CURRENT ISSUES OF GOVERNMENT PROCUREMENT – USA

A PRIMER

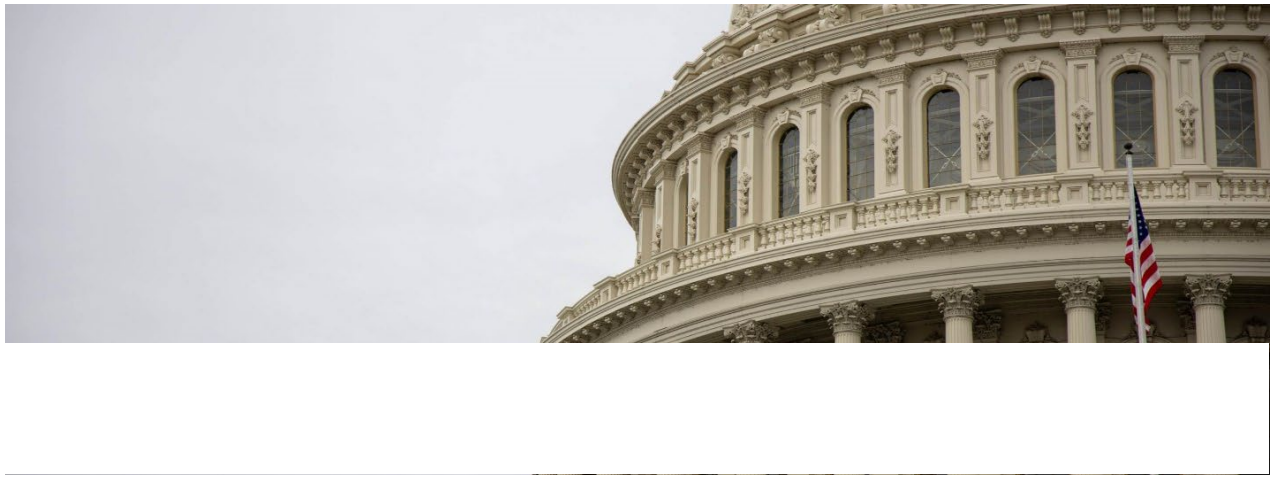
International Seminar on Local Legal Regime



CARLOS ALVARADO LAW PC
www.carlosalvaradolaw.com
Carlos Alvarado-Jorquera

The procurement regulatory framework in the United States is complex, as complex as its government structure. The U.S. federal system provides for three layers of government jurisdictions and regulations.

While it can generally be said that the principles applied to each jurisdiction in the matter of procurement are the same, **preemption** of federal and state laws usually affects local procurement rules.



Through preemption and **financial funding**, federal and state procurement regulations are enforced at the local level in several ways: imposing requirements, limiting the scope of certain areas of procurement, banning certain projects from local procurement, and/or imposing reporting thresholds. The underlying principle of procurement is that all acquisition of goods, services, and interest in real property shall be guided by public, accountable, consistent, efficient, and fair-dealing principles.





The local government structure is also complex. Most States are divided into counties, except for Louisiana and Alaska, where the county-equivalents are known as parishes and boroughs, respectively. Each county, is then divided into a multiplicity of local governments, which vary based on the state and region in which the county is located.

These local governmental entities include independent cities, cities, chartered townships, townships, Special Districts and Authorities. To make things even more complex, very few of the relationships between these entities are hierarchical or respond to any type of mutual governing structure. For example, a local school district is managed independently from the city or township where it is located and has no connection to the county government. This makes for a **multitude of procurement systems**





At the local level, unless preempted or funded by the federal or state government, local governments procurement regulations derives form its own statutory authority. General Municipal Laws, City Ordinances, General Law City Acts, Home Rule City Acts, Charter Township Acts, Parish Council Act, State laws and Federal Procurement rules (Uniform Guidance§§ 2 CFR 200.317–2 CFR 200.327) make up the **regulatory framework** for each local government's procurement rules and regulations.

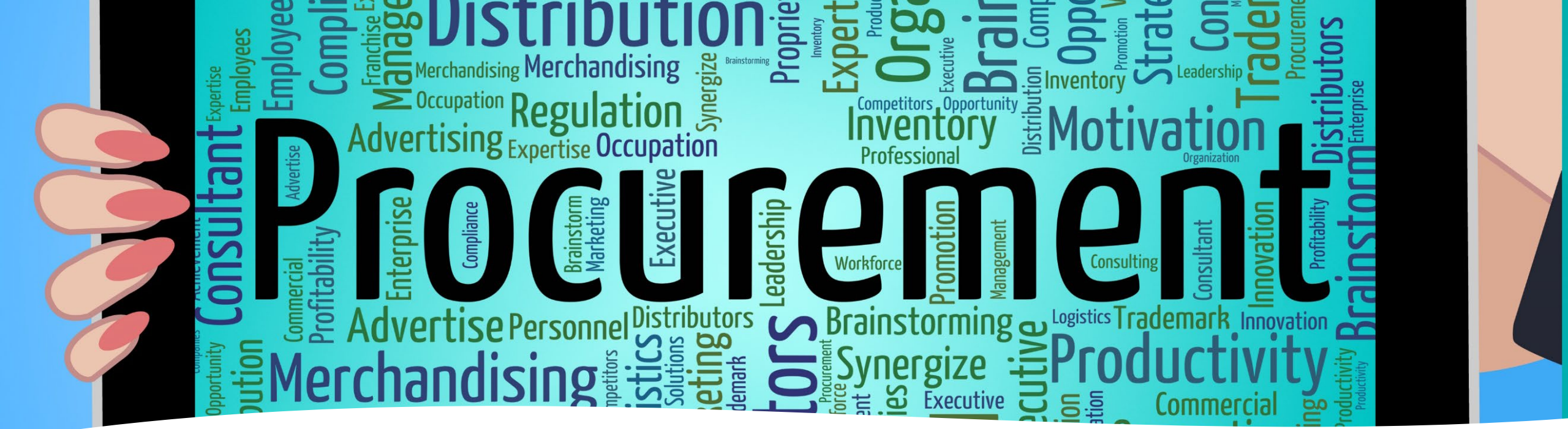


The General Municipal Law and the Home Rule City Act are perhaps the most common sources of procurement authority for local governments in the United States.

These statutes provide for a greater degree of autonomy when it comes to establish procurement guidelines and practices. Cities governed as independent cities enjoy almost full autonomy to manage their procurement policies, without major limitations. Cities under Home Rule have limited access to procurement independence, because state laws limit the ability to finance larger projects (infrastructure).



As a procurement mechanism, the well-established principle of the fair and unbiased bid process through Request for Proposals prevails in local governments in the United States. However, in the last twenty years the “low bid” hard rule, has been modified by the concept of “value”, deviating from the strict “low bid” criteria, to consider now awarding contracts based on a combination of “best value and lowest bidder”, as well as factors such as “quality” and “delivery time”.



Also common is the ability of a local government to “piggyback” on existing contracts, by receiving the same services or purchasing the same goods within an identified category of contract holders. A local government might also actively implement “cooperative purchasing”, by creating power-purchasing alliances with two or more local governments to obtain competitive prices for goods and services.



Summary

Procurement at the municipal level in the United States is determined by

- **Whether the local government is preempted from applying local rules and regulations.**
- **If the local government receives state or federal funding to finance the project requiring procurement.**
- **Its own statutory framework.**

Thank You! ¡Gracias!

Questions? ¿Preguntas?