

All Smith County purchases must be authorized by the Purchasing Department with a purchase order number prior to any vendor order. Any purchase not following this procedure may be considered void and returned to the vendor.

## **Expediting Purchase Orders**

In order to accomplish prompt receipt of materials as required by the County, the Purchasing Department shall:

- A. Review and process requisitions on a daily basis.
- B. Examine and expedite all orders past due.
- C. Follow up with past due orders via phone and/or email.

## **COMPETITIVE BIDDING PROCEDURES Purchases Over \$50,000.00**

There are two primary types of solicited purchases - competitive bidding and competitive proposals. Competitive solicitation means letting available vendors compete with each other to provide goods or services. The requirements for these procedures are outlined in Section 262 of

the Texas Local Government Code and Chapter 2269 of the Government Code and applies only to contracts for which payment will be made from current funds.

1. ***Competitive sealed bidding*** is a transparent procurement method in which bids from competing contractors, suppliers, or vendors are invited by openly advertising the scope, specifications, and terms and conditions of the proposed contract as well as the criteria by which the bids will be evaluated. Competitive bidding aims at obtaining goods and services at the lowest prices by stimulating competition, and by preventing favoritism. Competitive bids are not negotiated. With few exceptions, price is the sole determinant factor if the vendor's product or services meet the requirements of the specification.

The *Invitation for Bid (IFB)* method is the most preferred method of procuring goods and supplies. It is used when the requirement can be definitively described, is readily available, and is an off-the-shelf kind of requirement.

2. ***Competitive proposals***: The Texas Legislature added the ability for counties to utilize best value analysis for any type of procurement where price is not necessarily the most important factor and is determined to be in the best interest of the county. The Request for Proposal (RFP) method is used where the evaluation is made by established weighted evaluation factors. Request for Proposal procedures can be found in Texas Local Government Code Section 262.030. Any formal contract resulting from the RFP process must be reviewed by the Civil Division of the District Attorney's Office and approved by the Commissioners Court.

While the competitive proposal (RFP) process is similar to the competitive bidding (IFB) process, there are notable differences. The primary difference is that the RFP results in a negotiated procurement. Cost is not the only determining evaluation factor; however, its relative importance to other evaluation factors that must be specified in the RFP and considered in recommending award.

### ***Procedures***

Formal competitive bidding calls for formal approval by the commissioners court due to a required expenditure in excess of \$50,000.

***Notice to Purchasing Agent*** - The requisitioning party must furnish detailed specifications to the Purchasing Department in the form of a requisition, along with the budget authorization and recommended sources of suppliers (vendors), if known by the user.

***Bid Notice*** - The bid/proposal advertisement, prepared by the Purchasing Department stating a brief description of the item(s), where the documents, plan, or specifications may be examined, the time and place for prior to the opening. Bid/Proposal openings must be at least fourteen days from the date of the first publication. Bid/Proposal requests shall be furnished to known suppliers and to any supplier requesting an opportunity to respond. Any vendor who fails to respond may be removed from the approved vendor list. Suppliers

may be added to the approved vendors list by submitting their request in writing or by completing a Vendor Application Form and returning to the Purchasing Department.

***Pre-Bid Conference*** - Texas Local Government Code, section 262.0256 allows the commissioners court to require potential vendors to attend a mandatory pre-bid (preproposal) conference to discuss contract requirements and answer vendor questions. The Purchasing Agent works with the user department to determine if a pre-bid (pre-proposal) conference is necessary and whether attendance is mandatory or optional. The Purchasing Office manages any pre-bid (pre-proposal) conference and requests that the user department makes staff available to answer questions at the conference.

***Receiving Competitive Sealed Bids*** - The below procedures will be followed when receiving competitive sealed bids in order to preclude any perception of favoritism or revealing bid prices or information.

1. Bids will be received by the Purchasing Agent and or designee in the Smith County Purchasing Department.
2. Bids will be stamped with the time and date received. The “Date Stamp Clock” in the Purchasing Department will serve as the official time clock for the purpose of identifying the date and time bids were received in the Purchasing Department.
3. Bids received after the opening time will be returned unopened to the bidder with a letter from the Purchasing Agent notifying the bidder that the submitted bid was received after the due date and time.
4. After bids are received, a secure place will be provided by the Purchasing Department for holding the bids until the opening date. The bids are to be received sealed and shall remain sealed until opened on the advertised date and time by the Purchasing Department in a public forum.
5. On occasion, bids that are received in the mail, or by some other independent carrier, may be inadvertently opened. If this situation occurs, another Purchasing Department staff member will be called immediately to act as a witness that the details of the bid, particularly the price, were not reviewed and that the bid was again sealed by an employee of the Purchasing Department.
6. Bids may be submitted electronically online through the Smith County Website on the Purchasing Department Page by utilizing the applicable software and instructions. Bids submitted electronically must be submitted by the bid deadline – late submissions will not be accepted. The Purchasing Agent or designee will open the electronic bid portal at bid opening.

### ***Public Bid Opening:***

**IFB:** The Purchasing Agent publicly opens, reads aloud, and documents the bids at the date, time, and place specified in the notice. Preliminary tabulations are provided to the public upon request.

**RFP:** The Purchasing Agent publicly opens and documents sealed proposals at the date, time, and place specified in the notice. Only the names of vendors submitting proposals are announced. Proposals are opened to avoid disclosure of contents to competing proposers and are kept secret during the process of negotiation. All proposals that have been submitted are available and open for public inspection after the contract is awarded, except for trade secrets and confidential proprietary information contained in them. Disclosure of all information obtained from a vendor is subject to the provisions of the Texas Public Information Act.

### **No Responsive Bids Received**

Texas Local Government Code § 262.0225(d): “A county that complies in good faith with the competitive bidding requirements of this chapter [Texas Local Government Code, Chapter 262, *entitled* Purchasing and Contracting Authority of Counties] and receives no responsive bids for an item may procure the item under Section 262.0245.”

Texas Local Government Code § 262.0245: This Section requires the county purchasing agent to adopt procedures that provide for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item that is not subject to competitive procurement or for which the county receives no responsive bid.

### **Procedures to Follow**

If the County has complied with the competitive bid process (Texas Local Government Code § 262.023) and no responsive bids were received, the Purchasing Department shall use the following procedures to satisfy the needs of the county.

1. The same specifications that were used in the initial formal bid process will generally be used to obtain quotes from vendors known to provide the needed goods or services.
2. Three (3) written price quotes for the item(s) and/or service(s) to be procured shall be obtained. If obtaining quotes from three (3) vendors is not possible, due to lack of competition or vendor interest, Purchasing will proceed to obtain as many quotes as possible.
3. The lowest and best quote shall be determined in the same manner as defined in the formal bid process for which no bids were received.



4. The requesting department shall include its recommendation of the lowest and best quote to the Purchasing Department. Purchasing will then review the quotes, terms and conditions, and requesting department recommendation. After review, Purchasing shall request placement of the request on the Commissioners Court agenda for consideration and approval. When approved by the Commissioners Court, the necessary purchase order will be issued.
5. This process may be continued for a twelve month period, subject to the following conditions:
  - a. New price quotes shall be obtained every three (3) months at a minimum. Increases in price during the 12 month period of more than 25% will be subject to additional approval by the Commissioners Court.
  - b. This process may be utilized for up to one (1) year after the competitive bid process resulted in no responsive bids. At the end of the one (1) year period, the item or service shall be rebid in accordance with Texas Local Government Code § 262.023.

## **CONTRACTS AND CONTRACT ADMINISTRATION**

The user department will be responsible for monitoring and documenting contractor performance/compliance. All documentation of non-compliance must be shared with Purchasing. Documentation related to clarification of expected performance standards that are complied with after problem notification, need not be provided to the Purchasing Department. If poor performance or non-compliance with the contract is evidenced, Purchasing will be responsible to initiate corrective action with the vendor.

The Purchasing Agent will take all steps related to obtaining compliance with the contract, but will consult the Civil Division of the District Attorney's Office before taking any steps toward suppression or termination of the contract. Before any letter, notices, or other communication related to termination or suspension are sent to the contractor, the contents of these should be reviewed by the Civil Division of the District Attorney's Office as the initial steps toward potential litigation. The Purchasing Agent shall be responsible to review contracts to ensure procurement compliance and negotiation terms only. All other contract language and its correctness including contract preparation is not the responsibility of the Purchasing Agent

### ***Contract Modifications***

It is the policy of Smith County that change orders, be processed through the Purchasing Department in accordance with requisition procedures. The total contract price may not be increased unless the cost of the change can be paid from current and available funds. **All contract modifications and change orders must be approved by the Smith County Commissioners Court.**

## PURCHASING PROFESSIONAL SERVICES

The two (2) principal laws with which the Purchasing Agent must comply when procuring professional services are the Professional Services Procurement Act and the County Purchasing Act.

There are two (2) kinds of professional services:

1. Those professional services specifically defined under the Professional Services Procurement Act; and
2. Those “other” professional services that are not specifically defined under either the Professional Services Procurement Act or the County Purchasing Act and which must be obtained in compliance with the County Purchasing Act. The Purchasing Agent must rely on court cases and Attorney General Opinions to determine what services are included in these “other” professional services.

***Request for Qualifications (RFQ)*** - To ensure vendors a fair and equal opportunity to do business with Smith County, and to ensure that the services of the most qualified professional are obtained; professional services should be purchased by using the Request for Qualifications (RFQ) process, unless otherwise exempted by commissioners court. Any exemption situations will be submitted to the commissioners’ court by the Purchasing Agent for approval. Contracts for the procurement of these professional services may not be awarded on the basis of bids. Instead, services must be awarded on the basis of demonstrated competence and qualifications.

Procedures for the Request for Qualifications process will be followed as outlined in Chapter 2254 of the Texas Government Code.

Proposals are opened to avoid disclosure of contents to competing proposers and are kept secret during the process of negotiation. All proposals that have been submitted are available and open for public inspection after the contract is awarded, except for trade secrets and confidential proprietary information.

***Confidentiality Memorandum*** - The Purchasing Office uses a confidentiality memorandum to ensure compliance with the ethics policy related to keeping proprietary information confidential. Before the evaluation of confidential proposals, the Purchasing Office sends a memorandum to evaluation committee members for signature. The memorandum contains requirements to keep information confidential until the commissioners’ court approves an award. The evaluation committee members are expected to adhere to this memorandum during the competitive process.

***Evaluation and Negotiation*** - The Purchasing Office supervises the evaluation/negotiation process or committee to ensure that the evaluation is conducted fairly and that the integrity of the process is maintained.

If, as a result of an RFQ, Smith County enters into contracts with more than one (1) qualified professional so that there are several professionals under contract to provide services as needed, thereby creating a pool of professionals, then the user department must ensure that an RFQ is distributed at least once every five (5) years to allow newly qualified professionals may be added to the pool.

### **SOLE SOURCE GOODS AND SERVICES**

Sole source goods and services require a statement from the Purchasing Agent as to the existence of only one source, and specifically noting which type of listed sole source good or service is being purchased. The statement will be submitted for consideration and approval by the commissioners' court and must be reflected on the agenda of the meeting of the commissioners' court. Sole source purchasing and procedures are outlined in Section 262.024 of the Texas Local Government Code.

### **SMITH COUNTY LEASE POLICY**

It is the policy of Smith County to consider lease options for capital assets (vehicles & large equipment) for the Smith County Sheriff's Department and/or the Smith County Road & Bridge Department only. Any departments requesting capital assets should get a proper written quote from the Smith County Purchasing Director or designee to attach to budget request documents to ensure proper funding of said request.

*(Policy adopted by the Smith County Commissioners Court 11/09)*

### **INVENTORY & DISPOSITION**

Per V.T.C.A., Local Government Code Sec. 262.011(l), "On July 1, of each year, the county purchasing agent shall file with the county auditor and each of the members of the board that appoints the county purchasing agent an inventory of all the property on hand and belonging to the county and each subdivision, officer, and employee of the County" § **263.152. Disposition: The Commissioners Court of a county may:**

- (1) Periodically sell the county's surplus or salvage property by **competitive bid or auction**, except that competitive bidding or an auction is not necessary if the purchaser is another county or a political subdivision within the county that is selling the surplus or salvage property;
- (2) offer the property as a trade-in for new property of the same general type if the commissioners court considers that action to be in the best interests of the county;
- (3) order any of the property to be destroyed or otherwise disposed of as worthless if the commissioners court undertakes to sell that property under Subdivision (1) and is unable to do so because no bids are made;

(4) dispose of the property by donating it to a civic or charitable organization located in the county if the commissioners court determines that:

- a. undertaking to sell the property under Subdivision (1) would likely result in no bids or a bid price that is less than the county's expenses required for the bid process;
- b. the donation serves a public purpose; and
- c. the organization will provide the county with adequate consideration, such as relieving the county of transportation or disposal expenses related to the property;

When property is determined to be surplus/salvage, is no longer needed, is in unusable or unsafe condition, it shall be disposed of as outlined below.

Items purchased by Federal Funds or Grant Funds shall be handled in accordance with their respective regulations.

Disposal of county property by donation to civic or charitable organization requires a determination by the Commissioners Court pursuant to Texas Local Government Code § 263.152(a)(4). Such disposal will require a Commissioners Court order making the specific findings outlined in Texas Local Government Code § 263.152(a)(4). Departments desiring to donate county property shall coordinate with the Purchasing Department and the Civil Division of the District Attorney's Office.

The originating department must follow the following procedure:

- A. Originator must complete a Smith County Inventory Form and send original form to the Purchasing Department for processing.
- B. Purchasing Agent or designee will inspect the property and will make a determination on the nature of the surplus property.
- C. On the recommendation of the Purchasing Agency, the Commissioners Court, by approval, may declare the property surplus and no longer needed by the county and authorize disposal of the property. D. Disposal will be as follows:
  1. Inventory tags will be removed (by purchasing prior to auction) and a list will be given to the County Auditor.
  2. Property will be turned over to an approved auctioneer. The auctioneer will be responsible for following established State of Texas law for the advertisement, soliciting and bidding of property.
  3. Auctioneer will auction the property after publication, as per law.

- E. All sales will be handled by the giving of a check or cashier's check. All proceeds will be given to the County and deposited in the General Fund with the giving and receiving of receipts thereof.
- F. Trade-Ins, items that are beyond repair, no longer of use, or surplus may be traded-in on more useful like items, with approval of Commissioners' Court.
  - 1. Originator must complete a Smith County Inventory Form and send the original form to the Purchasing Department for processing.
  - 2. Commissioner's Court must authorize the trade-in, prior to trade-in.
  - 3. In all cases where property is declared surplus, property shall be removed from County Inventory by the purchasing Department. *Since title to all personal property is vested to Smith County, no property may be sold, traded, or disposed of without commissioners court action, with the following exceptions:*
    - a. Scrap building materials,
    - b. Parts of equipment that cannot be used or identified. In such cases, the Purchasing Agent shall inspect the personal property and declare them scrap, making a written notation for the record of the nature of the item(s), the reason for scraping, and the date of disposal. Such records shall be kept for at least three years.

### **Relocation of Furniture and Equipment**

The moving of county inventory must be coordinated with the Purchasing Department. Each department must complete a Smith County Inventory Form (*forms located on county's intranet*) and Submit the original form to the Purchasing Department for processing. The Purchasing Department will review the items requested to be re-located and will verify a time and date for said items to be moved within two weeks from the original date of request. (Please note Purchasing has to get aid from other departments to get furniture re-located)

The Purchasing Department is not responsible for assembly or the disassembly of furniture, equipment, etc. All items must be cleared away from the property to be moved.

All requests to move computer equipment and/or peripherals must be approved and coordinated by the IT Department.

### **VENDOR REGISTRATION**

In an effort to provide a fair place for all vendors to do business and to protect our elected officials, Smith County has a no contact clause. It is Smith County's policy that all vendors interested in doing business with the county *must* first register with the Smith County Purchasing Director or designee prior to contacting/meeting with any elected official, department head or employee of

Smith County. Vendor Registration can be done through utilization of the county's website and/or contacting the Smith County Purchasing Department directly.

## **VENDOR RELATIONS**

It is Smith County's policy to maintain and practice the highest possible standards of business ethics, professional courtesy, and competence in all of our dealings. At all times, applicable laws must be scrupulously observed. In this regard, the following should be observed when dealing with suppliers and/or their representatives:

- A. To accord prompt and courteous reception, as well as fair and equal treatment, to all suppliers and their representatives,
- B. Provide equal opportunity for all suppliers to offer price quotes and products,
- C. Guarantee the confidentiality of all price quotations made by vendors,
- D. Explain as clearly and fully as possible to suppliers the reason for any rejection of prices and/or quotes provided,
- E. Remain scrupulously free from obligations to any supplier,
- F. Keep informed about sources of supply, current methods, services, and material; encourage their testing of new product samples,
- G. If, for any reason, one vendor is permitted to re-quote, his competitors will be given the same opportunity. Re-quoting should be restricted to an absolute minimum.

The Purchasing Director and Purchasing Department Personnel deal with vendors on a continuous basis. It is important that information be recorded about specific performance of all vendors.

The Purchasing Department welcomes any useful and constructive evaluations from departments. This information will be useful for the Purchasing Department to monitor and effectively stimulate vendor activities and performance.

The Vendor Performance Evaluation form is available in the Purchasing Department.

## **DEBARMENT AND SUSPENSION**

In an effort to provide assurance to the Federal Government that the State of Texas and its sub recipients comply with Federal Executive Order 12549, 44 CFR § 13.35 ("Sub-awards to debarred and suspended parties"), and the Texas Uniform Grant Management System (UGMS), the Texas Department of Public Safety/Texas Homeland Security-State Administrative Agency requires all Homeland Security Grant Program sub-recipients (to include all programs administered by the TXDPS/THS-SAA) check the debarment status of all vendors before contracting with or making any purchases with funds from any federal grant.

The Excluded Parties Listing Systems (EPLS) is an electronic database of parties excluded from federal procurement and non-procurement programs and is located at <https://www.SAM.Gov>. The EPLS identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits.

### **Authority**

Executive Order 12549 – Debarment and Suspension

### **Policy**

Prior to procuring or entering into contract(s) for any goods/services, the sub-recipient must check debarment status of the vendor using the EPLS system (<https://www.SAM.Gov>) and document that verification has occurred. This policy applies to the procurement of all goods or services regardless of unit price or quantity.

All purchases with grant Funds shall comply with the rules, standards, or procedures as required by the granting agency. These requirements will include but not limited to adherence to Uniform Grant management Standards, Code of Federal Regulations, Single Audit Act, Texas Homeland Security State Administrative Information Bulletins and any other applicable regulations specific to any and all grant funding awarded to Smith County.

Purchases requested from grant funds must include the following information on the requisition from the requesting department:

- ✓ Grant Name & Fund Number
- ✓ Vendor Debarment Information
- ✓ Verifiable documentation for all purchases approved by the Commissioners Court

The Purchasing Agent and or designee should seek approval from the County Grant Administrator prior to authorizing and purchases from grant funds.

### **OFFICIAL REPRESENTATIVE**

The County Purchasing Agent or designee shall verify the debarment status of all vendors prior to utilizing Homeland Security Grant Funds, using the EPLS system ([SAM.gov](https://www.SAM.gov)).

### **Procedure**

- Go to the EPLS Website (<https://www.SAM.Gov>).
- The County Purchaser or their agent will search the EPLS system for the vendor.
- If the vendor is found to be debarred, the vendor may not be used for procurements utilizing Homeland Security Grant Funds.
- If the vendor is found not to be debarred, print the screen page and retain with the procurement documentation.

- A copy of the screen print indicating the vendor is not debarred, at the time of the procurement, must be included with the supporting documentation submitted to the Texas Homeland Security State Administrative Agency requesting reimbursement or advance.

### **SAA Monitoring**

During monitoring and reviews, sub-recipients must be able to provide proof of a written policy requiring verification of debarment status. Records of vendors verified should be retained for audit purposes (maintain a copy of the screen print verification from the EPLS website) throughout the record retention period for the particular grant. Status will be checked [www.SAM.gov](http://www.SAM.gov)

## **CERTIFICATE OF INTERESTED PARTIES**

*(Form 1295)*

In 2015, the Texas Legislature adopted House Bill 1295, which added Section 2252.908 of the Government Code. The law states that a government entity may not enter into certain contracts with a business entity\* unless the business entity submits a disclosure of interested parties to the government entity. The disclosure of interested parties will be submitted online via Form 1295 through the Texas Ethics Commission website and must be submitted to the governmental entity prior to any signed contract and/or vote by the governing authority.

1. When an apparent Awardee has been identified, the Buyer must contact them immediately and request Form 1295. Awardee must return completed, notarized form, to purchasing within 10 days of request.
2. Unsuccessful bidders are not required to complete Form 1295.
3. The Awardee must place the Smith County Contract Number on Form 1295, in line #3.
4. Prior to Commissioners' Court approval buyer must acknowledge on the TEC website, the receipt of the correctly completed Form 1295.
5. Renewals are also part of this process. Each renewal, change order, contract alteration, modification, etc. will require a new form from the Vendor.

The Purchasing Agent will not be responsible to retrieve Vendor Form 1295 for any contracts, renewals, leases that were not processed through the Purchasing Office.

\*Business Entity does not include another governmental entity.

## **CONFLICT OF INTEREST DISCLOSURE**

Chapter 176 of the Texas Local Government Code requires the filing of Conflict of Interest Questionnaires by certain individuals and businesses.



The Questionnaires require disclosures describing certain business and gift giving relationships, if any; the filers may have with the commissioners' court members, the purchasing agent and other elected/appointed officials.

The Law applies to:

- Businesses and individuals who contract with the county
- Businesses and individuals who seek to contract with the County, (regardless of whether a bidder is awarded the contract), and
- Agents who represent such businesses in their dealings with the County

Compliance is the responsibility of the individual, business and agent who is subject to the law's filing requirements

All Conflict of Interest Questionnaires must be filed with the Smith County Clerk.

### **CODE OF ETHICS Policy**

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

#### **Responsibility to County**

Employees will avoid any activities that would compromise or give the perception of compromising the best interest of Smith County. Employees will not use confidential proprietary information for actual or anticipated personal gain.

#### **Conflict of Interest**

Employees will avoid any activity that would create a conflict between personal interests and the interest of Smith County. Conflicts exists in any relationship where an employee is not acting in the County's best interest and may be acting in their own best interests or the interests of someone associated with them.

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

- The employee or any member of the employee's family has any financial interest pertaining to the Smith County procurement process;
- A business or organization in which the employee, or any member of the employee's family, has a financial interest pertaining to the Smith County procurement process; or
- Any other person, business, or organization with whom the employee or member of the employee's family is negotiating or has any arrangement concerning prospective employment.

If any such conflicts of interest exist, the employee will immediately notify the Purchasing Director in writing and will remove himself/herself from the Smith County procurement process.

### **Perception**

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

### **Gratuities**

Employees will never solicit or accept money, loans, gifts, favors, or anything of value, from present or potential vendors which might influence or appear to influence any purchasing decision. If anyone is in doubt whether a transaction complies with this policy, the individual should disclose the transaction to the Purchasing Director for interpretation.

### **Subcontractor(s)**

It shall be a breach for any payment, gratuity or offer of employment to be made on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Smith County, or any person associated therewith, as an inducement for the award of a subcontract to order.

### **Confidential Information**

It shall be a breach of ethics for any employee or former employee of Smith County knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated gain of any person.

## **CREDIT CARD POLICY**

### ***Authority:***

***Texas Local Government Code § 262.015 (o) allows the Purchasing Agent to establish the credit card rules (subject to Commissioners Court approval) as follows:***

*(o) The county purchasing agent shall adopt the rules and procedures necessary to implement the agent's duties under this section subject to approval by the commissioner's court. Notwithstanding Subsection (f) or other law, rules and procedures adopted under this subsection may include rules and procedures for persons to use county purchasing cards to pay for county purchases under the direction and supervision of the county purchasing agent.*

*(f) A purchase made by the county purchasing agent shall be paid for by a warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. The county auditor may not draw and the county treasurer may not honor a warrant for a purchase unless the purchase is made by the county purchasing agent or on competitive bid as provided by law.*

***Purpose:***

The purpose of this policy is to establish procedures for the use of County Credit Cards. This policy is being established in order to provide immediate access to goods and/or services and basic travel registration. All Credit Card purchases shall adhere to all purchasing statutes, rules, policies and procedures when using the card. The use of a credit card does not automatically exempt a governmental agency or its officers or its employees from any purchasing requirements of state law.

- The Credit Card is provided and utilized to make basic travel registration, and small or spot purchases of business related goods and services.
- All Credit Card purchases must follow Smith County's Procurement Policies and appropriate encumbrances must be made prior to the utilization of any credit card purchases to ensure adequate funds are available.
- All Smith County Credit Cards shall remain in the safe and checked out as needed by the Smith County Purchasing Director or its designee.
- Smith County Credit purchases should be made only when there are specific situations of need and/or the vendor does not direct bill.

***Unauthorized Credit Card Use:***

Smith County may not use a credit card and may not reimburse and officer or employee for use of said credit card for the following:

- A purchase of a personal nature or any other purchase not connected with county business.
- A cash advance.
- Charges for entertainment.
- Purchases made in attempt to bypass the normal purchasing policy.
- A purchase that violates any provision of state law or Smith County's Procurement Policies and Procedures.
- Under "NO" circumstances should an authorized credit card user allow another person to use the county credit cards either by physically having the card in their possession or by giving a card number to another individual or vendor so as to allow someone other than the designated cardholder to use the card.

Any person(s) who makes unauthorized purchases, carelessly uses the card, or fails to turn in the appropriate documentation in a timely manner, will be liable for the total dollar amount of such unauthorized purchases, plus any administrative fee charged by the bank in connection with misuse.

***Responsibilities***

- Ensure sales tax is not charged at time of purchase.
- Ensure appropriate encumbrances are made with the issuance of a purchase order prior to the utilization of any credit card purchases.
- When a charge is made, documentation shall be retained as proof of purchase.
- Hotel rooms will NOT be charged on the Credit Card; they will only be reserved. It is the responsibility of the department to request a check from the County Auditor for the amount of the hotel room, prior to the conference.
- If a county employee requests Purchasing Personnel to reserve a hotel room, airline ticket, or rental car; **it is the responsibility of said employee to cancel reservations in the event the trip is cancelled or they are unable to attend.**
- Personal charges on hotel bills should be paid for at checkout time by the employee and not charged to the county credit card.
- It is the card holder's responsibility to take reasonable steps to ensure that proper safeguards are maintained of the card, account number, personal identification number, electronic serial number, or mobile identification number from unauthorized disclosure.

### ***Payment***

At the end of each billing cycle, all statements with accompanying purchase orders shall be sent to the Auditor's Office for processing.

### ***Confidentiality of Credit Card Numbers***

Pursuant to Texas Government Code § 552.136, the County credit card number shall remain confidential. Information that is confidential pursuant to the above statute is information containing:

A card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential and such information shall be redacted from any information disclosed pursuant to the Texas Public Information Act, Texas Government Code, Chapter 552. (Texas Government Code § 552.136)

## **Smith County Environmental/Sustainable Procurement Policy**

**(adopted by Smith County Commissioner's Court 5/14/2019)**

**Recycled and energy consumptive materials, life cycle costing and environmental procurement should be factors in purchasing decisions for goods and services for Smith County.**

The purpose of this policy is to encourage and enable all county employees and elected officials involved with the procurement of goods and services to use environmental responsibility as a factor in their purchasing decisions. Guidelines shall be established governing the review and approval of specifications for the procurement of selected materials based on considerations of recycling, energy conservation, life cycle costing and other environmental considerations.

### **Environmental/Sustainable Procurement Policy**

This Sustainable Purchasing Policy, hereinafter referred to as Policy, has been established to ensure the consideration of procurement of products and services that reduce the consumption of resources and the production of waste, minimize adverse health effects and reduce costs to the County.

The principles of the Policy are based upon resource efficiency, life cycle perspective, and pollution prevention.

- Resource efficiency incorporates preference to reusable content and recycled materials over virgin materials, as well as energy and water conservation.
- Life cycle perspective considers the environmental impact of a product or service over its lifetime (raw material extraction, manufacturing, packaging, transport, energy consumption, maintenance and disposal).
- Pollution prevention incorporates processes and practices that prevent the creation of pollution and wastes, rather than managing these after they have been created.

The Policy requires the County to:

1. Strongly promote and enable the purchase and use of materials, products and services that are fiscally responsible, reduce resource consumption and waste, promote local business opportunities, and promote human health and well-being.
2. Minimize the consumption of non-replaceable natural resources by reviewing current and proposed future usage and evaluating the pros and cons of alternatives.
3. Maximize the reuse and recycling of materials.
4. Reduce waste in the manufacturing, use, and packaging of products.
5. Consider the energy usage/cost of operating equipment prior to purchase.
6. Specify items that can be recycled or used.
7. Consider factors that provide other environmental and health benefits in purchasing decisions.

Procedures and Guidelines may be established as necessary to ensure the continuation of a viable and strong Sustainable Procurement Program.

## **APPENDIX**

## **VENDOR PERFORMANCE EVALUATION FORM**

The Vendor Performance Evaluation Form can be filled out by any employee of Smith County to inform the Purchasing Department of vendor performance. This form must be filled out completely and returned to the Purchasing Department as soon as possible after the occurrence. Be specific as possible to describe the occurrence, good or bad. Please photocopy this form and keep a copy for your records.

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

Employee's Name: \_\_\_\_\_

Office/Department: \_\_\_\_\_

Company Name: \_\_\_\_\_

Sales Representatives Name: \_\_\_\_\_

Occurrence:

\_\_\_\_\_

**Signature of Employee**