

## **BILL ANALYSIS**

C.S.H.B. 273  
By: Truitt  
Public Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law permits, but does not require, a school district to award contracts to vendors based on consideration of purchase price, vendor reputation, product quality, prior vendor relationships and other factors. To help ensure that districts receive the best value for the taxpayer's dollar, CSHB 273 makes consideration of such factors mandatory in determining to whom to award a contract.

Note, however, that although school districts will be required to consider each factor, no single factor is necessarily determinative. School districts will be able to award contracts based on best value, but each of these factors must be considered in determining what the best value for a particular school district is.

Further, currently there is little state-level oversight of district purchases of goods and services or of performance under contracts. This bill vests additional audit authority in the Commissioner of Education, and creates a mechanism for imposing sanctions for insufficient performance under a district contract.

In addition, management fees and other contract-related fees paid by districts under cooperative purchasing contracts or programs often do not receive adequate public scrutiny. This bill would require public reporting of such fees in an open meeting of the school board, and would give the Commissioner of Education certain audit authority with respect to such fees.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

The bill amends the Education Code to require school districts, in determining to whom to award a contract, to consider purchase price, vendor reputation, product quality and appropriateness to the district's needs, prior vendor relationship with the district, impact on compliance with laws relating to historically underutilized businesses, long term costs, and any other relevant factor specifically listed for consideration in requests for bids or proposals.

The bill authorizes the Commissioner of Education to audit district purchases of goods and services to assess district contract performance, and provides that if the commissioner determines that sufficient performance levels have not been achieved, the district may not renew that contract. The bill defines "sufficient performance level" as meaning that a contract resulted in substantially similar value as contracts of similar amounts for purchases of similar goods or services entered into during a similar contract period by similarly situated school districts.

The bill also amends the Education Code to require that, for a contract valued at \$25,000 or more entered into under a cooperative purchasing program or agreement authorized for school districts by law, a district must document any contract related fee, including any management fee, and the purpose of each fee under the contract. The bill further provides that a written report including the amount, purpose, and disposition of any such fee must be submitted annually in an open meeting of the board of trustees of the school district, and must appear as an agenda item. The bill also authorizes the commissioner to audit such written reports.

The bill further provides that the changes made by the Act, with the exception of the commissioner's authority to audit purchases of goods and services to assess district contract performance, shall apply only to a contract entered into on or after the effective date of the Act. Contracts entered into before the effective date of the Act are governed by current law

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The original bill included the following language, in pertinent part:

SECTION 1. Sections 44.031(b) and (c), Education Code, are amended to read as follows:

(b) Except as provided by this subchapter, in determining the method listed under Subsection (a) that provides the best value for a school district [~~to whom to award a contract~~], the district shall [~~may~~] consider:

However, the substitute bill provides, in pertinent part:

SECTION 1. Sections 44.031(b) and (c), Education Code, are amended to read as follows:

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district shall [~~may~~] consider:

The original bill expanded upon existing law with respect to the state auditor's authority to audit purchases of good or services by a school district by providing that if the state auditor determines that sufficient performance levels have not been achieved under an audited contract, the district may not renew that contract. The substitute bill delegates authority to the commissioner to conduct an audit of district purchases of goods and services to assess district contract performance, and further provides that if the commissioner determines that sufficient performance levels have not been achieved under an audited contract, the district may not renew that contract.

The original bill set a cap of 2% of the contract amount that could be paid to a person designated to perform contract management services under certain cooperative purchasing contracts. The substitute bill does not include such cap, but does require a school district to document any contract-related fee, including any management fee, and the purpose for each fee under the contract.

The provisions of the original bill were applicable to certain cooperative purchasing contracts, irrespective of dollar amount. The substitute bill applies to the same type of contracts if valued at \$25,000 or more.

The original bill provided that the amount and disposition of such fees must be presented in a written report submitted annually to the school board in an open meeting. The substitute provides that the amount, purpose, and disposition of such fees must be presented in a written report submitted annually to the school board in an open meeting.

The original bill provided that the state auditor may audit such written reports. The substitute bill provides that the commissioner may audit such written reports.