

**CRITICAL SHORTAGE** **RISK**  
 Fraud Sole Supplier REGULATIONS  
 Price Volatility **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 SYSTEMS Accidental Order

**Auditor**

**FORMS** Invisible Supply Chain

**Intro to Purchasing**



By: Rebecca Lundberg  
 ASSISTANT DISTRICT ATTORNEY  
 DALLAS COUNTY, TEXAS

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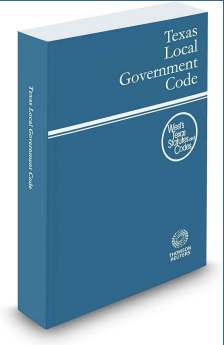
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Purchasing and Contracting Authority of County

- ◆ § 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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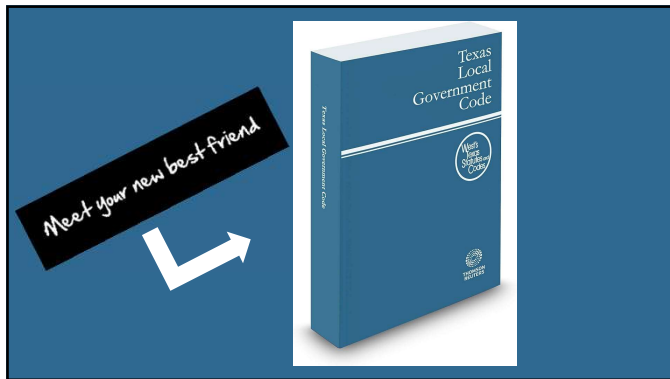
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### Commissioner Court Authority

- ◆ **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)

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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 Nutrition Facts**  
Serving Size: 1 Amazing Purchasing Agent

Amount Per Serving	% Daily Value
<b>Awareness</b>	200%
<b>Dedication</b>	100%
<b>Work</b>	80%
<b>Play</b>	20%
<b>Critical Thinking</b>	100%
<b>Problem Solving</b>	100%
<b>Focus</b>	100%
<b>Strong Answer</b>	0%
<b>Caffeine</b>	100%

\*Percent Daily Values are based on a diet of 1 amazing great Purchasing Agent. Your daily values may vary depending on your local purchasing agent's needs and your own purchasing agent's needs.

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



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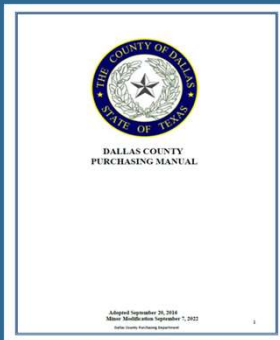
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### Policy Samples – Comparisons

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	\$00.01 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 (2<sup>nd</sup> 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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Plant Year	Department Name	Req #	Req Date	Date Rec'd	Order	Status	Delivery Location
2016	CONCRETE	1455	06/02/2016	06/17/2016	Shawnee	SO	P.O. Samuel

Line	Qty	Unit	Item	Item Description	Qty	Unit Price	Unit Cost	Total Amount
1	000	00	C	110-1200-1400 Grasshopper	2.00	10,623.7500		21,247.50
Grand Totals:								21,247.50

Requisition comments:  
Waxahachie Equipment Co., Inc.

Supplier info part 1:  
1913 E 135 St.

Supplier info part 2:  
Waxahachie, Texas 75165

Supplier info part 3:  
972-997-0470 Fax 972-997-0500

## Requisition

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Quantity	Description	Amount
2	Grasshopper 7500T-1402 side-discharge P4000 deck with PowerFold and auto-discharge (deck fold release) @ \$10,623.75 each	\$21,247.50
Total		\$21,247.50

Other information and financing:  
The quote is Buyboard priced.

By: Aaron Taylor  
Salesman

## Quote 1

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## Quote 2

**Four Bros. Outdoor Power**  
 2324 E-101 Rogers City, TX 79108  
 PHONE: 972-438-2983 FAX: 972-438-8974

**SHAPER ECHO STIHL TEREX**

August 3, 2018

ATT: Kaufman County Sheriff Department  
 Email: lawen@kaufmanco.com

1. Grasshopper 755BT with 3451PF Side Discharge deck - \$11,625 each

Total for 2 machines delivered - \$23,250

If you have any questions please call  
 Regatta  
*Edna Fenton*

Edna Fenton  
 Sales

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## Quote 3

grasshopper 755BT mower 3451 deck - \$11,625.00

grasshopper 755BT gas mower 3451 deck - \$11,625.00

will this do or do you need more just let me know please and thank you for all your help

Thank you  
 Chris Tufano

From: Chris Tufano <ctufano@jascom.com>  
 Date: Tue, May 31, 2016 at 9:48 AM  
 To: lawen@kaufmanco.com

**Forwarded conversation**  
 Subject: grasshopper mower

From: Chris Tufano <ctufano@jascom.com>  
 Date: Tue, May 31, 2016 at 9:29 AM  
 To: lawen@kaufmanco.com

From: lawen@kaufmanco.com  
 Date: Tue, May 31, 2016 at 9:29 AM

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

**KAUFMAN COUNTY**  
 3003 S. Washington  
 Kaufman, TX 75142

**PURCHASE ORDER**

PO No: 125875  
 Date: 06/15/18  
 PO Description: 125875  
 PO Number: 125875

**DELIVERY ADDRESS:**  
 3003 S. Washington  
 Kaufman, TX 75142

**VENDOR INFORMATION:**  
 VENDOR NAME: 125875  
 VENDOR ADDRESS: 125875  
 VENDOR CITY: 125875  
 VENDOR STATE: 125875  
 VENDOR ZIP: 125875

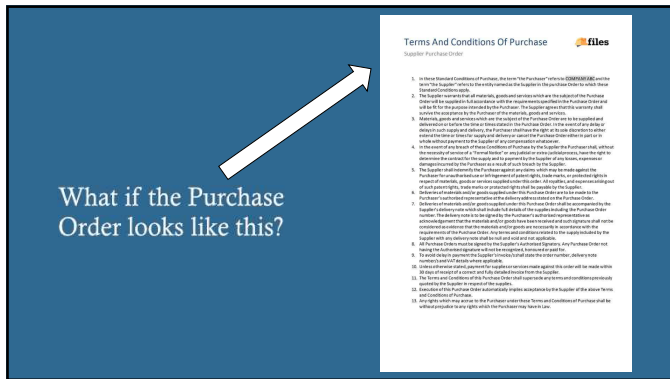
ITEM	QTY	DESCRIPTION	UNIT	UNIT PRICE	TOTAL
1	1	GRASSHOPPER 755BT MOWER 3451 DECK	EA	\$11,625.00	\$11,625.00

**TERMS:** NET 30

**CONDITIONS OF PURCHASE:**  
 KAUFMAN COUNTY IS A BUYER OF LAST RESORT. KAUFMAN COUNTY SHALL NOT BE RESPONSIBLE FOR THE ACTIONS OF ANY VENDOR. KAUFMAN COUNTY SHALL NOT BE RESPONSIBLE FOR THE ACTIONS OF ANY VENDOR. KAUFMAN COUNTY SHALL NOT BE RESPONSIBLE FOR THE ACTIONS OF ANY VENDOR.

**PURCHASER AGENT:**

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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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**DALLAS COUNTY  
PURCHASING DEPARTMENT**  
Purchasing Director  
Dallas, Texas 75202

Department Sole Source Procurement Request Form

**Sole Source**  
Texas Local Government Code 262.024(7) an item that can be obtained from only one source, including:  
Prose and/or text:  
(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;  
(B) time, manuscripts, or books;  
(C) electric power, gas, water, and other utility services; and  
(D) capital replacement parts or components for equipment.

**Substantiating a Sole Source**  
The procurement request must be available from only one source and must meet at least one of the exceptions to competitive bidding, as listed above, to be considered sole source.

Explain how the good or service meets the sole source criteria, why a competitive process is impractical or not in the best interests of the County. Attach evidence that is provided, sufficient for the approver to independently determine that the justification is true and accurate. Attach evidence must be included and may include written documents, reports, data, affidavits, patent or copyright, research or other information.

**Sole purpose of procurement?**  
United Publishing Corporation offers a comprehensive selection of legal publications such as Practice Materials, Case Law, Court Rules, Treatises, and Statutes which supports the legal research needs of the County and its constituents.

## Sole Source Required Documents

1. Department/  
Official Letter  
See 262.024(c)
2. Vendor Letter  
See County  
Purchasing  
Policy.

Department Sole Source Procurement Request Form  
Provide evidence of department's price analysis to determine the price is fair and reasonable?  
☐ Yes ☐ No. If yes, please provide authorization memo from the IT Department.

A copy of the analysis will be provided along with this document.

Public Defender's Office  
Department Name  
Director/Assistant Director Name  
Date  
Signature  
Department Requestor Name  
Date  
Signature  
Purchasing Director Approval  
Date  
Signature

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Week 4 - Thomson Reuters Business, for the period of April 1 through March 31, 2027. Discretionary Exemption is authorized by Texas Local Government Code, 262.024 (a)(7)(A), and enter the sole source exemption from the Purchasing Director into the minutes - Estimated amount \$489,007.00  
Briefing and Court Order - D#F  
Authorize a Three Year Sole Source Service Price Agreement for Westlaw Edge and Westlaw FirstClass Legal Research, unless otherwise stated.

**2024-0207**  
Commissioner John Wiley Price moved, seconded by Commissioner Andrew Schreierman.  
Be it resolved and ordered that the Dallas County Commissioners Court does hereby:  
Authorize a three-year sole source service price agreement for Westlaw Edge and Westlaw FirstClass Legal Research, for the period of April 1, 2024 through March 31, 2027. Discretionary Exemption is authorized by Texas Local Government Code, 262.024 (a)(7)(A), and enter the sole source exemption from the Purchasing Director into the minutes - Estimated amount \$489,007.00

**RESULT:** Carried 4-8  
**IN FAVOR:** County Judge Clay Jenkins, Commissioner Dr. Theresa Daniel, Commissioner John Wiley Price, Commissioner Dr. Elba Garcia, and Commissioner Andrew Schreierman.

(2) Authorize a one-time purchase of three dump trucks, for Road and Bridge No. 4, with Southwest International Trucks, Inc., through Bid Board 723-24, authorized by Chapter 271, section 271.102 (a)(1) of the Texas Local Government Code - Amount not to exceed \$460,073.80  
Briefing and Court Order - D#F

**2024-0208**  
Commissioner John Wiley Price moved, seconded by Commissioner Andrew Schreierman.  
Be it resolved and ordered that the Dallas County Commissioners Court does hereby:  
Authorize a one-time purchase of three dump trucks, for Road and Bridge No. 4, with Southwest International Trucks, Inc., through Bid Board 723-24, authorized by Chapter 271, section 271.102 (a)(1) of the Texas Local Government Code - Amount not to exceed \$460,073.80

**RESULT:** Carried 4-8  
**IN FAVOR:** County Judge Clay Jenkins, Commissioner Dr. Theresa Daniel, Commissioner John Wiley Price, Commissioner Dr. Elba Garcia, and Commissioner Andrew Schreierman.

Example  
Sole Source  
Agenda Posting

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10900901 009066




Texas Department of Information Resources

## 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?

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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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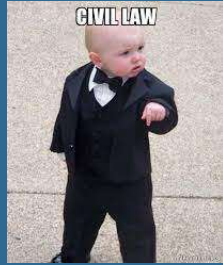
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### CIVIL liability for not following the County Purchasing Act.

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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### Who has standing to bring suit for CPA violation?

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 *Lalanda v. County of El Paso*, 132 S.W.3d 581 (Tex. App. - El Paso, March 18, 2004).

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### Don't forget about the PSPA.

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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But, how do I get paid?



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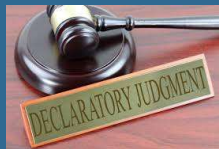
A declaratory judgment action can be brought against the government to determine a party's rights and status under a statute or contract; however, such an action is typically barred by sovereign immunity when it seeks to impose contractual liabilities or seeks money damages from the government.

Parties may not circumvent sovereign immunity from suit by characterizing a contract dispute as a declaratory judgment action.

**UDJA suit to void contract barred by immunity?** [Likely]

The immunity waiver contained in the County Purchasing Act is specific and narrowly drawn: "Any property tax paying citizen of the county may enjoin performance under a contract made by a county in violation of the CPA." Tex. Loc. Gov't Code Ann. § 262.032. Clearly, the Legislature intended to waive immunity for injunctive relief claims arising from CPA violations, but that is the only waiver in the CPA. The unambiguous language of this statutory waiver does not include requests for attorney's fees or for declaratory relief. See *City of New Braunfels v. Carowest Land, Ltd.*, 549 S.W.3d 163, 171-72 (Tex. App.—Austin 2017, pet. denied) (holding specific immunity waiver for injunctive relief in Municipality Purchasing Act did not waive city's immunity from UDJA claims), discussed with approval in Swanson, 2019 WL 6794327, at \*7-8. UDJA not available for TOMA and procurement; confirmed in *Carowest Land, Ltd. v. City of New Braunfels*, No. 18-0678, 2020 WL 6811467 (Tex. Nov. 20, 2020).

Use of UDJA just to recover atty fees and/or monetary damages. The redundant remedies doctrine bars a claim for declaratory relief when "the Legislature created a statutory waiver of governmental immunity that permits the parties to raise their claims through some avenue other than the UDJA." *Patel v. Tex. Dept. of Licensing & Regulation*, 469 S.W.3d 69, 79 (Tex. 2015).



*Open Meetings Act/Procurement: Carowest Land, Ltd. v. City of New Braunfels*, No. 18-0678, 2020 WL 6811467 (Tex. Nov. 20, 2020). The plaintiff sued the city for declaratory relief for violations of the Texas Open Meetings Act (TOMA) and the corresponding provisions of Local Government Code Chapter 282. Prior to trial, the city appealed the denial of its plea to the jurisdiction against the plaintiff's declaratory relief claims. The appellate court affirmed, permitting the plaintiff's declaratory judgment claims to proceed. The plaintiff then filed its claims against the city and a developer before a jury and prevailed. Based on the jury's findings, the trial court awarded the plaintiff declaratory relief and attorney's fees. The city again appealed on the grounds that both TOMA and the procurement laws only allow for mandamus and injunctive relief, not declaratory relief. The appellate court agreed. The Texas Supreme Court found that declaratory relief was not available to the plaintiff. It remanded the case to the trial court for further proceedings under TOMA and the procurement laws because existing precedent on which the plaintiff relied at trial had been overruled.

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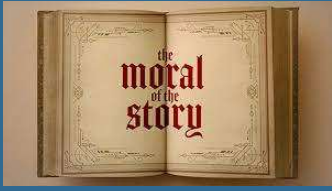
## RATIFICATION

Can a contract that was entered into in violation of the County Purchasing Act be **ratified** by the commissioners court?

Ratification **may not** be used to justify the making of an illegal contract. Because the commissioners court lacks authority to enter into a contract in violation of the County Purchasing Act in the first place, a commissioners court lacks authority to subsequently ratify such a contract.




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

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

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.



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## Don't forget about me!

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://efaidnbmnnnibpcajpgcldefindmkaj/https://countygprodblob2023.blob.core.usgovcloudapi.net/cms/tac/media/default/member-services/legal/legal-publications/procurement.pdf
- ◆ The Texas Prosecutor, "The civil approach to confronting a governmental contract."
  - ◆ <https://www.tdcaa.com/journal/the-civil-approach-to-confronting-a-government-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://efaidnbmnnnibpcajpgcldefindmkaj/https://www.bickerstaff.com/wp-content/uploads/Purchasing-Law-Basics-for-Counties-00875814x7A30E.pdf
- ◆ UTSA Business Contracts Office
  - ◆ <https://www.utsa.edu/bco/resources/terms.html#CCOL>

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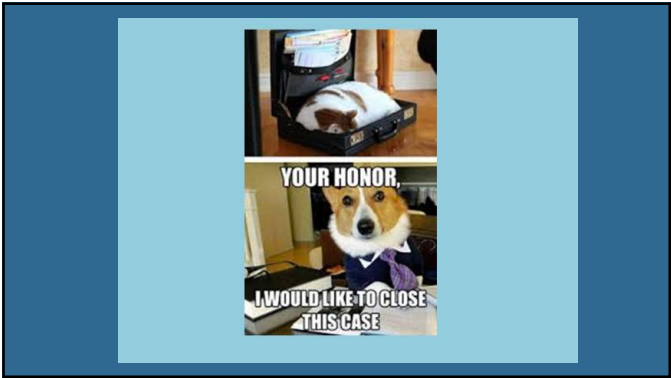
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