

Bill Number: TX81RHB 987

Date: 06-01-2009

ENROLLED

- 1                   AN ACT
- 2 relating to competitive procurement requirements for local
- 3 governments.
- 4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- 5       SECTION 1. Section 44.031(a), Education Code, is amended to
- 6 read as follows:
- 7       (a) Except as provided by this subchapter, all school
- 8 district contracts, except contracts for the purchase of produce or
- 9 vehicle fuel, valued at \$50,000 [~~\$25,000~~] or more in the aggregate
- 10 for each 12-month period shall be made by the method, of the
- 11 following methods, that provides the best value for the district:
- 12           (1) competitive bidding;
- 13           (2) competitive sealed proposals;
- 14           (3) a request for proposals, for services other than
- 15 construction services;
- 16           (4) an interlocal contract;
- 17           (5) a design/build contract;
- 18           (6) a contract to construct, rehabilitate, alter, or
- 19 repair facilities that involves using a construction manager;
- 20           (7) a job order contract for the minor construction,
- 21 repair, rehabilitation, or alteration of a facility;
- 22           (8) the reverse auction procedure as defined by

23 Section 2155.062(d), Government Code; or

24 (9) the formation of a political subdivision

1

1 corporation under Section 304.001, Local Government Code.

2 SECTION 2. Subchapter B, Chapter 44, Education Code, is  
3 amended by adding Section 44.0313 to read as follows:

4 Sec. 44.0313. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS.

5 (a) A school district may receive bids or proposals under this  
6 chapter through electronic transmission if the board of trustees of  
7 the school district adopts rules to ensure the identification,  
8 security, and confidentiality of electronic bids or proposals and  
9 to ensure that the electronic bids or proposals remain effectively  
10 unopened until the proper time.

11 (b) Notwithstanding any other provision of this chapter, an  
12 electronic bid or proposal is not required to be sealed. A  
13 provision of this chapter that applies to a sealed bid or proposal  
14 applies to a bid or proposal received through electronic  
15 transmission in accordance with the rules adopted under Subsection  
16 (a).

17 SECTION 3. Section 262.003(a), Local Government Code, is  
18 amended to read as follows:

19 (a) Any law that requires a county to follow a competitive  
20 procurement [~~bidding~~] procedure in making a purchase requiring the  
21 expenditure of \$50,000 [~~\$25,000~~] or less does not apply to the  
22 purchase of an item available for purchase from only one supplier.

23 SECTION 4. Section 262.023(a), Local Government Code, is  
24 amended to read as follows:

25 (a) Before a county may purchase one or more items under a  
26 contract that will require an expenditure exceeding \$50,000  
27 [~~\$25,000~~], the commissioners court of the county must:

2

1 (1) comply with the competitive bidding or competitive  
2 proposal procedures prescribed by this subchapter;

3 (2) use the reverse auction procedure, as defined by  
4 Section 2155.062(d), Government Code, for purchasing; or

5 (3) comply with a method described by Subchapter H,  
6 Chapter 271.

7 SECTION 5. Section 262.0245, Local Government Code, is  
8 amended to read as follows:

9 Sec. 262.0245. COMPETITIVE PROCUREMENT [~~BIDDING~~]  
10 PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS. A county  
11 purchasing agent shall adopt procedures that provide for  
12 competitive procurement [~~bidding~~], to the extent practicable under  
13 the circumstances, for the county purchase of an item [~~under a~~  
14 ~~contract~~] that is not subject to competitive procurement [~~bidding~~  
15 ~~under Section 262.023~~].

16 SECTION 6. Section 271.024, Local Government Code, is  
17 amended to read as follows:

18 Sec. 271.024. COMPETITIVE PROCUREMENT [~~BIDDING~~] PROCEDURE  
19 APPLICABLE TO CONTRACT. If a governmental entity is required by  
20 statute to award a contract for the construction, repair, or  
21 renovation of a structure, road, highway, or other improvement or  
22 addition to real property on the basis of competitive bids, and if  
23 the contract requires the expenditure of more than \$50,000  
24 [~~\$25,000~~] from the funds of the entity, the bidding on the contract

25 must be accomplished in the manner provided by this subchapter.

26 SECTION 7. Section 271.054, Local Government Code, is

27 amended to read as follows:

3

1       Sec. 271.054. COMPETITIVE PROCUREMENT [~~BIDDING~~]  
2       REQUIREMENT. Before the governing body of an issuer may enter into  
3       a contract requiring an expenditure by or imposing an obligation or  
4       liability on the issuer, or on a subdivision of the issuer if the  
5       issuer is a county, of more than \$50,000 [~~\$25,000~~], the governing  
6       body must submit the proposed contract to competitive procurement  
7       [~~bidding~~].

8       SECTION 8. Section 271.153(a), Local Government Code, is  
9       amended to read as follows:

10       (a) The total amount of money awarded in an adjudication  
11       brought against a local governmental entity for breach of a  
12       contract subject to this subchapter is limited to the following:

13               (1) the balance due and owed by the local governmental  
14       entity under the contract as it may have been amended, including any  
15       amount owed as compensation for the increased cost to perform the  
16       work as a direct result of owner-caused delays or acceleration;

17               (2) the amount owed for change orders or additional  
18       work the contractor is directed to perform by a local governmental  
19       entity in connection with the contract; [~~and~~]

20               (3) reasonable and necessary attorney's fees that are  
21       equitable and just; and

22               (4) interest as allowed by law.

23       SECTION 9. Section 271.9051(b), Local Government Code, is  
24       amended to read as follows:

25 (b) In purchasing under this title any real property,  
26 personal property that is not affixed to real property, or  
27 services, if a municipality receives one or more competitive sealed

1 bids from a bidder whose principal place of business is in the  
2 municipality and whose bid is within five percent of the lowest bid  
3 price received by the municipality from a bidder who is not a  
4 resident of the municipality, the municipality may enter into a  
5 contract [for an expenditure of less than \\$100,000](#) with:  
6 (1) the lowest bidder; or  
7 (2) the bidder whose principal place of business is in  
8 the municipality if the governing body of the municipality  
9 determines, in writing, that the local bidder offers the  
10 municipality the best combination of contract price and additional  
11 economic development opportunities for the municipality created by  
12 the contract award, including the employment of residents of the  
13 municipality and increased tax revenues to the municipality.

14 SECTION 10. The heading to Section 281.047, Local  
15 Government Code, is amended to read as follows:

16 Sec. 281.047. CONTRACTS OVER [\\$50,000](#) [~~\$10,000~~].

17 SECTION 11. Section 281.047(a), Local Government Code, is  
18 amended to read as follows:

19 (a) This section applies to a contract that is for materials  
20 for, or construction of, facilities and that is for an amount  
21 greater than [\\$50,000](#) [~~\$10,000~~].

22 SECTION 12. Section 351.137(b), Local Government Code, is  
23 amended to read as follows:

24 (b) Construction contracts requiring an expenditure of more

25 than \$50,000 [~~\$15,000~~] may be made only after competitive bidding  
26 as provided by Subchapter B, Chapter 271.

27 SECTION 13. Section 375.221, Local Government Code, is

1 amended to read as follows:

2       Sec. 375.221. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS

3 CONTRACTS. (a) A contract, other than a contract for services, for  
4 more than \$50,000 [~~\$15,000~~] for the construction of improvements or  
5 the purchase of material, machinery, equipment, supplies, and other  
6 property, except real property, may be entered into only after  
7 competitive bids. Notice of the contract for the purpose of  
8 soliciting bids shall be published once a week for two consecutive  
9 weeks in a newspaper with general circulation in the area in which  
10 the district is located. The first publication of notice must be  
11 not later than the 14th [~~15th~~] day before the date set for receiving  
12 bids. The board may adopt rules governing receipt of bids and the  
13 award of the contract and providing for the waiver of the  
14 competitive bid requirement if:

15           (1) there is an emergency;

16           (2) the needed materials are available from only one  
17 source;

18           (3) in a procurement requiring design by the supplier  
19 competitive bidding would not be appropriate and competitive  
20 negotiation, with proposals solicited from an adequate number of  
21 qualified sources, would permit reasonable competition consistent  
22 with the nature and requirements of the procurement; or

23           (4) after solicitation, it is ascertained that there  
24 will be only one bidder.

25 (b) If a proposed contract for works, plant improvements,  
26 facilities other than land, or the purchase of equipment,  
27 appliances, materials, or supplies is for an estimated amount of

1 more than \$50,000 [~~\$15,000 but less than \$25,000~~] or for a duration  
2 of more than two years, competitive sealed proposals [~~bids~~] shall  
3 be asked from at least three persons.

4 SECTION 14. Section 54.054(a), Transportation Code, is  
5 amended to read as follows:

6 (a) Except as otherwise provided by this chapter, the board  
7 may award a contract involving the expenditure of funds in excess of  
8 the amount applicable to an expenditure of funds by a municipality  
9 under Section 252.021(a), Local Government Code. [~~more than~~  
10 ~~\$25,000~~] only by competitive bidding.

11 SECTION 15. Section 44.033, Education Code, is **repealed**.

12 SECTION 16. Section 271.159, Local Government Code, is  
13 **repealed**.

14 SECTION 17. The change in law made by this Act applies only  
15 to a claim that arises under a contract executed on or after the  
16 effective date of this Act. A claim that arises under a contract  
17 executed before the effective date of this Act is governed by the  
18 law as it existed immediately before the effective date of this Act,  
19 and that law is continued in effect for that purpose.

20 SECTION 18. This Act takes effect immediately if it  
21 receives a vote of two-thirds of all the members elected to each  
22 house, as provided by Section 39, Article III, Texas Constitution.  
23 If this Act does not receive the vote necessary for immediate  
24 effect, this Act takes effect September 1, 2009.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 987 was passed by the House on April 15, 2009, by the following vote: Yeas 146, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 987 on May 31, 2009, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 987 was passed by the Senate, with amendments, on May 21, 2009, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor