

By: Coleman

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;

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 Subsections (a) and (c) and adding Subsections

1 (d), (e), (f), and (g) to read as follows:

2 (a) Before a county may purchase one or more items under a  
3 contract that will require an expenditure exceeding \$50,000  
4 [~~\$25,000~~], the commissioners court of the county must:

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

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

9 (3) comply with a method described by Subchapter H,  
10 Chapter 271.

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

13 (1) the person makes separate, sequential, or  
14 component purchases of items for that person's office or department  
15 within a single fiscal year; and

16 (2) the office or department budget for similar items  
17 exceeds the competitive bidding threshold [~~In applying the~~  
18 ~~requirements established by Subsection (a), all separate,~~  
19 ~~sequential, or component purchases of items ordered or purchased,~~  
20 ~~with the intent of avoiding the requirements of this subchapter,~~  
21 ~~from the same supplier by the same county officer, department, or~~  
22 ~~institution are treated as if they are part of a single purchase and~~  
23 ~~of a single contract. In applying this provision to the purchase of~~  
24 ~~office supplies, separate purchases of supplies by an individual~~  
25 ~~department are not considered to be part of a single purchase and~~  
26 ~~single contract by the county if a specific intent to avoid the~~  
27 ~~requirements of this subchapter is not present].~~

1        (d) A person may rebut the presumption under Subsection (c)  
2 if the person:

3            (1) requisitioned the items through a county  
4 purchasing agent or county judge;

5            (2) timely obtained an exemption for the purchases  
6 from the commissioners court under Section 262.024; or

7            (3) initiated competitive bidding procedures within a  
8 reasonable time after reaching the competitive bidding threshold.

9        (e) Under this section, a person is presumed to have intent  
10 to avoid the competitive bidding requirement if:

11            (1) the person authorizes separate, sequential, or  
12 component purchases of items for multiple offices or departments  
13 within a single fiscal year; and

14            (2) the aggregate county expenditures for similar  
15 items in the previous fiscal year exceeded the competitive bidding  
16 threshold.

17        (f) A person may rebut the presumption under Subsection (e)  
18 if the person:

19            (1) timely obtained an exemption for the purchases  
20 from the commissioners court under Section 262.024; or

21            (2) initiated competitive bidding procedures within a  
22 reasonable time after reaching the competitive bidding threshold  
23 for the aggregate of county expenditures for the items.

24        (g) In applying the requirements established in Subsection  
25 (a), "expenditure" means the final price paid for the item or items  
26 purchased.

27        SECTION 10. Sections 262.024(a), (b), and (d), Local

1 Government Code, are amended to read as follows:

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

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

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

11 (3) an item necessary because of unforeseen damage to  
12 public property;

13 (4) a personal or professional service;

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

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

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

21 (A) items for which competition is precluded  
22 because of the existence of patents, copyrights, secret processes,  
23 or monopolies;

24 (B) films, manuscripts, or books;

25 (C) electric power, gas, water, and other utility  
26 services; and

27 (D) captive replacement parts or components for

1 equipment;

2 (8) an item of food;

3 (9) personal property sold:

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

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

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

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

14 (11) vehicle and equipment repairs; or

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

17 (b) The renewal or extension of an [~~a lease or of an~~  
18 ~~equipment maintenance~~] agreement to purchase equipment, supplies,  
19 or maintenance service is exempt from the requirement established  
20 by Section 262.023 if the commissioners court by order grants the  
21 exemption and if:

22 (1) the [~~lease or~~] agreement has gone through the  
23 competitive bidding procedure within the preceding three years  
24 [~~year~~];

25 (2) the renewal or extension does not exceed one year;  
26 and

27 (3) the renewal or extension is the first or second

1 renewal or extension of the [~~lease or~~] agreement.

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

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

17 Sec. 262.0245. COMPETITIVE BIDDING PROCEDURES ADOPTED BY  
18 COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county  
19 purchasing agent or, in a county without a purchasing agent, the  
20 commissioners court shall adopt procedures that provide for  
21 competitive procurement [~~bidding~~], to the extent practicable under  
22 the circumstances, for the county purchase of an item [~~under a~~  
23 ~~contract~~] that is not subject to competitive bidding under Section  
24 262.023 or for which the county receives no responsive bid.

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

1           (a) A notice of a proposed purchase must be published twice  
2 in a newspaper of general circulation in the county at least seven  
3 days apart between the 30th day and the 14th day before the date  
4 bids are due [~~at least once a week in a newspaper of general~~  
5 ~~circulation in the county, with the first day of publication~~  
6 ~~occurring before the 14th day before the date of the bid opening~~].  
7 If there is no newspaper of general circulation in the county, the  
8 notice must be posted in a [~~prominent~~] place described by Section  
9 51.002, Property Code, [in the courthouse] for 14 days before the  
10 date of the bid opening.

11           (a-1) Nothing in Subsection (a) shall be construed to  
12 require more than two notices in one newspaper or to limit the  
13 county from providing additional notice for longer periods or in  
14 more locations.

15           (b-1) Notwithstanding Subsection (a), a county that  
16 maintains an Internet website may publish a notice of a proposed  
17 purchase once in a newspaper of general circulation in the county  
18 not earlier than the 30th day and not later than the 14th day before  
19 the date bids are due and continuously on the county website for at  
20 least 14 days before the date bids are due. Notice published in a  
21 newspaper under this section must include:

- 22                   (1) a general statement of the proposed purchase;  
23                   (2) the name and telephone number of the purchasing  
24 agent; and  
25                   (3) the county website address.

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

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

7        SECTION 14. Section 262.0256, Local Government Code, as  
8 amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the  
9 78th Legislature, Regular Session, 2003, is reenacted and amended  
10 to read as follows:

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

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

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

27        SECTION 15. Section 262.026(b), Local Government Code, is

1 amended to read as follows:

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

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

8 (c) A contract may not be awarded to a bidder who is not the  
9 lowest dollar bidder meeting specifications unless, before the  
10 award, each lower bidder is given notice of the proposed award and  
11 the commissioners court's evaluation of the bid as lowest and best  
12 and is given an opportunity to appear before the commissioners  
13 court and present previously unconsidered evidence concerning the  
14 value of the lower bid, which may include evidence of the bidder's  
15 responsibility.

16 (g) If after the award the successful bidder fails to  
17 qualify for required bonds, or is otherwise unable to meet the  
18 requirements of the award, the commissioners court may award the  
19 contract to the next bidder in order of ranking as lowest and best  
20 bid.

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

23 (b) In purchasing items under this chapter through a  
24 competitive bidding process, if a county receives one or more bids  
25 from a bidder who provides comparable health insurance coverage to  
26 its employees and requires a subcontractor the bidder intends to  
27 use to provide comparable health insurance coverage to the

1 subcontractor's employees and whose bid is within five percent of  
2 the lowest and best bid price received by the county from a bidder  
3 who does not provide or require comparable health insurance  
4 coverage, the commissioners court of the county may give preference  
5 to the bidder who provides and requires comparable health insurance  
6 coverage.

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

10 (a) By an order adopted and entered in the minutes of the  
11 commissioners court and after notice is published in a newspaper of  
12 general circulation in the county, the commissioners court may  
13 adopt rules permitting the county to refuse to enter into a contract  
14 or other transaction with a person who owes a debt [~~indebted~~] to the  
15 county.

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

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

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

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

3 (b) Quotations must be solicited through a request for  
4 proposals. Public notice for the request for proposals must be made  
5 in the same manner as provided in the competitive bidding  
6 procedure. The request for proposals must specify the relative  
7 importance of price and other evaluation factors. The award of the  
8 contract shall be made to the responsible offeror whose proposal is  
9 determined to be the lowest and best evaluated offer resulting from  
10 negotiation, taking into consideration the relative importance of  
11 price and other evaluation factors set forth in the request for  
12 proposals.

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

15 (e) The commissioners court may establish financial  
16 criteria for accepting surety companies that provide bid, payment,  
17 or performance bonds.

18 SECTION 22. Section 262.034, Local Government Code, is  
19 amended to read as follows:

20 Sec. 262.034. CRIMINAL PENALTIES. (a) A county officer or  
21 employee commits an offense if the officer or employee  
22 intentionally or knowingly:

23 (1) violates Section 262.023; or

24 (2) makes or authorizes separate, sequential, or  
25 component purchases to avoid the competitive bidding requirements  
26 of Section 262.023.

27 (b) Except as provided by Subsection (c), an offense under

1 this section is a Class C misdemeanor.

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

3 (1) a Class B misdemeanor if the officer or employee  
4 has a personal relationship with the selected vendor that has not  
5 been previously disclosed to and approved by the appropriate  
6 governing body; or

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

10 (d) For purposes of this section, "personal relationship"  
11 means a connection by blood, marriage, business, or friendship with  
12 another person or business entity such that the officer or employee  
13 has a direct and substantial interest in the welfare of that person  
14 or business entity.

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

17 ~~[(b) A county officer or employee commits an offense if the~~  
18 ~~officer or employee intentionally or knowingly violates Section~~  
19 ~~262.023, other than by conduct described by Subsection (a). An~~  
20 ~~offense under this subsection is a Class B misdemeanor.~~

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

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

27 (a) Notwithstanding any other provision in this chapter, a

1 county [~~with a population of 800,000 or more~~] may select an  
2 appropriately licensed insurance agent as the sole broker of record  
3 to obtain proposals and coverages for insurance that provides  
4 necessary coverage and adequate limits of coverage in all areas of  
5 risk, including public official liability, property, casualty,  
6 workers' compensation, and specific and aggregate stop-loss  
7 coverage for self-funded health care.

8 SECTION 24. Section 263.153, Local Government Code, is  
9 amended to read as follows:

10 Sec. 263.153. NOTICE. (a) A [The] commissioners court  
11 shall publish notice of a sale of an item of surplus or salvage  
12 property worth more than \$5,000 in at least one newspaper of general  
13 circulation in the county at least 14 days before the date of the  
14 sale.

15 (b) A commissioners court shall publish notice of a sale of  
16 an item of surplus or salvage property worth \$5,000 or less:

17 (1) once for at least 14 days before the date of sale  
18 in at least one newspaper of general circulation in the county; or

19 (2) consecutively for 14 days before the date of sale  
20 on the county's Internet website.

21 (c) A commissioners court that contracts with a public  
22 Internet auction site for sale of surplus or salvage property shall  
23 post notice on the Internet auction site for at least 14 consecutive  
24 days [The notice must be published on or after the 30th day but  
25 before the 10th day] before the date of the sale.

26 SECTION 25. Section 271.025(e), Local Government Code, is  
27 amended to read as follows:

1           (e) 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 26. Section 271.029, Local Government Code, is  
9 amended to read as follows:

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

13                   (1) violates Section 271.024; or

14                   (2) makes or authorizes separate, sequential, or  
15 component purchases to avoid the competitive bidding requirements  
16 of the statute that requires a contract described by Section  
17 271.024 [~~to be awarded on the basis of competitive bids~~].

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

20                   (c) An offense under this subsection is:

21                           (1) a Class B misdemeanor if the officer or employee  
22 has a personal relationship with the selected vendor that has not  
23 been previously disclosed to and approved by the appropriate  
24 governing body; or

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

1        (d) For purposes of this section, "personal relationship"  
2 means a connection by blood, marriage, business, or friendship with  
3 another person or business entity such that the officer or employee  
4 has a direct and substantial interest in the welfare of that person  
5 or business entity.

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

8        ~~[(b) An officer or employee of a governmental entity commits~~  
9 ~~an offense if the officer or employee intentionally or knowingly~~  
10 ~~violates the competitive bidding requirements of the statute that~~  
11 ~~requires a contract described by Section 271.024 to be awarded on~~  
12 ~~the basis of competitive bids, other than by conduct described by~~  
13 ~~Subsection (a). An offense under this subsection is a Class B~~  
14 ~~misdemeanor.~~

15        ~~[(c) An officer or employee of a governmental entity commits~~  
16 ~~an offense if the officer or employee intentionally or knowingly~~  
17 ~~violates this subchapter, other than by conduct described by~~  
18 ~~Subsection (a) or (b). An offense under this subsection is a Class~~  
19 ~~C misdemeanor.]~~

20        SECTION 27. Section 271.042, Local Government Code, is  
21 amended by amending Subsection (b) and adding Subsection (c) to  
22 read as follows:

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

27        (c) Notwithstanding Subsection (b), for purposes of

1 enforcement or penalty, a county official or employee is presumed  
2 to act under Chapter 262.

3 SECTION 28. Section 271.055(e), Local Government Code, is  
4 amended to read as follows:

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

12 SECTION 29. Section 271.064, Local Government Code, is  
13 amended to read as follows:

14 Sec. 271.064. CRIMINAL PENALTIES. (a) An officer or  
15 employee of an issuer commits an offense if the officer or employee  
16 intentionally or knowingly:

17 (1) violates Section 271.054; or

18 (2) makes or authorizes separate, sequential, or  
19 component purchases to avoid the competitive bidding requirements  
20 of Section 271.054.

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

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

24 (1) a Class B misdemeanor if the officer or employee  
25 has a personal relationship with the selected vendor that has not  
26 been previously disclosed to and approved by the appropriate  
27 governing body; or

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

4           (d) For purposes of this section, "personal relationship"  
5 means a connection by blood, marriage, business, or friendship with  
6 another person or business entity such that the officer or employee  
7 has a direct and substantial interest in the welfare of that person  
8 or business entity.

9           (e) This section does not apply to a purchase that complies  
10 with a procedure adopted under Section 271.054.

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

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

19           SECTION 30. Section 252.312, Transportation Code, is  
20 amended by amending Subsections (b) and (c) and adding Subsection  
21 (d) to read as follows:

22           (b) If the county road engineer so recommends and the  
23 commissioners court considers it to be in the best interest of the  
24 county, a purchase in an amount of \$50,000 [~~\$25,000~~] or less may be  
25 made through negotiation by the commissioners court or the court's  
26 authorized representative under Subchapter B, Chapter 262, Local  
27 Government Code, on requisition to be approved by the commissioners

1 court [~~or the county auditor~~] without advertising for competitive  
2 bids.

3 (c) A purchase may not be divided or reduced to avoid the  
4 competitive bidding requirement on a purchase that would otherwise  
5 cost more than \$50,000 [~~\$25,000~~].

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

8 SECTION 31. Sections 262.0295(a)(3), 262.035, 271.030, and  
9 271.065, Local Government Code, are repealed.

10 SECTION 32. The changes in law made by this Act apply only  
11 to purchases made or a bid deadline that occurs on or after  
12 September 1, 2009. A purchase made or a bid deadline that occurs  
13 before September 1, 2009, is governed by the law as it existed  
14 immediately before the effective date of this Act, and that law is  
15 continued in effect for that purpose.

16 SECTION 33. (a) Notwithstanding Section 32 of this Act, the  
17 changes in law made by this Act to Sections 262.034, 271.029, and  
18 271.064, Local Government Code, apply only to an offense committed  
19 on or after the effective date of this Act. For purposes of this  
20 section, an offense is committed before the effective date of this  
21 Act if any element of the offense occurs before that date.

22 (b) An offense committed before the effective date of this  
23 Act is covered by the law in effect immediately before the effective  
24 date of this Act, and the former law is continued in effect for that  
25 purpose.

26 SECTION 34. This Act takes effect September 1, 2009.