

Mixed Services

When a contract involves both consulting services and one or more other services, an agency must comply with the consulting services requirements when the primary objective of the contract is the purchase of consulting services. For instance, if a contractor proposes to analyze an agency's information systems needs and develop and implement an automated information system, the primary objective of the contract is not the analysis provided. It is the delivery of a data information system. This contract is not a consulting contract; therefore, the requirements for consulting contracts do not apply. However, the agency must comply with the purchasing procedures under Chapters 2151-2158, Texas Government Code, administered by CPA.

Governmental agencies are prohibited from using competitive bidding to purchase or award a contract for “professional services”.^{xxii} The selection of a vendor or award of a contract for “professional services” must be based on two criteria:

1. The demonstrated competence and qualifications to perform the services; and
2. A fair and reasonable price. The professional fees under the contract:
 - a. Must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and
 - b. May not exceed any maximum provided by law.

Architectural, Engineering or Land Surveying Services

When procuring professional architectural, engineering or land surveying services, agencies must follow special procedures. Agencies must:

1. Select the most highly qualified provider of those services on the sole basis of demonstrated competence and qualifications – no consideration of price at this point; and *then*
2. Attempt to negotiate with that chosen provider a contract at a fair and reasonable price.

If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering or land surveying services, the agency must:

- a. Formally end negotiations with that provider;
- b. Select the next most highly qualified provider;
- c. Attempt to negotiate a contract with that provider at a fair and reasonable price.^{xxiii}

i Texas Government Code §2254.003(e).

ii Texas Government Code §2254.004