

By: Coleman

H.B. No. 3487

Substitute the following for H.B. No. 3487:

By: Bolton

C.S.H.B. No. 3487

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the purchasing and contracting authority of counties;
3 providing penalties.

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

5 SECTION 1. Section 262.002, Local Government Code, is
6 amended to read as follows:

7 Sec. 262.002. AUTHORITY TO COOPERATIVELY PURCHASE GOODS
8 ~~[ROAD EQUIPMENT]~~ AND SERVICES ~~[TIRES THROUGH COMPTROLLER]~~. (a) A
9 county may purchase an item through a cooperative purchasing
10 program that uses a competitive bidding procedure. ~~[The~~
11 ~~commissioners court of a county may purchase through the~~
12 ~~comptroller road machinery and equipment, tires, and tubes to be~~
13 ~~used by the county.]~~

14 (b) A county may purchase an item according to a competitive
15 bidding procedure promulgated by an authorized state agency.
16 ~~[The commission must purchase an item under this section on~~
17 ~~competitive bids and in accordance with any rules of the~~
18 ~~commission.]~~

19 (c) A county may purchase an item cooperatively through an
20 interlocal agreement that requires a competitive bidding
21 procedure. ~~[A purchase under this section must be made on the~~
22 ~~requisition of the commissioners court. When the court sends the~~
23 ~~requisition to the commission, the court must include with the~~
24 ~~requisition a general description of the item desired and a~~

1 ~~certification of the funds available to pay for the item.]~~

2 (d) A cooperative purchase under this section does not
3 violate competitive bidding statutes. [~~The commission may adopt~~
4 ~~rules to carry out the purpose of this section.~~]

5 SECTION 2. Section 262.003, Local Government Code, is
6 amended to read as follows:

7 Sec. 262.003. SMALL, SOLE-SOURCE PURCHASE EXEMPT FROM
8 COMPETITIVE BIDDING. [~~(a) Any law that requires a county to follow~~
9 ~~a competitive bidding procedure in making a purchase requiring the~~
10 ~~expenditure of \$25,000 or less does not apply to the purchase of an~~
11 ~~item available for purchase from only one supplier.~~

12 [~~(b)~~] If a county makes a sole-source purchase as described
13 by Section 262.024(a)(7) [~~covered by Subsection (a)~~], the county
14 auditor or other appropriate county officer or employee may not
15 refuse payment for the purchase because a competitive bidding
16 procedure was not followed.

17 SECTION 3. Section 262.011, Local Government Code, is
18 amended by amending Subsections (f), (g), (k), (m), and (o) and
19 adding Subsection (q) to read as follows:

20 (f) A purchase made by the county purchasing agent shall be
21 paid for by an electronic transfer, check, or [a] warrant drawn by
22 the county auditor on funds in the county treasury in the manner
23 provided by law. The county auditor may not draw and the county
24 treasurer may not honor an electronic transfer, check, or [a]
25 warrant for a purchase unless the purchase is made by the county
26 purchasing agent or on competitive bid as provided by law.

27 (g) The county purchasing agent may cooperate with the

1 purchasing agent of a municipality in the county to purchase any
2 item in volume as may be necessary. The county treasurer shall
3 honor an electronic transfer, check, or [~~a~~] warrant drawn by the
4 county auditor to reimburse the municipality's purchasing agent
5 making the purchase for the county.

6 (k) The board that appoints the county purchasing agent
7 shall set the salary of the agent in an amount not less than \$5,000 a
8 year, payable in equal monthly installments or by any other
9 distribution at the option of the county. The salary shall be paid
10 by an electronic transfer, check, or warrant [~~warrants~~] drawn on
11 funds in the county treasury.

12 (m) A person, including an officer, agent, or employee of a
13 county or of a subdivision or department of a county, commits an
14 offense if the person violates this section. An offense under this
15 subsection is a misdemeanor punishable by a fine of not less than
16 \$10 or more than \$100 [~~, by confinement in the county jail for not~~
17 ~~less than 30 days or more than one year, or by both the fine and~~
18 ~~confinement~~]. Each act in violation of this section is a separate
19 offense.

20 (o) The county purchasing agent shall adopt the rules and
21 procedures necessary to implement the agent's duties under this
22 section subject to approval by the commissioners court.
23 Notwithstanding Subsection (f) or other law, rules and procedures
24 adopted under this subsection may include rules and procedures for
25 persons to use county purchasing cards to pay for county purchases
26 under the direction and supervision of the county purchasing agent.
27 Procedures for use of purchasing cards may not avoid the

1 competitive bidding requirements of this chapter or other
2 requirements of county financial law.

3 (g) An electronic transfer under this chapter must provide
4 the same level of internal controls and statutory authorizations as
5 required for a check or warrant.

6 SECTION 4. Sections 262.0115(d) and (e), Local Government
7 Code, are amended to read as follows:

8 (d) Under the supervision of the commissioners court, the
9 purchasing agent shall carry out the functions prescribed by law
10 for a purchasing agent under Section 262.011 and for any
11 ministerial function of the county auditor in regard to county
12 purchases and contracts and shall administer the procedures
13 prescribed by law for notice and public bidding for county
14 purchases and contracts.

15 (e) A county that has established the position of county
16 purchasing agent under this section may abolish the position at any
17 time. On the abolition of the position, the county auditor shall
18 assume the rights and responsibilities of bid or proposal notice
19 and opening under this chapter and Chapter 271 [~~functions~~
20 ~~previously performed by the purchasing agent~~].

21 SECTION 5. Section 262.012, Local Government Code, is
22 amended to read as follows:

23 Sec. 262.012. [~~COUNTY AUDITORS AS~~] PURCHASING AGENTS IN
24 [~~CERTAIN~~] COUNTIES WITH POPULATION OF 100,000 OR LESS. (a) In a
25 county with a population of 100,000 or less:

26 (1) a county auditor may, on request of the
27 commissioners court, assume purchasing responsibilities [~~The~~

1 ~~commissioners court of a county that employs a county auditor~~
2 ~~jointly with one or more counties under Section 84.008 may require~~
3 ~~the auditor to act as the purchasing agent]~~ for the county, in
4 addition to performing the regular duties of the auditor as
5 required by law; or

6 (2) the commissioners court may employ a person to
7 serve as county purchasing agent at the pleasure of the
8 commissioners court.

9 (b) A purchasing agent employed under Subsection (a)(2):

10 (1) acts under the commissioners court's supervision;

11 (2) carries out the functions prescribed by law for
12 county purchases and contracts; and

13 (3) administers public notice and bidding procedures
14 for a county purchase or contract. [~~In a county with a population~~
15 ~~of 41,680 to 42,100, the county auditor shall act as the purchasing~~
16 ~~agent for the county in addition to performing the regular duties of~~
17 ~~the auditor as required by law.]~~

18 (c) This section applies only to a county in which a county
19 purchasing agent has not been appointed under Section 262.011.

20 SECTION 6. Subchapter B, Chapter 262, Local Government
21 Code, is amended by adding Section 262.013 to read as follows:

22 Sec. 262.013. QUALIFICATION. A person authorized to make a
23 purchase on behalf of a county or a county department or office may
24 not make any purchase until providing to the county or county
25 department or office a signed acknowledgment that the person
26 understands the requirements of this chapter and Chapters 263, 270,
27 and 271. The acknowledgment must be maintained in the person's

1 personnel file or with the official bond of an elected or appointed
2 official.

3 SECTION 7. Section 262.022, Local Government Code, is
4 amended by adding Subdivisions (3-a), (5-a), and (5-b) and amending
5 Subdivision (6) to read as follows:

6 (3-a) "Day" means a calendar day unless otherwise
7 designated.

8 (5-a) "Lowest and best" means a bid or offer providing
9 the best value considering associated direct and indirect costs,
10 including transport, maintenance, reliability, life cycle,
11 warranties, and customer service after a sale.

12 (5-b) "Normal purchasing practice" means:

13 (A) an accepted custom, practice, or standard for
14 government procurement in the state; or

15 (B) a practice recognized by the National
16 Institute of Government Purchasing regarding the purchase of a
17 particular good or service.

18 (6) "Purchase" means any kind of acquisition,
19 including a lease, of an item regardless of the generation or return
20 of revenue to the county.

21 SECTION 8. Section 262.0225, Local Government Code, is
22 amended by adding Subsection (d) to read as follows:

23 (d) A county that complies with the competitive bidding
24 requirements of this chapter and receives no responsive bids for an
25 item may procure the item under Section 262.0245.

26 SECTION 9. Section 262.023, Local Government Code, is
27 amended by amending Subsection (c) and adding Subsections (d) and

1 (e) to read as follows:

2 (c) Under this section, a person is presumed to have intent
3 to avoid the competitive bidding requirement if:

4 (1) the person makes separate, sequential, or
5 component purchases of items for that person's office or department
6 within a single fiscal year;

7 (2) the office or department budget for similar items
8 exceeds the competitive bidding threshold; and

9 (3) the purchase is not office supplies [~~In applying~~
10 ~~the requirements established by Subsection (a), all separate,~~
11 ~~sequential, or component purchases of items ordered or purchased,~~
12 ~~with the intent of avoiding the requirements of this subchapter,~~
13 ~~from the same supplier by the same county officer, department, or~~
14 ~~institution are treated as if they are part of a single purchase and~~
15 ~~of a single contract. In applying this provision to the purchase of~~
16 ~~office supplies, separate purchases of supplies by an individual~~
17 ~~department are not considered to be part of a single purchase and~~
18 ~~single contract by the county if a specific intent to avoid the~~
19 ~~requirements of this subchapter is not present].~~

20 (d) A person may rebut the presumption under Subsection (c)
21 if the person:

22 (1) timely obtained an exemption for the purchases
23 from the commissioners court under Section 262.024;

24 (2) initiated competitive bidding procedures within a
25 reasonable time after reaching the competitive bidding threshold;
26 or

27 (3) complied with a routine competitive procurement

1 practice adopted by the county purchasing agent or commissioners
2 court under Section 262.0245.

3 (e) In applying the requirements established in Subsection
4 (a), "expenditure" means the final price to be paid for the item or
5 items purchased.

6 SECTION 10. Section 262.024, Local Government Code, is
7 amended by amending Subsections (a), (b), and (d) and adding
8 Subsection (b-1) to read as follows:

9 (a) A contract for the purchase of any of the following
10 items is exempt from the requirement established by Section 262.023
11 if the commissioners court by order grants the exemption:

12 (1) an item that must be purchased in a case of public
13 calamity if it is necessary to make the purchase promptly to relieve
14 the necessity of the citizens or to preserve the property of the
15 county;

16 (2) an item necessary to preserve or protect the
17 public health or safety of the residents of the county;

18 (3) an item necessary because of unforeseen damage to
19 public property;

20 (4) a personal or professional service;

21 (5) any individual work performed and paid for by the
22 day, as the work progresses, provided that no individual is
23 compensated under this subsection for more than 20 working days in
24 any three month period;

25 (6) any land or right-of-way;

26 (7) an item that can be obtained from only one source,
27 including:

1 (A) items for which competition is precluded
2 because of the existence of patents, copyrights, secret processes,
3 or monopolies;

4 (B) films, manuscripts, or books;

5 (C) electric power, gas, water, and other utility
6 services; and

7 (D) captive replacement parts or components for
8 equipment;

9 (8) an item of food;

10 (9) personal property sold:

11 (A) at an auction by a state licensed auctioneer
12 or in a commercial online auction available to the general public;

13 (B) at a going out of business sale held in
14 compliance with Subchapter F, Chapter 17, Business & Commerce Code;
15 or

16 (C) by a political subdivision of this state, a
17 state agency of this state, or an entity of the federal government;

18 (10) any work performed under a contract for community
19 and economic development made by a county under Section 381.004;
20 ~~[or]~~

21 (11) vehicle and equipment repairs; or

22 (12) transportation and lodging purchased in
23 compliance with travel policies adopted by the commissioners court.

24 (b) The renewal or extension of an ~~[a lease or of an~~
25 ~~equipment maintenance]~~ agreement to purchase equipment, supplies,
26 or maintenance service is exempt from the requirement established
27 by Section 262.023 if the commissioners court by order grants the

1 exemption and if:

2 (1) ~~[the lease or agreement has gone through the~~
3 ~~competitive bidding procedure within the preceding year,~~

4 ~~[(2)]~~ the renewal or extension does not exceed one
5 year; and

6 (2) ~~[(3)]~~ the renewal or extension is the first or
7 second renewal or extension of the ~~[lease or]~~ agreement.

8 (b-1) The renewal or extension of an agreement to purchase
9 equipment, supplies, or maintenance service initially obtained
10 through a competitive bidding process is exempt from the
11 requirement established by Section 262.023.

12 (d) The exemption granted under Subsection (a)(8) of this
13 section shall apply only to the sealed competitive bidding
14 requirements on food purchases. Counties shall solicit at least
15 three bids for purchases of food items by telephone or written
16 quotation at intervals specified by the commissioners court.
17 Counties shall award food purchase contracts to the responsible
18 bidder who submits the lowest and best bid or shall reject all bids
19 and repeat the bidding process, as provided by this subsection. The
20 purchasing officer taking telephone or written bids under this
21 subsection shall maintain, on a form approved by the commissioners
22 court, a record of all bids solicited and the vendors contacted.
23 This record may be ~~[shall be kept in the purchasing office for a~~
24 ~~period of at least one year or until]~~ audited by the county auditor.

25 SECTION 11. Section 262.0245, Local Government Code, is
26 amended to read as follows:

27 Sec. 262.0245. COMPETITIVE BIDDING PROCEDURES ADOPTED BY

1 COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county
2 purchasing agent or, in a county without a purchasing agent, the
3 commissioners court shall adopt procedures that provide for
4 competitive procurement [~~bidding~~], to the extent practicable under
5 the circumstances, for the county purchase of an item [~~under a~~
6 ~~contract~~] that is not subject to competitive bidding under Section
7 262.023 or for which the county receives no responsive bid.

8 SECTION 12. Section 262.025, Local Government Code, is
9 amended by amending Subsection (a) and adding Subsections (a-1) and
10 (b-1) to read as follows:

11 (a) A notice of a proposed purchase must be published at
12 least once [~~a week~~] in a newspaper of general circulation in the
13 county, with the first day of publication occurring at least 14 days
14 before the [~~14th day before the~~] date of the bid opening. If there
15 is no newspaper of general circulation in the county, the notice
16 must be posted in a [~~prominent~~] place described by Section 51.002,
17 Property Code, [in the courthouse] for 14 days before the date of
18 the bid opening. Notice published in a newspaper under this section
19 must include:

- 20 (1) a general statement of the proposed purchase;
21 (2) the name and telephone number of the purchasing
22 agent; and
23 (3) the county website address, if any.

24 (a-1) Nothing in Subsection (a) shall be construed to
25 require more than one notice in one newspaper or to limit the county
26 from providing additional notice for longer periods or in more
27 locations.

1 (b-1) In addition to the notice required by Subsection (a),
2 a county that maintains an Internet website may post a notice of a
3 proposed purchase continuously on the county website for at least
4 14 days before the date bids are due.

5 SECTION 13. Section 262.0255, Local Government Code, is
6 amended by adding Subsection (c) to read as follows:

7 (c) A commissioners court purchasing earth-moving,
8 material-handling, road maintenance, or construction equipment
9 under Section 271.083 of this code or Section 791.025, Government
10 Code, may negotiate with a vendor awarded a cooperative contract
11 under those sections an agreement for the vendor to purchase or
12 accept as trade used equipment owned by the county.

13 SECTION 14. Section 262.0256, Local Government Code, as
14 amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the
15 78th Legislature, Regular Session, 2003, is reenacted and amended
16 to read as follows:

17 Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A
18 DISTRICT GOVERNED BY THOSE COUNTIES. (a) ~~[This section applies~~
19 ~~only to a county with a population of 2.8 million or more.~~

20 ~~[(b)]~~ The commissioners court of the county or the governing
21 body of a district or authority created under Section 59, Article
22 XVI, Texas Constitution, if the governing body is the commissioners
23 court of the county in which the district is located, may require a
24 principal, officer, or employee of each prospective bidder to
25 attend a mandatory pre-bid conference conducted for the purpose of
26 discussing contract requirements and answering questions of
27 prospective bidders.

1 (b) [~~(c)~~] After a conference is conducted under Subsection
2 (a) [~~(b)~~], any additional required notice for the proposed purchase
3 may be sent by certified mail, return receipt requested, only to
4 prospective bidders who attended the conference. Notice under this
5 subsection is not subject to the requirements of Section 262.025.

6 SECTION 15. Section 262.026(b), Local Government Code, is
7 amended to read as follows:

8 (b) Opened bids shall be kept on file and available for
9 inspection by anyone desiring to see them until the first
10 anniversary of the date of opening.

11 SECTION 16. Section 262.027, Local Government Code, is
12 amended by amending Subsection (c) and adding Subsection (g) to
13 read as follows:

14 (c) A contract may not be awarded to a bidder who is not the
15 lowest dollar bidder meeting specifications unless, before the
16 award, each lower bidder is given:

17 (1) notice of the proposed award;

18 (2) the purchasing agent's evaluation and
19 recommendation to the commissioners court or the commissioners
20 court's evaluation of the bid as lowest and best; and

21 (3) [is given] an opportunity to appear before the
22 commissioners court and present previously unconsidered evidence
23 concerning the value of the lower bid, which may include evidence of
24 the bidder's responsibility.

25 (g) If after the award the successful bidder fails to
26 qualify for required bonds, or is otherwise unable to meet the
27 requirements of the award, the commissioners court may award the

1 contract to the next bidder in order of ranking as lowest and best
2 bid.

3 SECTION 17. Section 262.0271(b), Local Government Code, is
4 amended to read as follows:

5 (b) In purchasing items under this chapter through a
6 competitive bidding process, if a county receives one or more bids
7 from a bidder who provides reasonable [~~comparable~~] health insurance
8 coverage to its employees and requires a subcontractor the bidder
9 intends to use to provide reasonable [~~comparable~~] health insurance
10 coverage to the subcontractor's employees and whose bid is within
11 five percent of the lowest and best bid price received by the county
12 from a bidder who does not provide or require reasonable
13 [~~comparable~~] health insurance coverage, the commissioners court of
14 the county may give preference to the bidder who provides and
15 requires reasonable [~~comparable~~] health insurance coverage.

16 SECTION 18. Section 262.0276, Local Government Code, is
17 amended by amending Subsection (a) and adding Subsection (d) to
18 read as follows:

19 (a) By an order adopted and entered in the minutes of the
20 commissioners court and after notice is published in a newspaper of
21 general circulation in the county, the commissioners court may
22 adopt rules permitting the county to refuse to enter into a contract
23 or other transaction with a person who owes a debt [~~indebted~~] to the
24 county.

25 (d) In this section, "debt" includes delinquent taxes,
26 finances, fees, and indebtedness arising from written agreements with
27 the county.

1 SECTION 19. Section 262.0295(d), Local Government Code, is
2 amended to read as follows:

3 (d) Within 30 days after the date the unpriced proposals are
4 opened under Subsection (c), the county official shall present the
5 priced bids to the commissioners court. The award of the contract
6 shall be made to the responsible offeror whose bid is determined to
7 be the lowest and best evaluated offer resulting from negotiation.
8 All proposals and bids that have been submitted shall be available
9 and open for public inspection after the contract is awarded.

10 SECTION 20. Section 262.030(b), Local Government Code, is
11 amended to read as follows:

12 (b) Quotations must be solicited through a request for
13 proposals. Public notice for the request for proposals must be made
14 in the same manner as provided in the competitive bidding
15 procedure. The request for proposals must specify the relative
16 importance of price and other evaluation factors. The award of the
17 contract shall be made to the responsible offeror whose proposal is
18 determined to be the lowest and best evaluated offer resulting from
19 negotiation, taking into consideration the relative importance of
20 price and other evaluation factors set forth in the request for
21 proposals.

22 SECTION 21. Section 262.032, Local Government Code, is
23 amended by adding Subsection (e) to read as follows:

24 (e) The commissioners court may establish financial
25 criteria for accepting surety companies that provide bid, payment,
26 or performance bonds.

27 SECTION 22. Section 262.034, Local Government Code, is

1 amended to read as follows:

2 Sec. 262.034. CRIMINAL PENALTIES. (a) A county officer or
3 employee commits an offense if the officer or employee
4 intentionally or knowingly:

5 (1) violates Section 262.023; or

6 (2) makes or authorizes separate, sequential, or
7 component purchases to avoid the competitive bidding requirements
8 of Section 262.023.

9 (b) Except as provided by Subsection (c), an offense under
10 this section is a Class C misdemeanor.

11 (c) An offense under this section [sub-section] is:

12 (1) a Class B misdemeanor if the officer or employee
13 has a personal relationship with the selected vendor that has not
14 been previously disclosed to and approved by the appropriate
15 governing body; or

16 (2) a Class A misdemeanor if the officer or employee
17 receives or has received from the vendor a benefit as defined by
18 Section 1.07, Penal Code, not provided to all employees.

19 (d) For purposes of this section, "personal relationship"
20 means a connection by blood, marriage, business, or friendship with
21 another person or business entity such that the officer or employee
22 has a direct and substantial interest in the welfare of that person
23 or business entity.

24 (e) This section does not apply to a purchase that complies
25 with a procedure adopted under Section 262.0245.

26 ~~[(b) A county officer or employee commits an offense if the~~
27 ~~officer or employee intentionally or knowingly violates Section~~

1 ~~262.023, other than by conduct described by Subsection (a). An~~
2 ~~offense under this subsection is a Class B misdemeanor.~~

3 ~~[(c) A county officer or employee commits an offense if the~~
4 ~~officer or employee intentionally or knowingly violates this~~
5 ~~subchapter, other than by conduct described by Subsection (a) or~~
6 ~~(b). An offense under this subsection is a Class C misdemeanor.]~~

7 SECTION 23. Section 262.036(a), Local Government Code, is
8 amended to read as follows:

9 (a) Notwithstanding any other provision in this chapter, a
10 county ~~[with a population of 800,000 or more]~~ may select an
11 appropriately licensed insurance agent as the sole broker of record
12 to obtain proposals and coverages for insurance that provides
13 necessary coverage and adequate limits of coverage in all areas of
14 risk, including public official liability, property, casualty,
15 workers' compensation, and specific and aggregate stop-loss
16 coverage for self-funded health care.

17 SECTION 24. Section 271.025(e), Local Government Code, is
18 amended to read as follows:

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

26 SECTION 25. Section 271.029, Local Government Code, is
27 amended to read as follows:

1 Sec. 271.029. CRIMINAL PENALTIES. (a) An officer or
2 employee [~~of a governmental entity~~] commits an offense if the
3 officer or employee intentionally or knowingly:

4 (1) violates Section 271.024; or

5 (2) makes or authorizes separate, sequential, or
6 component purchases to avoid the competitive bidding requirements
7 of the statute that requires a contract described by Section
8 271.024 [~~to be awarded on the basis of competitive bids~~].

9 (b) Except as provided by Subsection (c), an offense under
10 this section is a Class C misdemeanor.

11 (c) An offense under this subsection is:

12 (1) a Class B misdemeanor if the officer or employee
13 has a personal relationship with the selected vendor that has not
14 been previously disclosed to and approved by the appropriate
15 governing body; or

16 (2) a Class A misdemeanor if the officer or employee
17 receives or has received from the vendor a benefit as defined in
18 Section 1.07, Penal Code, not provided to all employees.

19 (d) For purposes of this section, "personal relationship"
20 means a connection by blood, marriage, business, or friendship with
21 another person or business entity such that the officer or employee
22 has a direct and substantial interest in the welfare of that person
23 or business entity.

24 (e) This section does not apply to a purchase that complies
25 with a procedure adopted under Section 271.024.

26 ~~[(b) An officer or employee of a governmental entity commits~~
27 ~~an offense if the officer or employee intentionally or knowingly~~

1 ~~violates the competitive bidding requirements of the statute that~~
2 ~~requires a contract described by Section 271.024 to be awarded on~~
3 ~~the basis of competitive bids, other than by conduct described by~~
4 ~~Subsection (a). An offense under this subsection is a Class B~~
5 ~~misdemeanor.~~

6 ~~[(c) An officer or employee of a governmental entity commits~~
7 ~~an offense if the officer or employee intentionally or knowingly~~
8 ~~violates this subchapter, other than by conduct described by~~
9 ~~Subsection (a) or (b). An offense under this subsection is a Class~~
10 ~~C misdemeanor.]~~

11 SECTION 26. Section 271.042, Local Government Code, is
12 amended by amending Subsection (b) and adding Subsection (c) to
13 read as follows:

14 (b) If there is a conflict between a provision of this
15 subchapter and a provision of Chapter 252 or 262, an issuer may use
16 either provision, and it is not necessary for the governing body to
17 designate the law under which action is being taken.

18 (c) Notwithstanding Subsection (b), for purposes of
19 enforcement or penalty, a county official or employee is presumed
20 to act under Chapter 262.

21 SECTION 27. Section 271.055(e), Local Government Code, is
22 amended to read as follows:

23 (e) A ~~[In a county with a population of 3.3 million or more,~~
24 ~~the]~~ county and any district or authority created under Article
25 XVI, Section 59, of the Texas Constitution of which the governing
26 body is the commissioners court may require that a minimum of 25
27 percent of the work be performed by the bidder and, notwithstanding

1 any other law to the contrary, may establish financial criteria for
2 the surety companies that provide payment and performance bonds.

3 SECTION 28. Section 271.064, Local Government Code, is
4 amended to read as follows:

5 Sec. 271.064. CRIMINAL PENALTIES. (a) An officer or
6 employee of an issuer commits an offense if the officer or employee
7 intentionally or knowingly:

8 (1) violates Section 271.054; or

9 (2) makes or authorizes separate, sequential, or
10 component purchases to avoid the competitive bidding requirements
11 of Section 271.054.

12 (b) Except as provided by Subsection (c), an offense under
13 this section is a Class C misdemeanor.

14 (c) An offense under this section [subsection] is:

15 (1) a Class B misdemeanor if the officer or employee
16 has a personal relationship with the selected vendor that has not
17 been previously disclosed to and approved by the appropriate
18 governing body; or

19 (2) a Class A misdemeanor if the officer or employee
20 receives or has received from the vendor a benefit as defined in
21 Section 1.07, Penal Code, not provided to all employees.

22 (d) For purposes of this section, "personal relationship"
23 means a connection by blood, marriage, business, or friendship with
24 another person or business entity such that the officer or employee
25 has a direct and substantial interest in the welfare of that person
26 or business entity.

27 (e) This section does not apply to a purchase that complies

1 with a procedure adopted under Section 271.054.

2 ~~[(b) An officer or employee of an issuer commits an offense~~
3 ~~if the officer or employee intentionally or knowingly violates~~
4 ~~Section 271.054, other than by conduct described by Subsection (a).~~
5 ~~An offense under this subsection is a Class B misdemeanor.~~

6 ~~[(c) An officer or employee of an issuer commits an offense~~
7 ~~if the officer or employee intentionally or knowingly violates this~~
8 ~~subchapter, other than by conduct described by Subsection (a) or~~
9 ~~(b). An offense under this subsection is a Class C misdemeanor.]~~

10 SECTION 29. Section 252.312, Transportation Code, is
11 amended by amending Subsection (b) and adding Subsection (d) to
12 read as follows:

13 (b) If the county road engineer so recommends and the
14 commissioners court considers it to be in the best interest of the
15 county, a purchase in an amount of \$25,000 or less may be made
16 through negotiation by the commissioners court or the court's
17 authorized representative under Subchapter B, Chapter 262, Local
18 Government Code, on requisition to be approved by the commissioners
19 court ~~[or the county auditor]~~ without advertising for competitive
20 bids.

21 (d) The cost under this section is the final amount of the
22 payment for the purchase.

23 SECTION 30. Sections 262.0295(a)(3), 262.035, 271.030, and
24 271.065, Local Government Code, are repealed.

25 SECTION 31. The changes in law made by this Act apply only
26 to purchases made or a bid deadline that occurs on or after
27 September 1, 2009. A purchase made or a bid deadline that occurs

1 before September 1, 2009, is governed by the law as it existed
2 immediately before the effective date of this Act, and that law is
3 continued in effect for that purpose.

4 SECTION 32. (a) Notwithstanding Section 31 of this Act, the
5 changes in law made by this Act to Sections 262.034, 271.029, and
6 271.064, Local Government Code, apply only to an offense committed
7 on or after the effective date of this Act. For purposes of this
8 section, an offense is committed before the effective date of this
9 Act if any element of the offense occurs before that date.

10 (b) An offense committed before the effective date of this
11 Act is covered by the law in effect immediately before the effective
12 date of this Act, and the former law is continued in effect for that
13 purpose.

14 SECTION 33. This Act takes effect September 1, 2009.