

WILLIAMSON COUNTY PROCEDURES FOR PROFESSIONAL SERVICES PROCUREMENT

PURPOSE

The Texas “Professional Services Procurement Act” (hereinafter referred to as “The Act”), prohibits awarding contracts for certain professional services on the basis of competitive bidding. **Tex. Gov’t Code § 2254.003(a)**. Instead, The Act mandates a review process to award contracts on the basis of “demonstrated competence and qualifications” to perform the services for the specific project. **Id. § 2254.003(a)(1)**. Services within the scope of The Act include the practice of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising or professional nursing. **Id. § 2254.002(2)(A)(i)-(ix)**. Contracts made in violation of the Professional Services Procurement Act are void as against public policy. **Id. § 2254.005**.

The Williamson County Auditor’s Office has prepared this Procedure to establish adequate confirmation that the county’s methods are in compliance and claims for services may be appropriately paid with public funds.

The Attorney General has “determin[ed] that the County Auditor has the principal responsibility for enforcing the [Professional Services Procurement Act] against a commissioners court.” **Op. Tex. Att’y Gen. JC-0266 (2000) (stating “since it is the County Auditor’s duty to withhold approval of a claim ‘unless the claim was incurred as provided by law,’ an auditor may not approve a claim for payment under a contract made in violation of the [Professional Services Procurement Act].” (also citing Tex. Loc. Gov’t Code Ann. § 113.065))**. Consequently, it is the responsibility of the County Auditor to create and maintain the Williamson County Procedures for Professional Services Procurement and the resulting approval of claims under the Professional Services Procurement Act. The County Auditor’s Office will update this procedure in order to comply with the Texas Constitution and any relevant state statutes, or as deemed necessary.

REVIEW PROCESS FOR “DEMONSTRATED COMPETENCE & QUALIFICATIONS”

A best practice for confirming “demonstrated competence and qualifications” under The Act is for the county Purchasing Agent to issue a Request for Qualifications (RFQ) for each specific project. This practice is mandatory for large capital projects or those projects requiring extraordinary care and expertise (e.g., renovation of a historic building or additions to the jail requiring approval of the Texas Commission on Jail Standards). A large capital project is defined as one with cumulative professional services fees in excess of two million dollars.

Absent an RFQ for a specific project, a prequalified pool of professional firms may be used *only if* certain guidelines and criteria are met that indicate a reasonable review process will likely yield “demonstrated competence and qualifications” for the specific project. Specifically, the use of a prequalified pool of firms to procure professional services must include, but it not limited to, the following guidelines and criteria:

Generation of Prequalified Pool Must Be Open and Fair for All Interested Firms:

In order to maintain a current prequalified pool, it is necessary that the County allow firms to be added to the pool or amend their information previously submitted on a quarterly basis. The entire list should be regenerated on an interval not to exceed two (2) years. The process must be consistent, open, and fair for all professional firms wishing to participate in the relevant prequalified pool. The regeneration may consist of a letter confirming data previously submitted. While membership in the pool is not a guarantee that work will be given, all firms that are members of the pool will be given consistent opportunities to demonstrate their competence and qualifications for appropriate projects.

Prequalified Pool Must Be Approved by Commissioners Court:

Only the Williamson County Commissioners Court acting as a body may approve the use of a prequalified pool under The Act. Such approval must be obtained and recorded in the minutes of the commissioners court for each fiscal year. Use of the pool should be based on a finding that it is in the public’s interest.

Sufficiently Large Committee for Each Project Necessary:

The committee used to administer a prequalified pool must be of no fewer than three (3) members for projects under \$1 million and no fewer than five (5) members for projects over \$1 million in order to inoculate the county from any allegation that an individual or that a few individuals exercise control over the committee and its selection(s). For road-related projects, appropriate committee members may include the Director of Infrastructure, County Engineer, Road & Bridge Director, and one (1) precinct commissioner whose precinct is most affected by the project or his/her designated employee. For capital projects involving facilities, appropriate committee members may include the Director of Infrastructure, Facilities Director, Department Head of relevant department (e.g., Parks, EMS, SO, etc.), one (1) precinct commissioner whose precinct is most affected by the project or his/her designated employee. A Purchasing Department representative will be a non-voting ex officio member of all committees to ensure procurement policies are followed. In no instance may the committee have more than one (1) member of the commissioners court unless the committee is formally appointed by the full commissioners court and complies with posting agendas under the Open Meetings Act (Tex. Gov’t Code Ch. 551) for drafting of the RFQ and relevant criteria. Additional committee members may include the Budget Office, the Auditor’s Office, or similar county employee(s) with sufficient knowledge and training to serve.

Affected Precinct Commissioner’s Office May Have Only One (1) Member on Project Selection Committee:

A precinct commissioner whose precinct is involved in a selection committee may have only one (1) member from their office on any such project selection committee.

Interviews by Selection Committee:

A presentation and an interview in a question and answer format may also be required for those firm/teams that are ranked the highest. Selected firms will be allowed an equal amount of time for the presentation and posed with equivalent interview questions. The committee will make a recommendation to the Williamson County Commissioners Court. The court will authorize negotiation and award of the contract utilizing Williamson County’s standard terms and conditions of agreement, which the selected firm must execute in order to be awarded the contract.

Committee Evaluations and Scoring Must Be Filed With Purchasing Department:

Documentation of the review process, which consists of evaluations and scoring, must be filed with the Purchasing Department for each project before a recommendation is made to the Williamson County Commissioners Court

Annual Reporting to County Judge:

The Director of Infrastructure and the Purchasing Agent will each update the Williamson County Judge regarding the use of prequalified pools and pending projects and their status on an annual basis.

Implementation of Formal Complaint Process for Firms Passed Up for a Project or Not Included in a Pool:

A representative of the selection committee and a representative of the purchasing department shall be designated to debrief any providers requesting a debriefing following the proposed designation of a pool list or specific contract award. If the issues are not resolved in the debriefing process a formal complaint may be made to the Williamson County Purchasing Agent who will then inform the project selection committee of the pending complaint. Any complaint regarding a contract award or failure to be included in a pool must be handled formally and in writing within five (5) days of the notice of contract being officially awarded by the Williamson County Commissioners Court. Any firm wishing to file a complaint must do so in writing prior to the Williamson County Commissioners Court vote on the award or the pool. If a firm wishes to address the Commissioners Court, it must request to do so in the formal written complaint.

The applicable project selection committee reserves the right to gather further information from any firm so long as consistent opportunity is given to all firms to answer any questions or address concerns. Ultimately, any recommendations from the selection committee are non-binding and are subject to formal approval of the Williamson County Commissioners Court acting as a body. The final decision of the Williamson County Commissioners Court with regard to contract award will be final disposition of any pending complaints.

RESPONSIBILITIES AND EXPECTATIONS

Numerous county representatives or officials may be involved in the procurement of professional services under The Act. Below is a list of customary participants and a description of responsibilities and expectations for each.

County Engineer:

Uses his expertise to make unbiased recommendations to assist the county in determining the appropriate firms with “demonstrated competence and qualifications” matched with specific projects while maintaining a transparent process free of conflicts of interest.

Director of Infrastructure:

Uses his expertise to make unbiased recommendations to assist the county in determining the appropriate firms with “demonstrated competence and qualifications” matched with specific projects while maintaining a transparent process free of conflicts of interest. Ensures filing of necessary documentation with the Purchasing department (such as evaluations and scoring).

Facilities Director or Other Department Head(s):

Uses his expertise to make unbiased recommendations to assist the county in determining the appropriate firms with “demonstrated competence and qualifications” matched with specific projects while maintaining a transparent process free of conflicts of interest.

Auditor’s Office:

Auditor’s Office has the authority to audit any department with regard to procurement under The Act to check compliance with this procedure, and review evaluations and scoring for each project.

Precinct Commissioner:

The commissioner whose precinct is most affected by a project may participate by making recommendation in the public interest; however, commissioners are bound by ethical rules including a prohibition that they not act as a surety or participate in any procurement of a government contract in which he or she may have a substantial interest (ten percent (10%) or \$15,000 or more of the fair market value of the business entity) in violation of Tex. Local Gov't Code § 171.001-171.004.

Purchasing Agent:

The Purchasing Agent is a facilitator, ensures compliance and is not a voting member of the selection committee. The Purchasing Agent maintains a list of all project selection committees and ensures compliance with state law and this procedure and makes policy recommendations. The Purchasing Agent determines appropriate Purchasing Department representatives to participate and assist with each project selection committee.

Road & Bridge Director:

Uses his expertise to make unbiased recommendations to assist the county in determining the appropriate firms with “demonstrated competence and qualifications” matched with specific projects while maintaining a transparent process free of conflicts of interest.

ADDITIONAL LEGAL COMPLIANCE REQUIREMENTS**Reasonable Fees**

Fees for such services must be lawful, fair and reasonable, and may not exceed the recommended practices and fees published by the applicable professional associations.

Tex. Gov’t Code § 2254.003(a)(2), (b)(1)-(2).

Contract Formation Under The Act

Architectural, engineering or land surveying services must be procured by selecting the most highly qualified provider of such services on the basis of demonstrated competence and qualifications, then attempting to negotiate a contract with that provider at a fair and reasonable price. **Tex. Gov’t Code § 2254.004(a)(1)-(2).** If a contract cannot successfully be negotiated with that provider, the commissioners court must formally end negotiations with that provider, select the next most highly qualified provider and attempt to negotiate a contract in similar fashion. ***Id. at (b)(1)-(3).*** This process must continue until a contract is formed. ***Id. at (c).***

Fraud Reporting

Any ethical issues or instances of fraud must be immediately reported. Suspected fraud or unlawful conduct must be reported to the Auditor’s Office as soon as possible for review and further appropriate action.