

By: VanDeaver

H.B. No. 2710

A BILL TO BE ENTITLED

AN ACT

relating to school district purchasing of and contracting for goods and services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 44.031, Education Code, is amended by amending Subsections (a), (f), (g), (j), and (m) and adding Subsections (g-1) and (o) to read as follows:

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

(1) competitive bidding for services other than construction services;

(2) competitive sealed proposals for goods or services other than construction services;

(3) a request for proposals, for goods or services other than construction services;

(4) an interlocal contract;

(5) a method provided by Chapter 2269, Government Code, for construction services;

(6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or

1           (7) the formation of a political subdivision  
2 corporation under Section 304.001, Local Government Code.

3           (f) This section does not apply to a contract for  
4 professional services rendered, including services of an  
5 architect, attorney, certified public accountant, engineer, [~~or~~]  
6 fiscal agent, or other professional service provider as determined  
7 by the board of trustees of the school district. A school district  
8 may, at its option, contract for professional services rendered by  
9 a financial consultant or a technology consultant in the manner  
10 provided by Section 2254.003, Government Code, in lieu of the  
11 methods provided by this section.

12           (g) Except as provided by (g-1), notice [~~Notice~~] of the time  
13 by when and place where the bids or proposals, or the responses to a  
14 request for qualifications, will be received and opened shall be  
15 published in the county in which the district's central  
16 administrative office is located, once a week for at least two weeks  
17 before the deadline for receiving bids, proposals, or responses to  
18 a request for qualifications. If there is not a newspaper in that  
19 county, the advertising shall be published in a newspaper in the  
20 county nearest the county seat of the county in which the district's  
21 central administrative office is located. In a two-step  
22 procurement process, the time and place where the second-step bids,  
23 proposals, or responses will be received are not required to be  
24 published separately.

25           (g-1) A school district may provide notice of the time by  
26 when and place where the bids or proposals, or the responses to a  
27 request for qualifications, will be received and opened by posting

1 on the state business daily under Section 2155.083, Government  
2 Code, instead of providing notice under Subsection (g).

3 (j) Without complying with Subsection (a), a school  
4 district may purchase an item or service that is available from only  
5 one source, including:

6 (1) an item for which competition is precluded because  
7 of the existence of a patent, copyright, secret process, or  
8 monopoly;

9 (2) a film, manuscript, or book;

10 (3) a utility service, including electricity, gas, or  
11 water; ~~and~~

12 (4) a captive replacement part or component for  
13 equipment;

14 (5) a proprietary maintenance service required to keep  
15 a manufactured or software product qualified under a warranty or in  
16 working condition; and

17 (6) a good or service specified by the commissioner as  
18 available from only one source.

19 (m) If a purchase is made at the campus level in a school  
20 district with a student enrollment of 180,000 or more that has  
21 formally adopted a site-based decision-making plan under  
22 Subchapter F, Chapter 11, that delegates purchasing decisions to  
23 the campus level, this section applies only to the campus and does  
24 not require the district to aggregate and jointly award purchasing  
25 contracts. A district that adopts site-based purchasing under this  
26 subsection shall adopt a policy to ensure that campus purchases  
27 achieve the best value to the district and are not intended or used

1 to avoid a ~~[the]~~ requirement ~~[that a district aggregate purchases]~~  
2 under Subsection (a).

3 (o) The commissioner shall adopt rules as necessary to  
4 implement this section.

5 SECTION 2. Section 44.031(h), Education Code, as amended by  
6 Chapters 922 (H.B. 2260) and 1225 (H.B. 1445), Acts of the 76th  
7 Legislature, Regular Session, 1999, is reenacted and amended to  
8 read as follows:

9 (h) On determination by the ~~[If school equipment or a part~~  
10 ~~of a school facility or personal property is destroyed or severely~~  
11 ~~damaged, or experiences a major unforeseen operational or~~  
12 ~~structural failure, or, as a result of an unforeseen catastrophe or~~  
13 ~~emergency, undergoes major operational or structural failure, and~~  
14 ~~the]~~ board of trustees of a school district after the occurrence of  
15 one of the following emergencies ~~[determines]~~ that the delay posed  
16 by the contract methods provided for in this section would prevent  
17 or substantially impair the conduct of classes or other essential  
18 school activities, the school district may enter into contracts as  
19 necessary to respond to the emergency ~~[then contracts for the~~  
20 ~~replacement or repair of the equipment, school facility, or the~~  
21 ~~part or portion of the school facility may be made]~~ by ~~[a method or]~~  
22 methods other than those ~~[methods]~~ required by this section:

23 (1) the destruction, severe damage, or operational or  
24 structural failure of school equipment or a part of a school  
25 facility;

26 (2) a health emergency declared by a governmental  
27 entity affecting the geographical area in which the school district

1 is located; or

2 (3) a cybersecurity threat involving the school  
3 district's critical infrastructure.

4 SECTION 3. Section 44.0331, Education Code, is amended by  
5 amending Subsections (a) and (b) and adding Subsection (d) to read  
6 as follows:

7 (a) A school district that enters into a purchasing contract  
8 [~~valued at \$25,000 or more~~] under Section 44.031(a)(5), under  
9 Subchapter F, Chapter 271, Local Government Code, or under any  
10 other cooperative purchasing program authorized for school  
11 districts by law shall document a contract-related fee, including a  
12 management fee, paid directly by [~~or to~~] the district to  
13 participate in the cooperative organization and the purpose of each  
14 fee under the contract.

15 (b) The amount, purpose, and disposition of any fee  
16 described by Subsection (a) must be presented in a written report  
17 and submitted annually in an open meeting of the board of trustees  
18 of the school district. The written report must appear in the  
19 board's meeting [~~as an~~] agenda [~~item~~].

20 (d) A report described by Subsection (b) is not required to  
21 include a fee paid directly to a cooperative organization by a  
22 contract vendor.

23 SECTION 4. Section 44.0352(c), Education Code, is amended  
24 to read as follows:

25 (c) The district shall either receive, publicly open, and  
26 read aloud the names of the offerors and, if any are required to be  
27 stated, all prices stated in each proposal or provide a written

1 summary of each price stated in the proposal to an interested party  
2 on request. The [~~Not later than the 45th day after the date on which~~  
3 ~~the proposals are opened, the~~] district shall evaluate and rank  
4 each proposal submitted in relation to the published selection  
5 criteria.

6 SECTION 5. Sections 44.031(k) and (l), Education Code, are  
7 repealed.

8 SECTION 6. (a) The changes in law made by this Act apply  
9 only to a solicitation for which a school district first advertises  
10 or otherwise solicits bids, proposals, offers, qualifications, or  
11 similar responses on or after the effective date of this Act. A  
12 solicitation for which a school district first advertised or  
13 otherwise solicited bids, proposals, offers, qualifications, or  
14 similar responses before the effective date of this Act is governed  
15 by the law in effect when the first advertisement or solicitation  
16 was given, as applicable, and the former law is continued in effect  
17 for that purpose.

18 (b) Section 44.0331, Education Code, as amended by this Act,  
19 applies only to a contract entered into on or after the effective  
20 date of this Act. A contract entered into before the effective date  
21 of this Act is governed by the law in effect when the contract was  
22 entered into and the former law is continued in effect for that  
23 purpose.

24 SECTION 7. This Act takes effect September 1, 2023.