

## **BILL ANALYSIS**

C.S.H.B. 1694  
By: Coleman  
County Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, a violation of county competitive bidding statutes can result in a costly repeat of advertising or bid processes as well as a criminal penalty. In statute, there are provisions with population brackets that leave a smaller county without the same tools as a larger county, while other provisions are unclear and inefficient, lagging behind available technology and current business processes. C.S.H.B. 1694 seeks to address these issues by establishing provisions relating to the purchasing and contracting authority of certain governmental entities.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1694 amends the Local Government Code to add payment by an electronic transfer or check as a form of payment for a purchase made by a county purchasing agent, reimbursement to a municipality's purchasing agent for making a purchase for a county as drawn by the county auditor, and payment of a county purchasing agent's salary. The bill removes confinement in a county jail for not less than 30 days or more than one year as a penalty for the misdemeanor offense of violating provisions relating to county purchasing agents. The bill prohibits procedures adopted by a county purchasing agent for use of county purchasing cards to pay for county purchases from avoiding competitive bidding requirements or other requirements of county financial law. The bill requires an electronic transfer under provisions relating to the purchasing and contracting authority of counties to provide the same level of internal controls and statutory authorizations as required for a check or warrant.

C.S.H.B. 1694, in a provision requiring a purchasing agent in certain counties with a population of more than 100,000 to carry out the functions prescribed by law for the county auditor in regard to county purchases and contracts, specifies such functions as any administrative function. The bill, in a provision requiring a county auditor to assume the functions previously performed by a county purchasing agent on the abolition of the county purchasing agent position, specifies such functions as those regarding the notice for and opening of competitive bids or proposals under provisions relating to the purchasing and contracting authority of counties and certain local governments.

C.S.H.B. 1694 authorizes a county that complies in good faith with competitive bidding requirements applicable to the purchasing and contracting authority of counties and receives no responsive bids for an item to procure the item under provisions relating to competitive procurement procedures adopted by a county purchasing agent or a commissioners court, as amended by the bill.

C.S.H.B. 1694 requires a commissioners court in a county without a purchasing agent to adopt procedures that provide for competitive procurement, to the extent practicable under the

circumstances, for the county purchase of an item that is not subject to competitive procurement. The bill requires a purchasing agent or a commissioners court in a county without a purchasing agent to adopt procedures that provide for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item for which the county receives no responsive bid.

C.S.H.B. 1694, in a provision requiring a notice of a proposed county purchase to be published at least once a week in a newspaper of general circulation in the county, requires the notice to be published at least once a week for two consecutive weeks. The bill requires notice published in a newspaper to include a general statement of the proposed purchase, the name and telephone number of the purchasing agent, and the county website address, if any. The bill establishes that certain notice requirements do not require more than two notices in one newspaper or limit the county from providing additional notice for longer periods or in more locations.

C.S.H.B. 1694 authorizes a commissioners court purchasing personal property under statutory provisions relating to local government participation in a certain purchasing program, or under specific interlocal contracting authority provisions relating to contracts for purchases, to negotiate with a vendor awarded a cooperative contract an agreement for the vendor to purchase or accept as trade used equipment owned by the county.

C.S.H.B. 1694 reenacts and amends Section 262.0256, Local Government Code, as amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the 78th Legislature, Regular Session, 2003, to remove a provision limiting to a county with a population of 2.8 million or more the authorization of the commissioners court of a county or the governing body of certain districts or authorities to require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference.

C.S.H.B. 1694 amends the Local Government Code, in a provision requiring bids opened by a county to be kept on file and available for inspection by anyone desiring to see them, to specify such bids to be kept and available until the first anniversary of the date of opening. The bill makes the opened bids subject to disclosure under the state's open records law. The bill, in a provision prohibiting a county contract from being awarded to a bidder who is not the lowest dollar bidder meeting specifications unless each lower bidder is given an opportunity to appear before the commissioners court and present evidence concerning the lower bidder's responsibility, specifies such evidence as previously unconsidered evidence concerning the lower bid as best, which may include evidence of the bidder's responsibility. The bill authorizes a commissioners court to award a contract to the next bidder in order of ranking as lowest and best bid if after the award the successful bidder fails to qualify for required bonds or is otherwise unable to meet the requirements of the award. The bill requires a bidder, before a contract is awarded, to give written notice to the officer authorized to open bids that the bidder intends to protest an award of the contract to a bidder who is not the lowest dollar bidder meeting specifications and establishes that such requirement does not limit the ability of a bidder to speak at a public meeting of the commissioners court under rules established by the court.

C.S.H.B. 1694 repeals the definition of "comparable health insurance coverage" and, in a provision relating to county consideration of health insurance provided by a bidder, makes a reference to comparable health insurance coverage a reference to reasonable health insurance coverage.

C.S.H.B. 1694, in a provision authorizing the commissioners court of a county to adopt rules permitting the county to refuse to enter into a contract or other transaction with a person indebted to the county, makes the reference to such a person indebted a reference to a person who owes a debt and defines "debt" to include delinquent taxes, fines, fees, and delinquencies arising from written agreements with the county.

C.S.H.B. 1694, in a provision authorizing a county to select an appropriately licensed insurance

agent as the sole broker of record to obtain proposals and coverages for insurance that provides necessary coverage and adequate limits of coverage in all areas of risk, removes the specification that such county have a population of 800,000 or more.

C.S.H.B. 1694 prohibits an officer authorized to make a purchase on behalf of a county or a county department or office from making any purchase until providing to the county judge a signed acknowledgement that the officer has read and understands provisions relating to the purchasing and contracting authority of counties. The bill makes such prohibition inapplicable in a county that has appointed a purchasing agent.

C.S.H.B. 1694 establishes that it is a purpose of the Certificate of Obligation Act of 1971 to provide a procedure for certain financing that is an alternative to the more cumbersome procedure under provisions relating to the purchasing and contracting authority of counties, in addition to provisions relating to the purchasing and contracting authority of municipalities, and provides for a situation in which such provisions are in conflict.

C.S.H.B. 1694 reenacts and amends Section 271.182, Local Government Code, as amended by Chapters 135 (S.B. 1047) and 725 (S.B. 229), Acts of the 81st Legislature, Regular Session, 2009, to make provisions relating to design-build procedures for certain civil works projects applicable to a board of trustees under Transportation Code provisions relating to harbor and port facilities in certain municipalities.

C.S.H.B. 1694 amends the Local Government Code to authorize such a board of trustees, during the first four years that provisions relating to design-build procedures for certain civil works projects apply, to enter into contracts for not more than two projects in any fiscal year, and, after such period, to enter into contracts for not more than four projects in any fiscal year.

C.S.H.B. 1694 repeals a provision making provisions relating to the alternative multistep competitive proposal procedure applicable only to a county with a population of 125,000 or more.

C.S.H.B. 1694 repeals a provision making it a Class B misdemeanor for a county officer or employee to intentionally or knowingly violate provisions relating to competitive bidding requirements for a county purchase exceeding \$50,000, other than by conduct constituting a Class B misdemeanor of intentionally or knowingly making or authorizing separate, sequential, or component purchases to avoid such competitive bidding requirements. The bill repeals a provision making it a Class B misdemeanor for an officer or employee of certain governmental entities to intentionally or knowingly violate the competitive bidding requirements of law that requires a contract for certain public works of more than \$50,000 to be awarded on the basis of competitive bids, other than by conduct constituting a Class B misdemeanor of intentionally or knowingly making or authorizing separate, sequential, or component purchases to avoid the competitive bidding requirements of such law. The bill repeals a provision making it a Class B misdemeanor for an officer or employee of a municipality, county, or certain hospital district to intentionally or knowingly violate a competitive procurement requirement for certain local government contracts of more than \$50,000, other than by conduct constituting a Class B misdemeanor of intentionally or knowingly making or authorizing separate, sequential, or component purchases to avoid such requirement. The bill repeals provisions establishing that the final conviction for any of these offenses results in the immediate removal from office or employment of the person and providing for certain ineligibilities of the person.

C.S.H.B. 1694, under the County Purchasing Act, specifies that the term "item" does not include professional services as defined under the Professional Services Procurement Act. The bill defines "lowest and best" and "normal purchasing practice." The bill redefines "purchase" to mean any kind of acquisition, including by a lease or revenue contract, rather than any kind of acquisition of an item, including a lease of an item. The bill makes certain references to lowest bid price and lowest evaluated offer a reference to a lowest and best bid price or lowest and best

evaluated offer, as appropriate.

C.S.H.B. 1694, under provisions relating to design-build procedures for certain civil works projects, redefines "civil works project" to include wharves and docks and redefines "local governmental entity" to include a board of trustees under Transportation Code provisions relating to harbor and port facilities in certain municipalities.

C.S.H.B. 1694 makes conforming and nonsubstantive changes.

C.S.H.B. 1694 establishes that to the extent of any conflict, the bill's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 1694 repeals the following provisions of the Local Government Code:

- Section 262.0271(a)
- Section 262.0295(a)(3)
- Section 262.034(b)
- Section 262.035
- Section 271.029(b)
- Section 271.030
- Section 271.064(b)
- Section 271.065

#### **EFFECTIVE DATE**

September 1, 2011.

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

C.S.H.B. 1694 omits a provision included in the original authorizing a county to purchase an item through a cooperative purchasing program that uses a competitive bidding procedure, purchase an item according to a competitive bidding procedure promulgated by an authorized state agency, and purchase an item cooperatively through an interlocal agreement that requires a competitive bidding procedure. The substitute omits a provision included in the original establishing that such cooperative purchases do not violate competitive bidding statutes. The substitute omits provisions included in the original removing statutory provisions authorizing the commissioners court of a county to purchase through the comptroller of public accounts road machinery and equipment, tires, and tubes to be used by the county, requiring the Texas Facilities Commission to purchase such items on competitive bids and in accordance with any commission rules, and authorizing the commission to adopt rules for such purchases.

C.S.H.B. 1694 differs from the original by prohibiting an officer authorized to make a purchase on behalf of a county or a county department or office from making any purchase until providing to the county judge a signed acknowledgement that the entity has read and understands certain provisions of law, whereas the original prohibits a person from making such a purchase under those conditions. The substitute omits a provision contained in the original including in those certain provisions of law provisions relating to the sale or lease of property by counties; the acquisition, sale, or lease of property by counties; and the purchasing and contracting authority of municipalities, counties, and certain other local governments. The substitute contains a provision not included in the original making the prohibition inapplicable in a county that has appointed a purchasing agent.

C.S.H.B. 1694 contains a provision not included in the original, under the County Purchasing Act, specifying that the term "item" does not include professional services as defined under the Professional Services Procurement Act. The substitute differs from the original by redefining "purchase" to mean any kind of acquisition, including by a lease or revenue contract, whereas the original redefines "purchase" to mean any kind of acquisition, including a lease, of an item regardless of the generation or return of revenue to the county.

C.S.H.B. 1694, in a provision authorizing a county that complies with competitive bidding requirements and receives no responsive bids for an item to procure the item under certain provisions, contains a provision not included in the original specifying that such compliance be in good faith.

C.S.H.B. 1694 omits a provision included in the original exempting a contract for the purchase of personal property sold in a commercial online auction available to the general public from certain competitive requirements applicable to a county purchase exceeding \$50,000.

C.S.H.B. 1694 omits a provision included in the original requiring notice of a proposed county purchase to be posted in a place specified by statutory provisions relating to the sale of real property under a contract lien, rather than in a prominent place in the courthouse, if there is no newspaper of general circulation in the county. The substitute omits a provision included in the original authorizing a county that maintains an Internet website to publish the notice a single time if the county publishes the notice continuously on the county's Internet website for at least 14 days before the date bids are due.

C.S.H.B. 1694 differs from the original by authorizing a commissioners court purchasing personal property under certain provisions to negotiate with a vendor awarded a cooperative contract an agreement for the vendor to purchase or accept as trade used equipment owned by the county, whereas the original authorizes such negotiation for a commissioners court purchasing earth-moving, material-handling, road maintenance, or construction equipment under such provisions.

C.S.H.B. 1694 contains a provision not included in the original making bids opened by a county subject to disclosure under the state's open records law. The substitute contains a provision not included in the original requiring a bidder, before a contract is awarded, to give written notice to the officer authorized to open bids that the bidder intends to protest an award of the contract to a bidder who is not the lowest dollar bidder meeting specifications and establishing that such requirement does not limit the ability of a bidder to speak at a public meeting of the commissioners court under rules established by the court.

C.S.H.B. 1694 differs from the original, in a provision defining "debt" applicable to provisions relating to a county contract with a person indebted to the county, by specifying certain delinquent taxes, fines, fees, and delinquencies, whereas the original specifies certain delinquent taxes, fines, fees, and other delinquencies.

C.S.H.B. 1694 omits a provision included in the original authorizing a commissioners court of a county to establish financial criteria for accepting surety companies that provide bid, payment, or performance bonds.

C.S.H.B. 1694 contains provisions not included in the original, under provisions relating to design-build procedures for certain civil works projects, redefining "civil works project" to include wharves and docks and redefining "local governmental entity" to include a board of trustees under provisions relating to harbor and port facilities in certain municipalities.

C.S.H.B. 1694 contains a provision not included in the original reenacting and amending certain provisions and making provisions relating to design-build procedures for certain civil works projects applicable to a board of trustees under provisions relating to harbor and port facilities in

certain municipalities. The substitute contains a provision not included in the original authorizing such a board of trustees, during the first four years that provisions relating to design-build procedures for certain civil works projects apply, to enter into contracts for not more than two projects in any fiscal year and, after such period, to enter into contracts for not more than four projects in any fiscal year.

C.S.H.B. 1694 contains a provision not included in the original establishing that to the extent of any conflict, the substitute's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.