

1-1 By: Creighton (Senate Sponsor - West) H.B. No. 987
1-2 (In the Senate - Received from the House April 16, 2009;
1-3 April 16, 2009, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 11, 2009, reported adversely,
1-5 with favorable Committee Substitute by the following vote: Yeas 4,
1-6 Nays 0; May 11, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 987 By: West

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

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

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

1-13 SECTION 1. Section 44.031(a), Education Code, is amended to
1-14 read as follows:

1-15 (a) Except as provided by this subchapter, all school
1-16 district contracts, except contracts for the purchase of produce or
1-17 vehicle fuel, valued at \$50,000 [~~\$25,000~~] or more in the aggregate
1-18 for each 12-month period shall be made by the method, of the
1-19 following methods, that provides the best value for the district:

1-20 (1) competitive bidding;
1-21 (2) competitive sealed proposals;
1-22 (3) a request for proposals, for services other than
1-23 construction services;

1-24 (4) an interlocal contract;
1-25 (5) a design/build contract;
1-26 (6) a contract to construct, rehabilitate, alter, or
1-27 repair facilities that involves using a construction manager;

1-28 (7) a job order contract for the minor construction,
1-29 repair, rehabilitation, or alteration of a facility;

1-30 (8) the reverse auction procedure as defined by
1-31 Section 2155.062(d), Government Code; or

1-32 (9) the formation of a political subdivision
1-33 corporation under Section 304.001, Local Government Code.

1-34 SECTION 2. Subchapter B, Chapter 44, Education Code, is
1-35 amended by adding Section 44.0313 to read as follows:

1-36 Sec. 44.0313. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS.

1-37 (a) A school district may receive bids or proposals under this
1-38 chapter through electronic transmission if the board of trustees of
1-39 the school district adopts rules to ensure the identification,
1-40 security, and confidentiality of electronic bids or proposals and
1-41 to ensure that the electronic bids or proposals remain effectively
1-42 unopened until the proper time.

1-43 (b) Notwithstanding any other provision of this chapter, an
1-44 electronic bid or proposal is not required to be sealed. A
1-45 provision of this chapter that applies to a sealed bid or proposal
1-46 applies to a bid or proposal received through electronic
1-47 transmission in accordance with the rules adopted under Subsection
1-48 (a).

1-49 SECTION 3. Section 262.003(a), Local Government Code, is
1-50 amended to read as follows:

1-51 (a) Any law that requires a county to follow a competitive
1-52 procurement [~~bidding~~] procedure in making a purchase requiring the
1-53 expenditure of \$50,000 [~~\$25,000~~] or less does not apply to the
1-54 purchase of an item available for purchase from only one supplier.

1-55 SECTION 4. Section 262.023(a), Local Government Code, is
1-56 amended to read as follows:

1-57 (a) Before a county may purchase one or more items under a
1-58 contract that will require an expenditure exceeding \$50,000
1-59 [~~\$25,000~~], the commissioners court of the county must:

1-60 (1) comply with the competitive bidding or competitive
1-61 proposal procedures prescribed by this subchapter;

1-62 (2) use the reverse auction procedure, as defined by
1-63 Section 2155.062(d), Government Code, for purchasing; or

2-1 (3) comply with a method described by Subchapter H,
2-2 Chapter 271.

2-3 SECTION 5. Section 262.0245, Local Government Code, is
2-4 amended to read as follows:

2-5 Sec. 262.0245. COMPETITIVE PROCUREMENT [~~BIDDING~~]
2-6 PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS. A county
2-7 purchasing agent shall adopt procedures that provide for
2-8 competitive procurement [~~bidding~~], to the extent practicable under
2-9 the circumstances, for the county purchase of an item [~~under a~~
2-10 ~~contract~~] that is not subject to competitive procurement [~~bidding~~
2-11 ~~under Section 262.023~~].

2-12 SECTION 6. Section 271.024, Local Government Code, is
2-13 amended to read as follows:

2-14 Sec. 271.024. COMPETITIVE PROCUREMENT [~~BIDDING~~] PROCEDURE
2-15 APPLICABLE TO CONTRACT. If a governmental entity is required by
2-16 statute to award a contract for the construction, repair, or
2-17 renovation of a structure, road, highway, or other improvement or
2-18 addition to real property on the basis of competitive bids, and if
2-19 the contract requires the expenditure of more than \$50,000
2-20 [~~\$25,000~~] from the funds of the entity, the bidding on the contract
2-21 must be accomplished in the manner provided by this subchapter.

2-22 SECTION 7. Section 271.054, Local Government Code, is
2-23 amended to read as follows:

2-24 Sec. 271.054. COMPETITIVE PROCUREMENT [~~BIDDING~~]
2-25 REQUIREMENT. Before the governing body of an issuer may enter into
2-26 a contract requiring an expenditure by or imposing an obligation or
2-27 liability on the issuer, or on a subdivision of the issuer if the
2-28 issuer is a county, of more than \$50,000 [~~\$25,000~~], the governing
2-29 body must submit the proposed contract to competitive procurement
2-30 [~~bidding~~].

2-31 SECTION 8. Section 271.153(a), Local Government Code, is
2-32 amended to read as follows:

2-33 (a) The total amount of money awarded in an adjudication
2-34 brought against a local governmental entity for breach of a
2-35 contract subject to this subchapter is limited to the following:

2-36 (1) the balance due and owed by the local governmental
2-37 entity under the contract as it may have been amended, including any
2-38 amount owed as compensation for the increased cost to perform the
2-39 work as a direct result of owner-caused delays or acceleration;

2-40 (2) the amount owed for change orders or additional
2-41 work the contractor is directed to perform by a local governmental
2-42 entity in connection with the contract; [~~and~~]

2-43 (3) reasonable and necessary attorney's fees that are
2-44 equitable and just; and

2-45 (4) interest as allowed by law.

2-46 SECTION 9. Section 271.9051(b), Local Government Code, is
2-47 amended to read as follows:

2-48 (b) In purchasing under this title any real property,
2-49 personal property that is not affixed to real property, or
2-50 services, if a municipality receives one or more competitive sealed
2-51 bids from a bidder whose principal place of business is in the
2-52 municipality and whose bid is within five percent of the lowest bid
2-53 price received by the municipality from a bidder who is not a
2-54 resident of the municipality, the municipality may enter into a
2-55 contract for an expenditure of less than \$100,000 with:

2-56 (1) the lowest bidder; or

2-57 (2) the bidder whose principal place of business is in
2-58 the municipality if the governing body of the municipality
2-59 determines, in writing, that the local bidder offers the
2-60 municipality the best combination of contract price and additional
2-61 economic development opportunities for the municipality created by
2-62 the contract award, including the employment of residents of the
2-63 municipality and increased tax revenues to the municipality.

2-64 SECTION 10. The heading to Section 281.047, Local
2-65 Government Code, is amended to read as follows:

2-66 Sec. 281.047. CONTRACTS OVER \$50,000 [~~\$10,000~~].

2-67 SECTION 11. Section 281.047(a), Local Government Code, is
2-68 amended to read as follows:

2-69 (a) This section applies to a contract that is for materials

3-1 for, or construction of, facilities and that is for an amount
3-2 greater than \$50,000 [~~\$10,000~~].

3-3 SECTION 12. Section 351.137(b), Local Government Code, is
3-4 amended to read as follows:

3-5 (b) Construction contracts requiring an expenditure of more
3-6 than \$50,000 [~~\$15,000~~] may be made only after competitive bidding
3-7 as provided by Subchapter B, Chapter 271.

3-8 SECTION 13. Section 375.221, Local Government Code, is
3-9 amended to read as follows:

3-10 Sec. 375.221. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS
3-11 CONTRACTS. (a) A contract, other than a contract for services, for
3-12 more than \$50,000 [~~\$15,000~~] for the construction of improvements or
3-13 the purchase of material, machinery, equipment, supplies, and other
3-14 property, except real property, may be entered into only after
3-15 competitive bids. Notice of the contract for the purpose of
3-16 soliciting bids shall be published once a week for two consecutive
3-17 weeks in a newspaper with general circulation in the area in which
3-18 the district is located. The first publication of notice must be
3-19 not later than the 14th [~~15th~~] day before the date set for receiving
3-20 bids. The board may adopt rules governing receipt of bids and the
3-21 award of the contract and providing for the waiver of the
3-22 competitive bid requirement if:

3-23 (1) there is an emergency;
3-24 (2) the needed materials are available from only one
3-25 source;

3-26 (3) in a procurement requiring design by the supplier
3-27 competitive bidding would not be appropriate and competitive
3-28 negotiation, with proposals solicited from an adequate number of
3-29 qualified sources, would permit reasonable competition consistent
3-30 with the nature and requirements of the procurement; or

3-31 (4) after solicitation, it is ascertained that there
3-32 will be only one bidder.

3-33 (b) If a proposed contract for works, plant improvements,
3-34 facilities other than land, or the purchase of equipment,
3-35 appliances, materials, or supplies is for an estimated amount of
3-36 more than \$50,000 [~~\$15,000 but less than \$25,000~~] or for a duration
3-37 of more than two years, competitive sealed proposals [~~bids~~] shall
3-38 be asked from at least three persons.

3-39 SECTION 14. Section 54.054(a), Transportation Code, is
3-40 amended to read as follows:

3-41 (a) Except as otherwise provided by this chapter, the board
3-42 may award a contract involving the expenditure of funds in excess of
3-43 the amount applicable to an expenditure of funds by a municipality
3-44 under Section 252.021(a), Local Government Code, [~~more than~~
3-45 \$25,000] only by competitive bidding.

3-46 SECTION 15. Section 44.033, Education Code, is repealed.

3-47 SECTION 16. Section 271.159, Local Government Code, is
3-48 repealed.

3-49 SECTION 17. The change in law made by this Act applies only
3-50 to a claim that arises under a contract executed on or after the
3-51 effective date of this Act. A claim that arises under a contract
3-52 executed before the effective date of this Act is governed by the
3-53 law as it existed immediately before the effective date of this Act,
3-54 and that law is continued in effect for that purpose.

3-55 SECTION 18. This Act takes effect immediately if it
3-56 receives a vote of two-thirds of all the members elected to each
3-57 house, as provided by Section 39, Article III, Texas Constitution.
3-58 If this Act does not receive the vote necessary for immediate
3-59 effect, this Act takes effect September 1, 2009.

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