

CRITICAL SHORTAGE RISK
Fraud Sole Supplier REGULATIONS
Price NO CONTRACT Theft

PROCUREMENT SWEAR WORDS!

RUSH Below BOILERPLATE CLAUSE
ORDER Standard

Late PAPERWORK CORRUPTION
Delivery GRNI Excess Inventory

BAD DATA
Indirect COMPLIANCE MANUAL PROCESSES
Spend STANDALONE Accidental Order

Auditor SYSTEMS
FORMS Invisible Supply Chain

Intro to Purchasing
By: Rebecca Lundberg
ASSISTANT DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

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WHAT IS IT EXACTLY



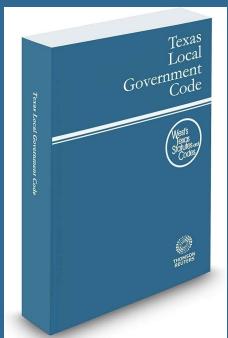
YOU DO IN PROCUREMENT?

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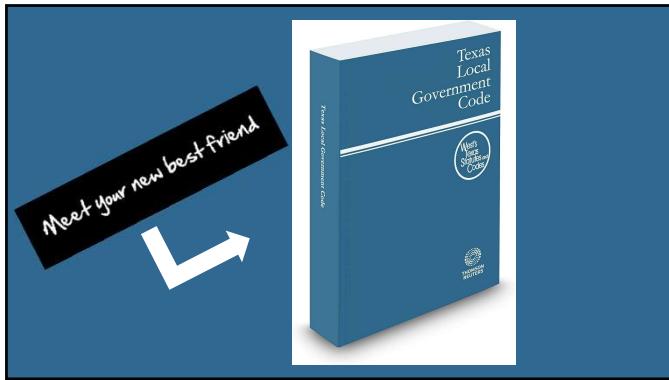
Purchasing and Contracting Authority of County

- ❖ [§ 262 of the Texas Local Government Code](#)
 - ❖ ["County Purchasing Act"](#)
- ❖ [§ 271 of the Texas Local Government Code](#)
- ❖ [§ 272 of the Texas Local Government Code](#)
- ❖ [Chapter 2254 of the Texas Government Code](#)
- ❖ County's purchasing policy.

Statute will always be controlling!!!



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Commissioner Court Authority

◊ **BUDGET**

- ◊ Authorize issuance of RFP, RFQ, IDIQ, etc.
- ◊ Approve selection of vendor/ award RFP, RFQ, IDIQ, etc.
- ◊ Contract authority (acts as a body)
- ◊ Hire/Supervise the purchasing activities of the **County Purchasing Agent**. (depends on population)

The block contains three small images: a photograph of a court room with several people seated at a long table, an exterior view of a red brick building with a prominent tower, and a photograph of a city skyline at sunset with a bridge in the foreground.

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Purchasing Agent

◊ See Purchasing Agent Authority; Local Government Code § 262.0115 (cc appoint); Local Government Code § 262.011 (board appoint)

◊ Serve at pleasure of employer.

◊ Statute + policy

Purchasing Agent Nutrient Facts	
Serving Size - 1 Amazing Purchasing Agent	
Amount Per Serving	200%
Awareness	200%
Dedication	100%
Work	80%
Pay	20%
Customer Service	100%
Problem Solving	100%
Focus	100%
Wrong Answer	0%
Caffeine	100%

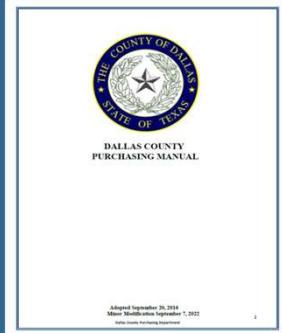
Properties: Values are based on 1 Amazing Purchasing Agent. Your Daily Values may be higher or lower depending on how much a Purchasing Agent ate.

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Hold your horses...
check your county's Purchasing Policy first!



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Policy Samples – Comparisons

Ellis County		Dallas County	
Non-Competitive Purchase Requesting department must attempt to obtain a phone or written quote. (Good faith effort to obtain best price; invoice is the only quote required)	≤ \$7,499.99	Non-Competitive Purchase	\$0.01 to \$3,000.00
Competitive Informal Purchase Must attempt to obtain <u>two</u> written quotes. (2 Informal Quotes)	\$7,500.00 to \$49,999.99	Competitive Informal Purchase Advertise a Request for Quote through the Purchasing Department selected procurement platform.	\$3,001.00 to \$49,999.99
Competitive Formal Purchase	≥ \$50,000.00	Competitive Formal Purchase	≥ \$50,000.00

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REQUISITION PROCESS



◊ The purpose of a requisition is to:

1. Inform
2. Identify goods/ services + funds
3. Provide a record

◊ If purchase is UN-BUDGETED, user department should send a memo detailing necessity & funding options.

◊ REQUISITION MUST BE DONE **BEFORE** INVOICES.

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PURCHASE ORDER Process (2nd STEP following Requisition)

◊ Requisition submitted, then Purchase Order will be drafted.

◊ The requisition will be returned to the requesting department if the funds for the purchase are not available.



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What is the first step of the purchasing process to purchase two grasshopper mowers?
(around 10k each)




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Requisition comments:
Waxahachie Equipment Co., Inc.

Supplier info part 1:
1911 E 12th Street

Supplier info part 2:
Waxahachie, Texas 75165

Supplier info part 3:
972-935-1810 Fax 972-937-9560

Requisition

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Quote 1

CASE IH Quotation
Waxahachie Equipment Co. Inc.
3833 FM 1181
Waxahachie, Texas 75165
Phone 972-935-5870, Fax 972-937-9560

Date: 07/23/16
To: beaver@lafmenco.com Phone:

Quantity	Description	Amount
Two	Grasshopper 7358T-34012 side-discharge FoldUp deck with Powerfold and wider stance single fork tail wheel @ \$10,423.79 each	\$21,247.50

Total \$21,247.50

Other Information and Financing:
The quote is **BuyBoard** priced

By: Aaron Tatum
Salesman

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Quote 2

Four Bros. Outdoor Power
3334 E. 100 Bayou City, TX 77058
PHONE: 281-548-2000 FAX: 281-548-0074

SNAPPER ECHO STIHL TEREX SCAG

August 3, 2016

ATT: Kaufman County Sheriff Department
Email: lawenforcement@kaufmail.com

1. Grasshopper 758BT with 3481PF Side Discharge deck - \$11,625 each

Total for 2 machines delivered - \$23,250

If you have any questions please call
Regards,
Becky Fenn

Becky Fenn
Sales

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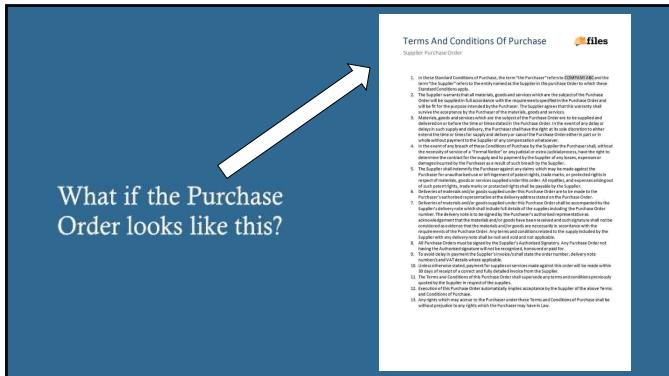
Quote 3

grasshopper 725bt diesel mower 3461 deck on \$ 13,350.00
grasshopper 735bt gas mower 3461 deck on \$ 11,400.00

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Purchase Order for the lowest + best responsible vendor. (informal)

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The bidding process does not have to look like this...



Bidding Process

In order to make a purchase of an item that costs over \$50,000.00, the requesting department must:
 Submit a requisition, specifications, and recommended vendors to the Purchasing Department far enough in advance of the desired purchase date to allow time for the **formal bidding process**.
 (6-8 weeks +)

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Competitive Bidding

- ◊ The purchasing department will ensure publication
- ◊ Lump sum versus per unit basis.
- ◊ After receiving the bids, the purchasing department shall open them publicly.
- ◊ After examining the bids, the requesting department will send a written recommendation for the bid award to the purchasing department at least seven days prior to the deadline for the Commissioners Court agenda.

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Competitive Bidding, continued...

- ◊ Bids are awarded to the **lowest and best responsible bidder**. lowest and best = means a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale.
- ◊ CC may consider:
 - ◊ The quality of the product;
 - ◊ The adaptability of the product to the intended use;
 - ◊ The ability, experience, efficiency, integrity, and financial responsibility of the bidder;
 - ◊ If the vendor is delinquent in taxes to County;
 - ◊ Compliance with all insurance requirements of County; and
 - ◊ Any conflict of interest.



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Competitive Bidding, continued...

- Only ONE bid, that bid may be accepted by the Commissioners Court if the Court determines that the price is **fair and reasonable** per § 262 of the Texas Local Government Code.
- After the award of the bid contract by the Commissioners Court, a purchase order, award letter, or official notice to proceed will be sent to the vendor by the purchasing department.



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- Does your Purchasing Policy include a "Bid Protest" section?
 - Sworn certification w/ complaint
 - Appeal process
 - CC hearing discretionary
 - Injunction suit under 262.033
- Public Info Act Requests
 - Sec. 552.104 Info Relating to Competition or Bidding
 - "Ongoing competitive situation"
 - Sec. 552.305. Information Involving Privacy or Property Interests of Third Party



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Purchases that are Exempt from Competitive Procurement Requirements... DISCRETIONARY EXEMPTIONS

Texas Local Government Code Sec. 262.024.

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

- (1) public calamity
- (2) public health
- (3) public property damage
- (4) a personal or professional service;
- (5) daily labor (short term)
- (6) any land or right-of-way

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Purchases that are Exempt from Competitive
Procurement Requirements...
DISCRETIONARY EXEMPTIONS CONT'D

(7) an item that can be obtained from only one source, including:

- (A) patents, copyrights, secret processes, or monopolies
- (B) films, manuscripts, or books
- (C) utility services
- (D) captive replacement parts or components for equipment

(8) food

(9) personal property sold: auction, out of business sale, government entity

(10) economic development work per 381 agreement

(11) vehicle and equipment repairs

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Sole Source IS... *Rare*

- Not used to avoid competition
- Inability to obtain competition due to proprietary or unique capabilities
- Substitutions are unacceptable
- Can only be obtained from a single supplier/manufacturer
- **Sole Source Form required from Purchasing Agent!**

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 <p style="text-align: center;">DALLAS COUNTY PURCHASING DEPARTMENT Received Bids Within 5000 Dallas, Texas 75201 Michael French Procurement Manager</p> <p>Department Sole Source Procurement Request Form</p> <p>Sole Source</p> <p>Texas Local Government Code 262.024(7) an item that can be obtained from only one source, including:</p> <p>Please select one:</p> <p><input type="checkbox"/> A) where competition is precluded because of the existence of patents, copyrights, service processes, or monopolies;</p> <p><input type="checkbox"/> B) where the item is unique;</p> <p><input type="checkbox"/> C) electric power, gas, water, and other utility services; and</p> <p><input type="checkbox"/> D) capital replacement parts or components for equipment.</p> <p>Submitting a Sole Source</p> <p>This procurement is submitted as a sole source request from only one source, and must attest at least one of the exceptions to competitive bidding, as listed below, to be considered sole source.</p> <p>Explain how the source meets the sole source criteria: why a competitive process is impractical or not in the best interests of the County. Factual evidence must be presented to support the sole source request. Evidence must be timely, clear and accurate. Factual evidence must be included and may include written documents, photographs, witness statements, patent, copyright, research or other information.</p> <p>State purpose of procurement</p> <p>West Publishing Corporation offers a comprehensive selection of legal publications such as <i>Practice Builders</i>, <i>Caselaw</i>, <i>Court Rules</i>, <i>Threaten</i>, and <i>Statutes</i> which supports the legal needs of the County and its employees.</p>	<h1 style="text-align: center;">Sole Source Required Documents</h1> <div style="text-align: center;">  <p style="text-align: center;">DALLAS COUNTY PURCHASING DEPARTMENT Received Bids Within 5000 Dallas, Texas 75201 Michael French Procurement Manager</p> </div> <p style="text-align: center;">Department Sole Source Procurement Request Form</p> <p>Provide evidence of department's price analysis to determine the price is fair and reasonable?</p> <p>A copy of the analysis will be provided along with this document.</p> <p>If this procurement request related to high technology, e.g. software, computer related equipment? If No, yes, please provide authorization memo from the IT Department.</p> <p>Public Defender's Office</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Department Name</td> <td style="width: 40%; text-align: right;">Date</td> </tr> <tr> <td>Director/Assistant Director Name</td> <td style="text-align: right;">Signature</td> </tr> <tr> <td>Paul Blotter</td> <td style="text-align: right;">11022022</td> </tr> <tr> <td>Department Requisitioner Name</td> <td style="text-align: right;">Date</td> </tr> <tr> <td>Purchasing Director Approval</td> <td style="text-align: right;">Date</td> </tr> <tr> <td></td> <td style="text-align: right;">Signature</td> </tr> </table>	Department Name	Date	Director/Assistant Director Name	Signature	Paul Blotter	11022022	Department Requisitioner Name	Date	Purchasing Director Approval	Date		Signature
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	Signature												

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<p>West, a Thomson Reuters Business, 311 the period of April 1 - 2024 through March 31, 2025, for the purchase of three (3) Westlaw Edge and Westlaw Pro O'Conor's Legal Research Databases, for Judicial Research, and for the purchase of three (3) dump trucks, for Road and Bridge No. 4, with Southwest International Trucks, Inc., through Boyerfield 723-23, authorized by Chapter 271, section 271.102 (a)(2) of the Texas Local Government Code - Amount not to exceed \$460,073.80</p> <p>Bidding and Contract Order - Tad</p> <p>RESULT: Carried 5-0</p> <p>IN FAVOR: County Judge Jim Jenkins, Commissioner Dr. Theresa Daniel, County Judge John Wiley Price, Commissioner Dr. Eba Garcia, and Commissioner Andrew Sommerman</p>	<p>West, a Thomson Reuters Business, 311 the period of April 1 - 2024 through March 31, 2025, for the purchase of three (3) Westlaw Edge and Westlaw Pro O'Conor's Legal Research Databases, for Judicial Research, and for the purchase of three (3) dump trucks, for Road and Bridge No. 4, with Southwest International Trucks, Inc., through Boyerfield 723-23, authorized by Chapter 271, section 271.102 (a)(2) of the Texas Local Government Code - Amount not to exceed \$460,073.80</p> <p>Bidding and Contract Order - Tad</p> <p>RESULT: Carried 5-0</p> <p>IN FAVOR: County Judge Jim Jenkins, Commissioner Dr. Theresa Daniel, County Judge John Wiley Price, Commissioner Dr. Eba Garcia, and Commissioner Andrew Sommerman</p>
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Purchases that are Exempt from Competitive Procurement Requirements...

COOPERATIVE AGREEMENTS

Texas Local Government Code chapter 271.102 allows public entities to make purchases using cooperative contracts.

- Is the County a member of the cooperative?
- Review the contract documents. Do the terms match?
- Is the underlying contract open? Or have a savings clause?



Texas Department of Information Resources

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PIGGYBACK AGREEMENT CONT'D...

→ Need an ILA with
Participating County/City

→ Contract clause for vendor agreement.

→ Is the agreement open?

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Professional Services Procurement Act **- Texas Gov't Code 2254**

- ❖ **Competency of the firm or individuals, NOT competitive bidding.**
- ❖ Architect, Engineer, or Surveyor = special negotiation steps.
- ❖ Others = most qualified + fair and reasonable
- ❖ Contracts in violation of act are VOID as against public policy. Sec. 2254.005



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Bid-Splitting IS ILLEGAL!

Texas Local Government Code
Sec. 262.034. CRIMINAL PENALTIES.

(a) A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 262.023. An offense under this subsection is a Class B misdemeanor.

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EVERYTHING IS ILLEGAL!

Texas Local Government Code
Sec. 262.034. CRIMINAL PENALTIES.

(c) A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by subchapter (a). An offense under this subsection is a Class C misdemeanor.

See GA-0604 (2008); County Auditor is mandated to approve/deny claims; intent to violate CPA is a fact question.

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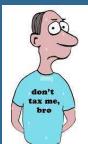
CIVIL liability for
not following the
County Purchasing Act.

In 1985, the legislature adopted the County Purchasing Act (Sec. 262). Contracts entered into in violation of the County Purchasing Act are not automatically **VOID**, but a court may declare such contracts void in a taxpayer suit, or in some circumstances an unsuccessful bidder suit.



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Texas Local Government Code
Sec. 262.033. **INJUNCTION.** Any property tax paying citizen of the county may enjoin performance under a contract made by a county in violation of this subchapter.



At least one court has ruled that a corporation is a tax paying citizen for purposes of filing suit against a governmental entity to enjoin performance of a contract that was awarded in violation of the County Purchasing Act. See *Labrado v. County of El Paso*, 132 S.W.3d 581 (Tex. App. – El Paso, March 18, 2004).

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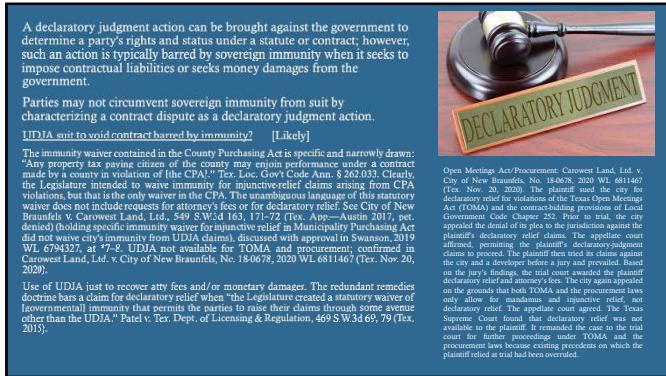
Sec. 2254.007. DECLARATORY OR INJUNCTIVE RELIEF.
(a) This subchapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date a contract is awarded.



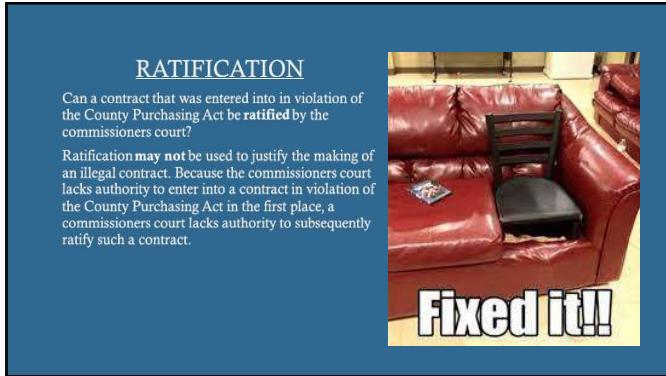
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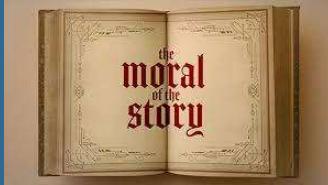
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- ❖ Include sovereign immunity clause in contract to be clear. Especially in out-of-state vendor agreements.

This Agreement is expressly made subject to _____ County's **Sovereign Immunity**. Title 5, Texas Civil Practice and Remedies Code. This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and venue shall lie exclusively in _____ County, Texas.

- ◆ TRAIN, TRAIN, TRAIN.
Always ask, what is the procurement vehicle?



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If the county auditor determines that the county awarded a contract without complying with the County Purchasing Act, §113.065 of the Local Government Code prohibits the auditor from approving a claim for payment on the contract. See Tex. Atty. Gen. Op. No. GA-0247 (2004).

The county auditor must assure that these claims have been "incurred as provided by law," requiring a court order or judgment notwithstanding that a quantum meruit payment is by definition one that is not incurred as provided by law. See Op. Tex. Atty Gen. No. GA-383 (2005) (Harris County).



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Summer Reading



- ❖ Texas Association of Counties' Procurement Handbook (2023)
 - ◊ chrome-extension://efaidnbmnnbcpojcgclefndmka/jhttps://countyorgprodblob2023.blob.core.usgovcloudapi.net/cms/tac/media/default/member-services/legal/legal-publications/procurement.pdf
- ❖ The Texas Procurement, "The civil approach to confronting a governmental contract."
 - ◊ <https://www.tcaa.com/journal/the-civil-approach-to-confronting-a-governmental-contract/>
- ❖ The State of Texas Procurement and Contract Management Guide
 - ◊ <https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>
- ❖ Purchasing Law Basics for Counties (Bickerstaff Heath Delgado Acosta L.L.P.)
 - ◊ chrome-extension://efaidnbmnnbcpojcgclefndmka/jhttps://www.bickerstaff.com/wp-content/uploads/Purchasing-Law-Basics-for-Counties-00875814x73A0F.pdf
- ❖ UTSA Business Contracts Office
 - ◊ <https://www.utsa.edu/bco/resources/terms.html#CCOL>

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