

Texas Unified Procurement Code (Texas UPC)

An Informational Paper by the Texas Public Purchasing Association (TxPPA)

TxPPA is an independent multi-agency organization for Public Purchasing Professionals across the great State of Texas. TxPPA began in 2008 with the merging of two established organizations, the Texas County Purchasing Association (TCPA), an organization of county purchasers, and the Texas Purchasing Management Association (TPMA), an organization of city purchasers. TxPPA's nearly 500 members represent 300 Texas cities, counties, schools, community colleges, universities, special districts, and state agencies.

Purchasing statutes in Texas have evolved over time, with changes in nearly every legislative session in recent history. The fractured structure of the existing system causes much inefficiency, as well as transparency issues for those wishing to do business with the different types of Governmental Agencies. For example, here are some of the statutes that govern procurement in Texas:

- *Government Code, Title 10, Subtitle D, State Purchasing and General Services*
- *Education Code, Chapter 44, Subchapter B, Purchases; Contracts*
- *Local Government Code, Chapter 252, Purchasing and Contracting Authority of Municipalities*
- *Local Government Code, Chapter 262, Purchasing and Contracting Authority of Counties*
- *Local Government Code, Chapter 271, Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments*
- *Government Code, Chapter 2254, Professional Services Procurement Act*
- *Government Code, Chapter 2253, Bonding (requirements for certain public works contracts)*
- *Government Code, Chapter 2267, Contracting and Delivery Procedures for Construction (HB 628)*
- *Government Code, Chapter 2269, Contracting and Delivery Procedures for Design Build (HB 1050)*
- *Financial Management of Grants and Contracts (FMGC) – Texas Workforce Commission*
- *Water Code, Title 4, Chapter 49-Water Districts*

The impact to businesses that want to participate in governmental procurement in Texas is that they face a daunting task if they try to do business across multiple State entities. Strategies that work in counties don't work in cities, higher education or special districts. Likewise, strategies that work in secondary schools don't work with hospital districts or State entities like TxDOT. Also, procurement officials across all public entities must re-learn the system as they move professionally between agencies. This is also true for personnel in the State Auditor's Office as they must retool their skills as they move between agencies in auditing individual procurement organizations. This system also is difficult to modify, with unintended consequences due to the many places that are required to be researched during proposed changes.

Moving to a single, Unified Procurement Code would remove many of these barriers and simplify the process, *particularly for businesses seeking to do business with multiple State procurement entities.* This will lead to greater transparency in procurement across the State.

In 1979, the American Bar Association issued a *Model Procurement Code* document that set a base standard for procurement excellence. To date, the following have modified the base code in a single procurement document for their State:

- 1979 Arkansas, Kentucky
- 1980 Louisiana, Utah
- 1981 Maryland, South Carolina
- 1982 Colorado, Indiana
- 1983 Montana, Virginia, Guam
- 1984 New Mexico
- 1985 Arizona
- 1988 Alaska
- 1989 Rhode Island
- 1994 Hawaii
- 1998 Pennsylvania

In 1996, an effort was undertaken to create a UPC for Texas, with discussion at the legislative level, but there was not enough common interest to establish a single code. Since 1996, the various sections of Government Code that affect procurement have continued to become more complex and less transparent, with additional sections and bracket language for specific entities and procurement areas.

Immediately after TxPPA was founded in 2008, an initiative to create a UPC was started. The effort began by examining the existing statutes that have been adopted by other States. The New Mexico Statute was selected as a base code to build on. At each of its' quarterly meetings since 2008, TxPPA members have worked through the New Mexico Statute to determine what should be deleted, kept or modified for application in Texas. This work was completed in 2013 and TxPPA now has a draft "skeleton" document upon which to build a UPC that will combine all the existing statutes into one Unified Procurement Code for Texas.

TxPPA is requesting its' member entities pass a resolution of their governing body that demonstrates support of a unified code and requests the Texas Legislature to create an Interim Study Committee to examine the feasibility of a unified code based on the extensive work created by TxPPA. A sample resolution is attached. This effort will lead to a simpler, more transparent set of procurement rules for Texas that will benefit all participants in the system.

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RESOLUTION TO RECOMMEND THE CREATION OF A UNIFIED PROCUREMENT CODE FOR TEXAS

WHEREAS, the (insert entity name) is subject to (insert appropriate government code section) for its purchasing, and

WHEREAS, there are at least eleven distinct statutes that govern public purchasing in Texas, and

WHEREAS, the number of statutes under which Texas purchasing is conducted creates confusion for both the legislature, the public and the businesses that strive to provide goods and services to governmental entities, and

WHEREAS, the Texas Public Purchasing Association, TxPPA, and its 500+ members from public entities across the State has been working on creating a structure for a unified code since 2008, and

WHEREAS, a single unified code, like that which exists in 16 other states would do much to create greater transparency in public purchasing;

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

Section 1: The (insert entity name) supports the creation of a Unified Procurement Code.

Section 2: The (insert entity name) requests the Texas Legislature to investigate the feasibility of creating a Unified Procurement Code for the State of Texas through all means at its disposal, beginning with an Interim Study Committee.

Section 3: This resolution shall be in effect as of (insert appropriate date an entity citations).

(This proposed resolution may be edited as needed for the individual entity)