

1-1 By: Creighton (Senate Sponsor - Watson) H.B. No. 3517
1-2 (In the Senate - Received from the House April 26, 2007;
1-3 May 1, 2007, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 18, 2007, reported adversely,
1-5 with favorable Committee Substitute by the following vote: Yeas 4,
1-6 Nays 0; May 18, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3517 By: Nichols

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to competitive purchasing requirements for local
1-11 governments.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The heading to Section 252.021, Local Government
1-14 Code, is amended to read as follows:

1-15 Sec. 252.021. COMPETITIVE REQUIREMENTS FOR ~~[CERTAIN]~~
1-16 PURCHASES.

1-17 SECTION 2. Sections 252.021(b) and (c), Local Government
1-18 Code, are amended to read as follows:

1-19 (b) ~~[Before a municipality with a population of less than~~
1-20 ~~25,000 may enter into a contract for insurance that requires an~~
1-21 ~~expenditure of more than \$5,000 from one or more municipal funds,~~
1-22 ~~the municipality must comply with the procedure prescribed by this~~
1-23 ~~chapter for competitive sealed bidding.~~

1-24 ~~[(c)]~~ A municipality may use the competitive sealed
1-25 proposal procedure for the purchase of goods or services, including
1-26 high technology items ~~[procurements]~~ and ~~[, in a municipality with a~~
1-27 ~~population of 25,000 or more, for the purchase of]~~ insurance.

1-28 (c) The governing body of a municipality that is considering
1-29 using a method other than competitive sealed bidding must determine
1-30 before notice is given the method of purchase that provides the best
1-31 value for the municipality. The governing body may delegate, as
1-32 appropriate, its authority under this subsection to a designated
1-33 representative. If the competitive sealed proposals requirement
1-34 applies to the contract, the municipality shall consider the
1-35 criteria described by Section 252.043(b) and the discussions
1-36 conducted under Section 252.042 to determine the best value for the
1-37 municipality.

1-38 SECTION 3. Section 262.024(a), Local Government Code, is
1-39 amended to read as follows:

1-40 (a) A contract for the purchase of any of the following
1-41 items is exempt from the requirement established by Section 262.023
1-42 if the commissioners court by order grants the exemption:

1-43 (1) an item that must be purchased in a case of public
1-44 calamity if it is necessary to make the purchase promptly to relieve
1-45 the necessity of the citizens or to preserve the property of the
1-46 county;

1-47 (2) an item necessary to preserve or protect the
1-48 public health or safety of the residents of the county;

1-49 (3) an item necessary because of unforeseen damage to
1-50 public property;

1-51 (4) a personal or professional service;

1-52 (5) any individual work performed and paid for by the
1-53 day, as the work progresses, provided that no individual is
1-54 compensated under this subsection for more than 20 working days in
1-55 any three month period;

1-56 (6) any land or right-of-way;

1-57 (7) an item that can be obtained from only one source,
1-58 including:

1-59 (A) items for which competition is precluded
1-60 because of the existence of patents, copyrights, secret processes,
1-61 or monopolies;

1-62 (B) films, manuscripts, or books;

1-63 (C) electric power, gas, water, and other utility

- 2-1 services; and
- 2-2 (D) captive replacement parts or components for
- 2-3 equipment;
- 2-4 (8) an item of food;
- 2-5 (9) personal property sold:
- 2-6 (A) at an auction by a state licensed auctioneer;
- 2-7 (B) at a going out of business sale held in
- 2-8 compliance with Subchapter F, Chapter 17, Business & Commerce Code;
- 2-9 or
- 2-10 (C) by a political subdivision of this state, a
- 2-11 state agency of this state, or an entity of the federal government;
- 2-12 [~~or~~]
- 2-13 (10) any work performed under a contract for community
- 2-14 and economic development made by a county under Section 381.004; or
- 2-15 (11) vehicle and equipment repairs.

2-16 SECTION 4. The heading to Section 262.030, Local Government

2-17 Code, is amended to read as follows:
2-18 Sec. 262.030. ALTERNATIVE COMPETITIVE PROPOSAL PROCEDURE
2-19 FOR CERTAIN GOODS AND [~~INSURANCE, HIGH TECHNOLOGY ITEMS, AND~~
2-20 ~~SPECIAL~~] SERVICES.

2-21 SECTION 5. Section 262.030(d), Local Government Code, is
2-22 amended to read as follows:

2-23 (d) A county in which a purchasing agent has been appointed
2-24 under Section 262.011 or employed under Section 262.0115 [~~having a~~
2-25 ~~population of one million or more according to the most recent~~
2-26 ~~federal census~~] may use the competitive proposal purchasing method
2-27 authorized by this section for the purchase of insurance or high
2-28 technology items. In addition, the method may be used to purchase
2-29 other items when the county official who makes purchases for the
2-30 county determines, with the consent of the commissioners court,
2-31 that it is in the best interest of the county to make a request for
2-32 proposals.

2-33 SECTION 6. Section 271.111(10), Local Government Code, is
2-34 amended to read as follows:

2-35 (10) "Governmental entity" means a municipality,
2-36 county, river authority, conservation and reclamation district
2-37 created pursuant to Section 59, Article XVI, Texas Constitution,
2-38 and located in a county with a population of more than 250,000, or
2-39 defense base development authority established under Chapter 379B
2-40 [~~378 as added by Chapter 1221, Acts of the 76th Legislature, Regular~~
2-41 ~~Session, 1999~~].

2-42 SECTION 7. Sections 271.112(a), (d), and (f), Local
2-43 Government Code, are amended to read as follows:

2-44 (a) Any provision in the charter of a home-rule municipality
2-45 or regulation, if any, of a county, river authority, conservation
2-46 and reclamation district created pursuant to Section 59, Article
2-47 XVI, Texas Constitution, and located in a county with a population
2-48 of more than 250,000, or defense base development authority that
2-49 requires the use of competitive bidding or competitive sealed
2-50 proposals or that prescribes procurement procedures and that is in
2-51 conflict with this subchapter controls over this subchapter unless
2-52 the governing body of the governmental entity elects to have this
2-53 subchapter supersede the charter or regulation.

2-54 (d) For a contract entered into by a municipality, river
2-55 authority, conservation and reclamation district created pursuant
2-56 to Section 59, Article XVI, Texas Constitution, and located in a
2-57 county with a population of more than 250,000, or defense base
2-58 development authority under any of the methods provided by this
2-59 subchapter, the municipality, river authority, conservation and
2-60 reclamation district created pursuant to Section 59, Article XVI,
2-61 Texas Constitution, and located in a county with a population of
2-62 more than 250,000, or defense base development authority shall
2-63 publish notice of the time and place the bids or proposals, or the
2-64 responses to a request for qualifications, will be received and
2-65 opened. The notice must be published in a newspaper of general
2-66 circulation in the county in which the defense base development
2-67 authority's or municipality's central administrative office is
2-68 located or the county in which the greatest amount of the river
2-69 authority's or such conservation and reclamation district's

3-1 territory is located once each week for at least two weeks before
3-2 the deadline for receiving bids, proposals, or responses. If there
3-3 is not a newspaper of general circulation in that county, the notice
3-4 shall be published in a newspaper of general circulation in the
3-5 county nearest the county seat of the county in which the defense
3-6 base development authority's or municipality's central
3-7 administrative office is located or the county in which the
3-8 greatest amount of the river authority's or such conservation and
3-9 reclamation district's territory is located. In a two-step
3-10 procurement process, the time and place the second step bids,
3-11 proposals, or responses will be received are not required to be
3-12 published separately.

3-13 (f) A contract entered into or an arrangement made in
3-14 violation of this subchapter is contrary to public policy and is
3-15 void. A court may enjoin performance of a contract made in
3-16 violation of this subchapter. A county attorney, a district
3-17 attorney, a criminal district attorney, a resident of a county that
3-18 enters into a contract under this subchapter or of a county in which
3-19 a municipality, ~~[or a]~~ river authority, or conservation and
3-20 reclamation district created pursuant to Section 59, Article XVI,
3-21 Texas Constitution, and located in a county with a population of
3-22 more than 250,000 that enters into a contract under this subchapter
3-23 is located, or any interested party may bring an action for an
3-24 injunction. A party who prevails in an action brought under this
3-25 subsection is entitled to reasonable attorney's fees as approved by
3-26 the court.

3-27 SECTION 8. Section 775.084(a), Health and Safety Code, is
3-28 amended to read as follows:

3-29 (a) Except as provided by Subsection (i), the board must
3-30 submit to competitive bids an expenditure of more than \$50,000
3-31 [~~\$25,000~~] for:

- 3-32 (1) one item or service; or
- 3-33 (2) more than one of the same or a similar type of item
3-34 or service in a fiscal year.

3-35 SECTION 9. This Act takes effect September 1, 2007.

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