

# Procurement Law for Charter Schools

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# Charter Summit



- Texas Procurement Law
  - Procurement Basics
  - Hypotheticals
  - Statutory Framework
    - Default Procurement Statutes
    - “Opt-in” Procurement Statutes

# Procurement Basics

- What is Procurement?
- Statutory Intent
- When is Procurement Required?
  - Charter Sources of Funding
- Failure to Comply

## What is Procurement?

The act and associated process governing the purchase of goods or services.

## Statutory Intent

- Open, transparent government spending
- Ensure responsible use of public funds

## When is Procurement Required?

- Public works contracts
  - Construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property
  - Expenditures over \$50,000

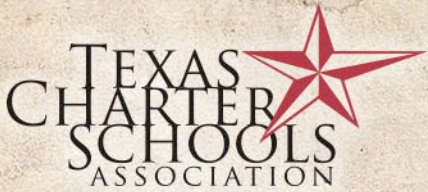


## Charter Sources of Funding

- Federal, State, Private
- State Funding Sources
  - Foundation School Program
    - Operations funding
  - Permanent School Fund
    - Recently expanded by \$850 million
  - New Instructional Facility Allotment
    - Limited to first two years after facility opens

## Failure to Comply

- Void contract
- Officer or employee of charter school
  - Intentionally or knowingly makes separate, sequential, component purchases
    - Class B Misdemeanor
  - Intentionally or knowingly violates this subchapter
    - Class C Misdemeanor



# Procurement Hypotheticals

A charter plans to build a new building on property it owns.

Must it comply with procurement rules to award contracts for the project?

# Procurement Hypotheticals

A charter enters into a lease purchase agreement with the property owner and spends more than \$50,000 to lease the property.

The charter also uses state funds to renovate a portion of the building before the school opens.

Must the charter comply with procurement regulations when making its lease payments?  
What about the renovation?

# Procurement Hypotheticals

A charter's planned renovation project will exceed the \$50,000 threshold, so it competitively bids the work under its governing statute.

Multiple bids are received, and the charter notices a few of the bids are missing some of the requested information.

Can the charter reach out to those bidders asking them to provide the missing information?

# Controlling Statutes

- TEC Section 12.1053; 19 TAC 100.1073 [default]
  - Texas Local Government Code Chapter 271
  - Texas Government Code Chapter 2254
- TEC Chapter 44, Subchapter B [19 TAC 100.1006: opt-in]
  - Texas Government Code 2269
  - Texas Government Code Chapter 2254 generally still applies



# Public Construction Procurement

- Default Procurement:  
Texas Local Gov't Code  
Chapter 271
  - Traditional Pure  
Competitive Bidding
  - No Longer Lowest Bid  
Automatically
  - Lowest Responsible Wins



# Competitive Bidding – Lowest Responsible Bidder

- Traditional Pure Competitive Bidding
- Lowest Responsible or Best Value Wins
- Entitled to reject any and all bids
- To consider safety record, Owner must include in advertisement:
  - Written definition and criteria to determine safety record
  - Notice that safety record may be considered

- Opt-in Procurement: TEC 44.031 et. seq.
- Texas Government Code Chapter 2269 for construction services: Authorizes Alternative Delivery Method
- Evolved over the last few sessions
  - Gradually expanded
  - Some differences between horizontal (civil) and vertical projects



# Differences with APD

- Allows Consideration of Subjective Criteria
  - Provides Flexibility to Owner
  - Allows Contractors to win Projects on more than just price alone
- May facilitate speedier completion
  - Allows for multi-phased construction
  - Can begin work before design complete



# Ch. 2269 Delivery Methods

- Competitive Bidding – Lowest Responsible Bidder
- Competitive Sealed Proposals
- Construction Manager Agent
- Construction Manager At-Risk
- Design-Build
- Job Order Contracting

# Charter Revision

- TEC 12.114; 19 TAC 100.1033
- Written charter amendment requests must be
  - consented by the charter holder
  - approved by the commissioner of education
- Best interest of the students enrolled in the charter school
- Decision is final and non-appealable



# Charter Revision – Delegation of Authority

- TEC 12.114 and 44.0312; 19 TAC 100.1033(13)
- Charter may delegate authority relating to procurement
  - Notice of the delegation must be provided in requests for bids, proposals, or qualifications
  - Must seek approval of the delegation from the commissioner
- Charter may delegate its authority to the executive director or other designated person in the event of a catastrophe, emergency, or natural disaster affecting the school.



# Questions?

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A Balanced Approach to Construction Law.