

By: Creighton

H.B. No. 987

A BILL TO BE ENTITLED

AN ACT

relating to competitive procurement and change order requirements for local governments.

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

SECTION 1. Section 44.031(a), Education Code, is amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 [~~\$25,000~~] 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;
- (2) competitive sealed proposals;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a design/build contract;
- (6) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;
- (7) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;
- (8) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (9) the formation of a political subdivision

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 252.048, Local Government Code, is
18 amended by amending Subsection (c) and adding Subsection (e) to
19 read as follows:

20 (c) If a change order involves a decrease or an increase of
21 \$50,000 [~~\$25,000~~] or less and is for work within the original bid,
22 the governing body may grant general authority to an administrative
23 official of the municipality to approve the change orders.

24 (e) Compensation for a contract awarded on a unit price
25 basis may not exceed the actual quantity of items supplied or
26 services provided.

27 SECTION 4. Section 262.003(a), Local Government Code, is

1 amended to read as follows:

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

6 SECTION 5. Section 262.023(a), Local Government Code, is
7 amended to read as follows:

8 (a) Before a county may purchase one or more items under a
9 contract that will require an expenditure exceeding \$50,000
10 [~~\$25,000~~], the commissioners court of the county must:

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

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

15 (3) comply with a method described by Subchapter H,
16 Chapter 271.

17 SECTION 6. Section 262.0245, Local Government Code, is
18 amended to read as follows:

19 Sec. 262.0245. COMPETITIVE PROCUREMENT [~~BIDDING~~]
20 PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS. A county
21 purchasing agent shall adopt procedures that provide for
22 competitive procurement [~~bidding~~], to the extent practicable under
23 the circumstances, for the county purchase of an item [~~under a~~
24 ~~contract~~] that is not subject to competitive procurement [~~bidding~~
25 ~~under Section 262.023~~].

26 SECTION 7. Section 262.025(d), Local Government Code, is
27 amended to read as follows:

1 (d) A [~~In a county with a population of 3.3 million or more,~~
2 ~~the~~] county and any district or authority created under Article
3 XVI, Section 59, of the Texas Constitution of which the governing
4 body is the commissioners court may require that a minimum of 25
5 percent of the work be performed by the bidder and, notwithstanding
6 any other law to the contrary, may establish financial criteria for
7 the surety companies that provide payment and performance bonds.

8 SECTION 8. Section 271.024, Local Government Code, is
9 amended to read as follows:

10 Sec. 271.024. COMPETITIVE PROCUREMENT [~~BIDDING~~] PROCEDURE
11 APPLICABLE TO CONTRACT. If a governmental entity is required by
12 statute to award a contract for the construction, repair, or
13 renovation of a structure, road, highway, or other improvement or
14 addition to real property on the basis of competitive bids, and if
15 the contract requires the expenditure of more than \$50,000
16 [~~\$25,000~~] from the funds of the entity, the bidding on the contract
17 must be accomplished in the manner provided by this subchapter.

18 SECTION 9. Section 271.054, Local Government Code, is
19 amended to read as follows:

20 Sec. 271.054. COMPETITIVE PROCUREMENT [~~BIDDING~~]
21 REQUIREMENT. Before the governing body of an issuer may enter into
22 a contract requiring an expenditure by or imposing an obligation or
23 liability on the issuer, or on a subdivision of the issuer if the
24 issuer is a county, of more than \$50,000 [~~\$25,000~~], the governing
25 body must submit the proposed contract to competitive procurement
26 [~~bidding~~].

27 SECTION 10. Section 271.060, Local Government Code, is

1 amended by adding Subsection (c) to read as follows:

2 (c) A governing body may grant authority to an official or
3 employee responsible for purchasing or administering a contract to
4 approve a change order that is within the scope of the original
5 contract and involves \$50,000 or less.

6 SECTION 11. Section 271.9051(b), Local Government Code, is
7 amended to read as follows:

8 (b) In purchasing under this title any real property,
9 personal property that is not affixed to real property, or
10 services, if a municipality receives one or more competitive sealed
11 bids from a bidder whose principal place of business is in the
12 municipality and whose bid is within five percent of the lowest bid
13 price received by the municipality from a bidder who is not a
14 resident of the municipality, the municipality may enter into a
15 contract for an expenditure of less than \$100,000 with:

16 (1) the lowest bidder; or

17 (2) the bidder whose principal place of business is in
18 the municipality if the governing body of the municipality
19 determines, in writing, that the local bidder offers the
20 municipality the best combination of contract price and additional
21 economic development opportunities for the municipality created by
22 the contract award, including the employment of residents of the
23 municipality and increased tax revenues to the municipality.

24 SECTION 12. Section 281.046, Local Government Code, is
25 amended by adding Subsection (f) to read as follows:

26 (f) The board may grant authority to an official or employee
27 responsible for purchasing or administering a contract to approve a

1 change order that is within the scope of the original contract and
2 involves \$50,000 or less.

3 SECTION 13. The heading to Section 281.047, Local
4 Government Code, is amended to read as follows:

5 Sec. 281.047. CONTRACTS OVER \$50,000 [~~\$10,000~~].

6 SECTION 14. Section 281.047(a), Local Government Code, is
7 amended to read as follows:

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

11 SECTION 15. Section 325.040, Local Government Code, is
12 amended to read as follows:

13 Sec. 325.040. CHANGE ORDERS. After a construction contract
14 is awarded, if the district determines that additional work is
15 needed or if the character or type of work, facilities, or
16 improvements should be changed, the board may authorize change
17 orders to the contract on terms the board approves. A change made
18 under this section may not increase or decrease the total cost of
19 the contract by more than 25 percent. The board may grant authority
20 to an official or employee responsible for purchasing or
21 administering a contract to approve a change order that is within
22 the scope of the original contract and involves \$50,000 or less.

23 SECTION 16. Sections 351.137(b) and (c), Local Government
24 Code, are amended to read as follows:

25 (b) Construction contracts requiring an expenditure of more
26 than \$50,000 [~~\$15,000~~] may be made only after competitive bidding
27 as provided by Subchapter B, Chapter 271.

1 (c) After a construction contract is awarded, if the
2 district determines that additional work is needed or if the
3 character or type of work, facilities, or improvements should be
4 changed, the board may authorize change orders to the contract on
5 terms the board approves. The board may grant authority to an
6 official or employee responsible for purchasing or administering a
7 contract to approve a change order that is within the scope of the
8 original contract and involves \$50,000 or less. A change made under
9 this subsection may not increase or decrease the total cost of the
10 contract by more than 25 percent.

11 SECTION 17. Section 375.221, Local Government Code, is
12 amended to read as follows:

13 Sec. 375.221. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS
14 CONTRACTS. (a) A contract, other than a contract for services,
15 for more than \$50,000 [~~\$15,000~~] for the construction of
16 improvements or the purchase of material, machinery, equipment,
17 supplies, and other property, except real property, may be entered
18 into only after competitive bids. Notice of the contract for the
19 purpose of soliciting bids shall be published once a week for two
20 consecutive weeks in a newspaper with general circulation in the
21 area in which the district is located. The first publication of
22 notice must be not later than the 14th [~~15th~~] day before the date
23 set for receiving bids. The board may adopt rules governing receipt
24 of bids and the award of the contract and providing for the waiver
25 of the competitive bid requirement if:

- 26 (1) there is an emergency;
- 27 (2) the needed materials are available from only one

1 source;

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

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

9 (b) If a proposed contract for works, plant improvements,
10 facilities other than land, or the purchase of equipment,
11 appliances, materials, or supplies is for an estimated amount of
12 more than \$50,000 [~~\$15,000 but less than \$25,000~~] or for a duration
13 of more than two years, competitive sealed proposals [~~bids~~] shall
14 be asked from at least three persons.

15 (c) The board of a district created by special law may by
16 resolution elect to contract, in accordance with the resolution,
17 for services for the construction of improvements or for the
18 purchase of equipment, materials, machinery, supplies, and
19 components of plants, works, facilities, or improvements of the
20 district, notwithstanding a conflicting provision in the
21 district's special law.

22 SECTION 18. Section 1433.025(a), Government Code, is
23 amended to read as follows:

24 (a) A contract for construction or purchase under this
25 chapter involving the expenditure of more than \$50,000 [~~\$2,000~~] may
26 be made only after advertising in the manner provided by Chapter
27 252, Local Government Code, or Subchapter C, Chapter 262, Local

1 Government Code, as applicable.

2 SECTION 19. Section 54.054(a), Transportation Code, is
3 amended to read as follows:

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

9 SECTION 20. Sections 44.031(k) and 44.033, Education Code,
10 are repealed.

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