



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2021

Ms. Becky Weston
Gonzales County Auditor
427 Saint George Street, Suite 302
Gonzales, Texas 78629

Opinion No. KP-0358

Re: Applicability of the County Purchasing Act in specific circumstances (RQ-0377-KP)

Dear Ms. Weston:

You ask about the potential application of the competitive bidding requirements of the County Purchasing Act (the “Act”) to the Gonzales County Attorney’s purchase of a laptop computer for \$1,500.¹ *See generally* TEX. LOC. GOV’T CODE §§ 262.021–.037. Section 262.023 of the Act requires certain purchases “under a contract that will require an expenditure exceeding \$50,000” to follow competitive purchasing procedures or specified statutory alternatives. *Id.* § 262.023(a). Your questions all concern how a county auditor should determine the \$50,000 threshold point that triggers the competitive purchasing requirements of the Act.

In some circumstances, “all separate, sequential, or component purchases of items ordered or purchased” must be treated as a single purchase under a single contract for purposes of applying the Act’s requirements. *Id.* § 262.023(c). You inform us that the Gonzales County (the “County”) budget for computer equipment totals more than \$100,000 and that current expenditures in the laptop category exceed \$50,000.² You state that the county attorney purchased the laptop from an online vendor that is not part of a state or other governmental cooperative purchasing program. Request Letter at 1. You assert the purchase is not included in the county attorney’s office budget.³ *Id.* at 3. You ask several questions that focus on the relevance of the sequential purchasing provision to the County’s current spending for like items in the aggregate. *Id.* We address these

¹See Letter and Attachments from Ms. Becky Weston, Gonzales Cnty. Auditor, to Honorable Ken Paxton, Tex. Att’y Gen. at 1–9 (Sept. 4, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0377KP.pdf> (“Request Letter” and “Attachments”) (Attachments on file with the Op. Comm.).

²See Email from Becky Weston, Gonzales Cnty. Auditor, to Op. Comm. (Oct. 6, 2020) (on file with the Op. Comm.); *see also* Request Letter at 1.

³The county attorney disputes several of the county auditor’s assertions of fact about the transaction, county purchasing practices, and the county budget. *See* Letter from Honorable Paul S. Watkins, Gonzales Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Oct. 5, 2020) (on file with the Op. Comm.). An attorney general opinion advises about questions of law and cannot resolve disputed questions of fact. *See* Tex. Att’y Gen. Op. No. KP-0240 (2019) at 1 (stating that “[t]he attorney general opinion process does not resolve disputed fact questions”).

concerns together with your ultimate question, which is whether section 262.023 requires you to disapprove the purchase. *Id.* at 4.

Subsection 262.023(a) provides that “[b]efore a county may purchase one or more items under a contract⁴ that will require an expenditure exceeding \$50,000, the commissioners court of the county must . . . comply with the competitive bidding or competitive proposal procedures,” among other statutory procedures not pertinent here. TEX. LOC. GOV’T CODE § 262.023(a). Subsection (c) further explains how to treat certain purchases:

(c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this subchapter, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.

Id. § 262.023(c). Subchapter C of the Act defines an “item” as “any service, equipment, good, or other tangible or intangible personal property, including insurance and high technology items.” *Id.* § 262.022(5). “Separate purchases” are “purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.” *Id.* § 262.022(7). “Sequential purchases” are “purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.” *Id.* § 262.022(8). “Component purchases” are “purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.” *Id.* § 262.022(2).

Thus, for subsection 262.023(c) to apply, a purchase must meet two conditions. First, separate, sequential, or component purchases or orders must be treated as one only when the orders or purchaser are “from the same supplier by the same county officer, department, or institution.” *Id.* § 262.023(c). Second, section 262.023 requires treating separate, sequential, or component purchases as one only if made with the intent of avoiding the Act’s requirements. *Id.* § 262.023(c). Therefore, subsection 262.023(c) does not necessarily require a county to consolidate all orders and purchases of like items from different county officers, departments, or institutions and treat them as a single purchase and contract to determine the \$50,000 competitive procedures threshold. *Id.* Instead, a county must consolidate only those purchases and orders that meet the conditions of subsection 262.023(c) to determine whether they collectively meet the \$50,000 threshold. *Id.*

Ultimately, whether a separate, sequential, or component purchase has taken place under 262.023(c) will depend on the particular facts. *See* Tex. Att’y Gen. Op. Nos. GA-0604 (2008) at 5, JC-0124 (1999) at 4. Accordingly, whether the purchase of this laptop computer is one that

⁴With regard to one of your subsidiary questions, section 262.023 does not distinguish on the basis of a purchase contract’s formalities. *See* Request Letter at 3; TEX. LOC. GOV’T CODE § 262.023.

normally would be a part of a larger purchase by the same county officer from the same supplier and was made separately in order to avoid the application of the Act presents questions of fact that cannot be answered in an attorney general opinion. *See* Tex. Att'y Gen. Op. No. GA-0604 (2008) at 5.

S U M M A R Y

Subsection 262.023(c) of the Local Government Code requires “separate, sequential, or component purchases of items ordered or purchased” to be treated as a single purchase only when the purchases or orders would in normal purchasing practices be purchased in one purchase from the same supplier by the same county officer, department, or institution, and the purchases were made with the intent of avoiding the requirements of the County Purchasing Act. Whether a purchase was made in violation of the Act presents questions of fact that cannot be determined in an attorney general opinion.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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