

## **BILL ANALYSIS**

C.S.H.B. 3487  
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County Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, a violation of county competitive bidding statutes can result in costly repeats of advertising or bidding processes, denial of invoice payment, and criminal penalties. Population brackets in certain provisions of the Local Government Code leaves smaller counties without the same tools as larger counties. Other provisions, such as those relating to purchasing, are unclear and inefficient, lagging behind available technology and current business processes.

C.S.H.B. 3487 clarifies provisions for competitive bidding and related processes, provides alternatives when bid processes fail to provide responsive bidders, recognizes current purchasing practices such as expanded cooperative providers and use of electronic transfers and procurement cards, and aligns statutory processes with current technology such as web-based procurement notices. The bill removes some of the population brackets limiting certain procurement processes to certain counties.

### **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**

C.S.H.B. 3487 amends the Local Government Code to authorize a county to purchase an item through a cooperative purchasing program that uses a competitive bidding procedure, purchase an item according to a competitive bidding procedure promulgated by an authorized state agency, or purchase an item cooperatively through an interlocal agreement that requires a competitive bidding procedure. The bill provides that a cooperative purchase under this section does not violate competitive bidding statutes. The bill removes provisions authorizing the commissioners court of a county to purchase, through the comptroller, road machinery and equipment, tires, and tubes to be used by the county; requiring the comptroller to purchase an item on competitive bids and in accordance with any rules; and requiring that a purchase be made on the requisition of the commissioners court.

C.S.H.B. 3487 removes the provision making any law that requires a county to follow a competitive bidding procedure in making a purchase requiring the expenditure of \$25,000 or less inapplicable to the purchase of an item available for purchase from only one supplier. The bill provides that if a county makes a sole-source purchase of an item that can be obtained from only one source, the county auditor or other appropriate county officer or employee may not refuse payment for the purchase because a competitive bidding procedure was not followed.

C.S.H.B. 3487 authorizes the use of electronic transfer and check by a county purchasing agent to pay for a purchase. The bill removes the penalty of confinement in the county jail for a violation of provisions relating to county purchasing agents. The bill establishes that procedures for use of purchasing cards may not avoid the competitive bidding requirements or other requirements of county financial law. The bill requires an electronic transfer to provide the same level of internal controls and statutory authorizations as required for a check or warrant.

C.S.H.B. 3487 authorizes a county purchasing agent, under the supervision of the commissioners court, to carry out any ministerial function of the county auditor in regard to county purchases and contracts in addition to the other functions the purchasing agent is required to carry out. The bill specifies that the county auditor shall assume, on abolition of the position of county purchasing agent, the rights and responsibilities of bid or proposal notice and opening under certain Local Government Code provisions, rather than assuming functions previously performed by the purchasing agent.

C.S.H.B. 3487 authorizes either a county auditor in a county with a population of 100,000 or less, on request of the commissioners court, to assume purchasing responsibilities for the county, in addition to performing the regular duties of the auditor as required by law, or the commissioners court to employ a person to serve as county purchasing agent at the pleasure of the commissioners court. The bill provides that such a purchasing agent acts under the commissioners court's supervision, carries out the functions prescribed by law for county purchases and contracts, and administers public notice and bidding procedures for a county purchase or contract. The bill removes a provision allowing the commissioners court of a county that employs a county auditor jointly with one or more counties to require the auditor to act as the purchasing agent and a provision requiring the county auditor in a county with a population of 41,680 to 42,100 to act as the purchasing agent for the county in addition to performing the regular duties of the auditor as required by law.

C.S.H.B. 3487 prohibits a person authorized to make a purchase on behalf of a county or a county department or office from making any purchase until providing to the county or county department or office a signed acknowledgment, to be maintained in the person's personnel file or with the official bond of an elected or appointed official, that the person understands the requirements of provisions for purchasing and contracting authority of a county, municipality, and certain other local governments, and the acquisition, sale, or lease of property by a county. The bill authorizes a county that complies with the competitive bidding requirements and receives no responsive bids for an item to procure the item under provisions for competitive bidding procedures adopted by a county purchasing agent.

C.S.H.B. 3487 provides that a person is presumed to have intent to avoid the competitive bidding requirement if the person makes separate, sequential, or component purchases of items for that person's office or department within a single fiscal year, the office or department budget for similar items exceeds the competitive bidding threshold, and the purchase is not office supplies. The bill removes the provision that all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the procedural requirements for purchases that exceed the limit, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract; and that separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements is not present. The bill authorizes a person to rebut the presumption of intent to avoid the competitive bidding requirement if the person timely obtained an exemption for the purchases from the commissioners court under provisions for discretionary exemptions, initiated competitive bidding procedures within a reasonable time after reaching the competitive bidding threshold, or complied with a routine competitive procurement practice adopted by the county purchasing agent or commissioners court under provisions for discretionary exemptions.

C.S.H.B. 3487 exempts a contract for the purchase of personal property sold in a commercial online auction available to the general public and a contract for transportation and lodging purchased in compliance with travel policies adopted by the commissioners court from competitive bidding requirements for an expenditure exceeding \$25,000 if the commissioners court by order grants the exemption. The bill provides that the renewal or extension of an agreement to purchase equipment, supplies, or maintenance service, rather than of a lease or of an equipment maintenance agreement, is exempt from the competitive bidding requirement if the commissioners court grants the exemption, the removal or extension does not exceed one year,

and the renewal or extensions is the first or second renewal or extension. The bill provides that renewal or extension of an agreement to purchase equipment, supplies, or maintenance service initially obtained through a competitive bidding process is exempt from the competitive bidding requirement for an expenditure exceeding \$25,000. The bill authorizes the record that a purchasing officer taking telephone or written bids is required to maintain of all bids solicited and the vendors contacted to be audited by the county auditor, rather than requiring the record to be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

C.S.H.B. 3487 requires the county commissioners court in a county without a purchasing agent to adopt procedures that provide for competitive procurement for county purchases of an item not subject to competitive bidding or for which the county receives no responsive bid. The bill adds to the existing requirements for a county purchasing agent the adoption of the procedures above relating to an item for which the county receives no responsive bid.

C.S.H.B. 3487 modifies the notice requirements to require notice of a proposed purchase to be published at least once, rather than at least once a week, in a newspaper of general circulation in the county. The bill provides that, if there is no such newspaper, the notice must be posted in a place described by provisions for the sale of real property under contract lien in the Property Code, rather than in a prominent place in the courthouse. The bill requires that the notice published in a newspaper include a general statement of the proposed purchase, the name and telephone number of the purchasing agent, and the county website address, if any. The bill prohibits these provisions from being construed to require more than one notice in one newspaper or to limit the county from providing additional notice for longer periods or in more locations. The bill allows a county that maintains an Internet website to post a notice of a proposed purchase continuously on the county website for at least 14 days before the date bids are due.

C.S.H.B. 3487 authorizes a commissioners court purchasing earth-moving, material-handling, road maintenance, or construction equipment to negotiate with a vendor awarded a cooperative contract an agreement for the vendor to purchase or accept as trade used equipment owned by the county.

C.S.H.B. 3487 reenacts and amends Section 262.0256, Local Government Code, as amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the 78th Legislature, Regular Session, 2003, relating to the authority of certain entities to require prospective-bidder attendance at a mandatory pre-bid conference, to remove the restriction that its provisions apply only to a county with a population of 2.8 million or more.

C.S.H.B. 3487 adds a time limit to the requirement that opened bids be kept on file and available for inspection by anyone desiring to see them, requiring those bids to be kept on file and available until the first anniversary of the date of opening.

C.S.H.B. 3487 requires, before a contract may be awarded to a bidder other than the lowest bidder, that each lower bidder be given, in addition to notice of the proposed award, the purchasing agent's evaluation and recommendation to the commissioners court or the commissioners court's evaluation of the bid as lowest and best and an opportunity to appear before the commissioners court and present previously unconsidered evidence concerning the value of the lower bid, which may include evidence of the bidder's responsibility. The bill authorizes the commissioners court, if after the award the successful bidder fails to qualify for required bonds, or is otherwise unable to meet the requirements of the award, to award the contract to the next bidder in order of ranking as lowest and best bid. The bill clarifies that the commissioners court may give preference to the bidder who provides reasonable, rather than comparable, health insurance coverage and who requires a subcontractor also to provide reasonable, rather than comparable, health insurance if the bid is within five percent for the lowest and best bid, and makes conforming changes.

C.S.H.B. 3487 authorizes a commissioners court to establish financial criteria for accepting surety companies that provide bid, payment, or performance bonds.

C.S.H.B. 3487 decreases from a Class B misdemeanor to a Class C misdemeanor the penalties for the following offenses: a violation by a county officer or employee of provisions relating to competitive bidding by a county or the making of separate, sequential, or component purchase to avoid those provisions; a violation by an officer or employee of a governmental entity of provisions relating to competitive bidding on contracts for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property; and a violation by an officer or employee of a governmental unit of provisions relating to competitive bidding on contracts under the Certificate of Obligations Act. The bill makes it a Class B misdemeanor in each of the above cases if the officer or employee has a personal relationship with the selected vendor that has not been previously disclosed to and approved by the appropriate governing body and makes it a Class A misdemeanor if the officer or employee receives or has received from the vendor a benefit not provided to all employees. The bill establishes that the provision making a violation by a county officer or employee of provisions relating to competitive bidding by a county or the making of separate, sequential, or component purchase to avoid those provisions an offense is inapplicable to a purchase that complies with certain procedure adopted under provisions for competitive bidding procedures adopted by county purchasing agents or a commissioners court, as amended by the bill.

C.S.H.B. 3487 removes the condition that a county have a population of 800,000 or more to be authorized to select an appropriately licensed insurance agent as the sole broker of record. The bill removes the condition that a county have a population of 3.3 million or more for the county and any conservation and reclamation district or authority within that county whose governing body is the commissioners court in order for the county, district, or authority to be authorized to require that a minimum of 25 percent of the work be performed by the bidder and to establish financial criteria for the surety companies that provide payment and performance bonds.

C.S.H.B. 3487 amends the Transportation Code to clarify that a representative of the commissioners court that is authorized to make purchase-related negotiations is authorized under provisions governing a county purchasing agent in the Local Government Code. The bill removes the provision that the requisition for such a negotiated purchase may be approved by the county auditor as an alternative to approval by the commissioners court. The bill provides that the cost under provisions for competitive bidding for a county road department system is the final amount of the payment for the purchase.

C.S.H.B. 3487 defines "expenditure," "debt," "personal relationship," "day," "lowest and best," and "normal purchasing practice" and modifies the definition of "purchase."

C.S.H.B. 3487 repeals Sections 262.0295(a)(3), 262.035, 271.030, and 271.065, Local Government Code.

### **EFFECTIVE DATE**

September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3487 removes a provision in the original increasing from \$25,000 to \$50,000 the minimum expenditure under a contract for which a county is required to comply with competitive bidding or other specified procedures and methods.

C.S.H.B. 3487 differs from the original by adding to the conditions under which a person is presumed to have intent to avoid competitive bidding requirements the fact that the purchase is of an item other than office supplies. The substitute adds a provision not included in the original authorizing a person to rebut that presumption if the person complied with a routine competitive procurement practice adopted by the county purchasing agent or commissioners court. The substitute removes provisions included in the original authorizing a person to rebut that presumption if the person requisitioned the item through a county purchasing agent or count judge.

C.S.H.B. 3487 removes a provision included in the original establishing that a person is presumed to have intent to avoid the competitive bidding requirement if the person authorizes separate, sequential, or component purchases of items for multiple offices or departments within a single fiscal year and the aggregate county expenditures for similar items in the previous fiscal year exceeded the competitive bidding threshold and providing ground on which that person may rebut that presumption.

C.S.H.B. 3487 differs from the original by requiring, before a contract may be awarded to a bidder who is not the lowest dollar bidder meeting specifications, that each lower bidder be given addition to the notice of proposed award and an opportunity to appear before the commissioners court, either the purchasing agent's evaluation and recommendation to the commissioners court or the commissioners court's evaluation of the bid as lowest and best, whereas the original requires each lower bidder to be given the commissioners court's evaluation but does not require such bidders to be given the purchasing agent's evaluation and recommendation

C.S.H.B. 3487 differs from the original by removing altogether a statutory requirement amended in the original to establish that, for a renewal or extension of certain agreements to be exempt from competitive bidding requirements, the agreement must have gone through the competitive bidding procedure within the preceding three years. The substitute adds a provision not included in the original exempting the renewal or extension of an agreement to purchase equipment, supplies, or maintenance service initially obtained through a competitive bidding process from the requirement for competitive bidding.

C.S.H.B. 3487 differs from the original, in those provisions relating to publication for notice of a proposed purchase, by requiring notice to be published at least once in a newspaper of general circulation in the county, with the first day of publication occurring at least 14 days before the date of the bid opening, whereas the original requires notice to be published twice in such a newspaper at least seven days apart between the 30th day and the 14th day before the date bids are due. The substitute differs from the original by authorizing a county that maintains an Internet website to post notice continuously on the county website for at least 14 days before the date bids are due, whereas the original authorizes a county that maintains an Internet website to publish a notice of a proposed purchase once in a newspaper described above not earlier than the 30th day and not later than the 14th day before the date bids are due and continuously on the county website for at least 14 days before the date bids are due.

C.S.H.B. 3487 differs from the original by adding an alternative not included in the original, providing that a contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given, in addition to other required items, either the purchasing agent's evaluation and recommendation to the commissioners court or the commissioners court's evaluation of the bid as lowest and best, rather than only the latter as in the original.

C.S.H.B. 3487 adds a provision not included in the original authorizing the commissioners court of the county to give preference to the bidder who provides reasonable, rather than comparable, health insurance coverage, and who requires a subcontractor to provide reasonable rather than comparable health insurance if the bid is within five percent of the lowest and best bid.

C.S.H.B. 3487 removes provisions in the original establishing specific requirements for notice of a sale of surplus or salvage property by a county depending on the value of that surplus or salvage property.

C.S.H.B. 3487 removes a provision from the original increasing from \$25,000 to \$50,000 the maximum purchase that may be made through negotiation by the commissioners court or the court's authorized representative.

C.S.H.B. 3487 removes a provision from the original increasing from \$25,000 to \$50,000 the minimum purchase that may not be divided or reduced to avoid the competitive bidding requirement on a purchase.