

By: Coleman

H.B. No. 1694

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the purchasing and contracting authority of certain
3 governmental entities.

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

5 SECTION 1. Section 262.011, Local Government Code, is
6 amended by amending Subsections (f), (g), (k), (m), and (o) and
7 adding Subsection (q) to read as follows:

8 (f) A purchase made by the county purchasing agent shall be
9 paid for by an electronic transfer, check, or [a] warrant drawn by
10 the county auditor on funds in the county treasury in the manner
11 provided by law. The county auditor may not draw and the county
12 treasurer may not honor an electronic transfer, check, or [a]
13 warrant for a purchase unless the purchase is made by the county
14 purchasing agent or on competitive bid as provided by law.

15 (g) The county purchasing agent may cooperate with the
16 purchasing agent of a municipality in the county to purchase any
17 item in volume as may be necessary. The county treasurer shall
18 honor an electronic transfer, check, or [a] warrant drawn by the
19 county auditor to reimburse the municipality's purchasing agent
20 making the purchase for the county.

21 (k) The board that appoints the county purchasing agent
22 shall set the salary of the agent in an amount not less than \$5,000 a
23 year, payable in equal monthly installments or by any other
24 distribution at the option of the county. The salary shall be paid

1 by an electronic transfer, check, or warrant [~~warrants~~] drawn on
2 funds in the county treasury.

3 (m) A person, including an officer, agent, or employee of a
4 county or of a subdivision or department of a county, commits an
5 offense if the person violates this section. An offense under this
6 subsection is a misdemeanor punishable by a fine of not less than
7 \$10 or more than \$100 [~~, by confinement in the county jail for not~~
8 ~~less than 30 days or more than one year, or by both the fine and~~
9 ~~confinement~~]. Each act in violation of this section is a separate
10 offense.

11 (o) The county purchasing agent shall adopt the rules and
12 procedures necessary to implement the agent's duties under this
13 section subject to approval by the commissioners court.
14 Notwithstanding Subsection (f) or other law, rules and procedures
15 adopted under this subsection may include rules and procedures for
16 persons to use county purchasing cards to pay for county purchases
17 under the direction and supervision of the county purchasing agent.
18 Procedures for use of purchasing cards may not avoid the
19 competitive bidding requirements of this chapter or other
20 requirements of county financial law.

21 (q) An electronic transfer under this chapter must provide
22 the same level of internal controls and statutory authorizations as
23 required for a check or warrant.

24 SECTION 2. Sections 262.0115(d) and (e), Local Government
25 Code, are amended to read as follows:

26 (d) Under the supervision of the commissioners court, the
27 purchasing agent shall carry out the functions prescribed by law

1 for a purchasing agent under Section 262.011 and for any
2 administrative function of the county auditor in regard to county
3 purchases and contracts and shall administer the procedures
4 prescribed by law for notice and public bidding for county
5 purchases and contracts.

6 (e) A county that has established the position of county
7 purchasing agent under this section may abolish the position at any
8 time. On the abolition of the position, the county auditor shall
9 assume the functions previously performed by the purchasing agent
10 regarding the notice for and opening of competitive bids or
11 proposals under this chapter and Chapter 271.

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

15 (5) "Item" means any service, equipment, good, or
16 other tangible or intangible personal property, including
17 insurance and high technology items. The term does not include
18 professional services as defined by Section 2254.002, Government
19 Code.

20 (5-a) "Lowest and best" means a bid or offer providing
21 the best value considering associated direct and indirect costs,
22 including transport, maintenance, reliability, life cycle,
23 warranties, and customer service after a sale.

24 (5-b) "Normal purchasing practice" means:

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

27 (B) a practice recognized by a national

1 purchasing association regarding the purchase of a particular good
2 or service.

3 (6) "Purchase" means any kind of acquisition,
4 including by a lease or revenue contract [~~, of an item~~].

5 SECTION 4. Section 262.0225, Local Government Code, is
6 amended by adding Subsection (d) to read as follows:

7 (d) A county that complies in good faith with the
8 competitive bidding requirements of this chapter and receives no
9 responsive bids for an item may procure the item under Section
10 262.0245.

11 SECTION 5. Section 262.0245, Local Government Code, is
12 amended to read as follows:

13 Sec. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED
14 BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county
15 purchasing agent or, in a county without a purchasing agent, the
16 commissioners court shall adopt procedures that provide for
17 competitive procurement, to the extent practicable under the
18 circumstances, for the county purchase of an item that is not
19 subject to competitive procurement or for which the county receives
20 no responsive bid.

21 SECTION 6. Section 262.025, Local Government Code, is
22 amended by amending Subsection (a) and adding Subsection (a-1) to
23 read as follows:

24 (a) A notice of a proposed purchase must be published at
25 least once a week for two consecutive weeks in a newspaper of
26 general circulation in the county, with the first day of
27 publication occurring at least 14 days before the [~~14th day before~~

1 ~~the~~] date of the bid opening. If there is no newspaper of general
2 circulation in the county, the notice must be posted in a prominent
3 place in the courthouse for 14 days before the date of the bid
4 opening. Notice published in a newspaper must include:

- 5 (1) a general statement of the proposed purchase;
6 (2) the name and telephone number of the purchasing
7 agent; and
8 (3) the county website address, if any.

9 (a-1) Subsection (a) does not require more than two notices
10 in one newspaper or limit the county from providing additional
11 notice for longer periods or in more locations.

12 SECTION 7. Section 262.0255, Local Government Code, is
13 amended by adding Subsection (c) to read as follows:

14 (c) A commissioners court purchasing personal property
15 under Section 271.083 of this code or Section 791.025, Government
16 Code, may negotiate with a vendor awarded a cooperative contract
17 under those sections an agreement for the vendor to purchase or
18 accept as trade used equipment owned by the county.

19 SECTION 8. Section 262.0256, Local Government Code, as
20 amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the
21 78th Legislature, Regular Session, 2003, is reenacted and amended
22 to read as follows:

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

26 ~~[(b)]~~ The commissioners court of the county or the governing
27 body of a district or authority created under Section 59, Article

1 XVI, Texas Constitution, if the governing body is the commissioners
2 court of the county in which the district is located, may require a
3 principal, officer, or employee of each prospective bidder to
4 attend a mandatory pre-bid conference conducted for the purpose of
5 discussing contract requirements and answering questions of
6 prospective bidders.

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

12 SECTION 9. Section 262.026(b), Local Government Code, is
13 amended to read as follows:

14 (b) Opened bids shall be kept on file and available for
15 inspection by anyone desiring to see them until the first
16 anniversary of the date of opening. Opened bids are subject to
17 disclosure under Chapter 552, Government Code.

18 SECTION 10. Section 262.027, Local Government Code, is
19 amended by amending Subsection (c) and adding Subsections (g) and
20 (h) to read as follows:

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

- 24 **(1)** notice of the proposed award; and
25 **(2)** [~~is given~~] an opportunity to appear before the
26 commissioners court and present previously unconsidered evidence
27 concerning the lower bid as best, which may include evidence of the

1 bidder's responsibility.

2 (g) If after the award the successful bidder fails to
3 qualify for required bonds, or is otherwise unable to meet the
4 requirements of the award, the commissioners court may award the
5 contract to the next bidder in order of ranking as lowest and best
6 bid.

7 (h) Before a contract is awarded, a bidder must give written
8 notice to the officer authorized to open bids that the bidder
9 intends to protest an award of the contract under Subsection (c).
10 This subsection does not limit the ability of a bidder to speak at a
11 public meeting of the commissioners court under rules established
12 by the court.

13 SECTION 11. Section 262.0271(b), Local Government Code, is
14 amended to read as follows:

15 (b) In purchasing items under this chapter through a
16 competitive bidding process, if a county receives one or more bids
17 from a bidder who provides reasonable ~~[comparable]~~ health insurance
18 coverage to its employees and requires a subcontractor the bidder
19 intends to use to provide reasonable ~~[comparable]~~ health insurance
20 coverage to the subcontractor's employees and whose bid is within
21 five percent of the lowest and best bid price received by the county
22 from a bidder who does not provide or require reasonable
23 ~~[comparable]~~ health insurance coverage, the commissioners court of
24 the county may give preference to the bidder who provides and
25 requires reasonable ~~[comparable]~~ health insurance coverage.

26 SECTION 12. Section 262.0276, Local Government Code, is
27 amended by amending Subsection (a) and adding Subsection (d) to

1 read as follows:

2 (a) By an order adopted and entered in the minutes of the
3 commissioners court and after notice is published in a newspaper of
4 general circulation in the county, the commissioners court may
5 adopt rules permitting the county to refuse to enter into a contract
6 or other transaction with a person who owes a debt [~~indebted~~] to the
7 county.

8 (d) In this section, "debt" includes delinquent taxes,
9 finances, fees, and delinquencies arising from written agreements with
10 the county.

11 SECTION 13. Section 262.0295(d), Local Government Code, is
12 amended to read as follows:

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

20 SECTION 14. Section 262.030(b), Local Government Code, is
21 amended to read as follows:

22 (b) Quotations must be solicited through a request for
23 proposals. Public notice for the request for proposals must be made
24 in the same manner as provided in the competitive bidding
25 procedure. The request for proposals must specify the relative
26 importance of price and other evaluation factors. The award of the
27 contract shall be made to the responsible offeror whose proposal is

1 determined to be the lowest and best evaluated offer resulting from
2 negotiation, taking into consideration the relative importance of
3 price and other evaluation factors set forth in the request for
4 proposals.

5 SECTION 15. Section 262.034(c), Local Government Code, is
6 amended to read as follows:

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

11 SECTION 16. Section 262.036(a), Local Government Code, is
12 amended to read as follows:

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

21 SECTION 17. Subchapter C, Chapter 262, Local Government
22 Code, is amended by adding Section 262.037 to read as follows:

23 Sec. 262.037. QUALIFICATION. An officer authorized to make
24 a purchase on behalf of a county or a county department or office
25 may not make any purchase until providing to the county judge a
26 signed acknowledgment that the officer has read and understands
27 this chapter. This section does not apply in a county that has

1 appointed a purchasing agent under Subchapter B.

2 SECTION 18. Section 271.029(c), Local Government Code, is
3 amended to read as follows:

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

9 SECTION 19. Section 271.042, Local Government Code, is
10 amended to read as follows:

11 Sec. 271.042. PURPOSE; CONFLICT. (a) It is the purpose of
12 this subchapter to provide:

13 (1) a procedure for certain financing that is an
14 alternative to the more cumbersome procedure under Chapter 252 or
15 262; and

16 (2) a new class of securities to be issued and
17 delivered within the financial capabilities of an issuer on
18 compliance with the procedures prescribed by this subchapter.

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

23 SECTION 20. Section 271.064(c), Local Government Code, is
24 amended to read as follows:

25 (c) An officer or employee of an issuer commits an offense
26 if the officer or employee intentionally or knowingly violates this
27 subchapter, other than by conduct described by Subsection (a) [~~or~~

1 ~~(b)~~]. An offense under this subsection is a Class C misdemeanor.

2 SECTION 21. Sections 271.181(2) and (6), Local Government
3 Code, are amended to read as follows:

4 (2) "Civil works project" means:

5 (A) roads, streets, bridges, utilities, water
6 supply projects, water plants, wastewater plants, water
7 distribution and wastewater conveyance facilities, desalination
8 projects, wharves, docks, airport runways and taxiways, storm
9 drainage and flood control projects, or transit projects;

10 (B) types of projects or facilities related to
11 those described by Paragraph (A) and associated with civil
12 engineering construction; and

13 (C) buildings or structures that are incidental
14 to projects or facilities that are described by Paragraphs (A) and
15 (B) and that are primarily civil engineering construction projects.

16 (6) "Local governmental entity" means a municipality,
17 a county, a river authority, a defense base development authority
18 established under Chapter 379B, a board of trustees under Chapter
19 54, Transportation Code, a municipally owned water utility with a
20 separate governing board appointed by the governing body of a
21 municipality, or any other special district or authority authorized
22 by law to enter into a public works contract for a civil works
23 project. The term does not include a regional tollway authority
24 created under Chapter 366, Transportation Code, a regional mobility
25 authority created under Chapter 370, Transportation Code, or a
26 water district or authority created under Section 52, Article III,
27 or Section 59, Article XVI, Texas Constitution, with a population

1 of less than 50,000.

2 SECTION 22. Section 271.182, Local Government Code, as
3 amended by Chapters 135 (S.B. 1047) and 725 (S.B. 229), Acts of the
4 81st Legislature, Regular Session, 2009, is reenacted and amended
5 to read as follows:

6 Sec. 271.182. APPLICABILITY. (a) This subchapter applies
7 to:

8 (1) a local governmental entity with a population of
9 more than 100,000 within its geographic boundaries or service area;

10 (2) a board of trustees under Chapter 54,
11 Transportation Code; and~~[-]~~

12 (3) [~~(c) This subchapter applies to~~] a municipally
13 owned combined electric, water, and wastewater utility situated in
14 an economically distressed area and located within 30 miles of the
15 Lower Texas Gulf Coast.

16 (b) For purposes of Subsection (a)(3) [~~this subchapter~~],
17 "combined" means that the utilities are managed and controlled by
18 one board whose members are appointed by the governing body of the
19 municipality and that the financing of capital improvements is
20 secured from the revenue [~~revenues~~] of all three utilities.

21 SECTION 23. Sections 271.186(a) and (b), Local Government
22 Code, are amended to read as follows:

23 (a) During the first four years that this subchapter applies
24 to a local governmental entity under Section 271.182:

25 (1) a local governmental entity with a population of
26 500,000 or more may, under this subchapter, enter into contracts
27 for not more than three projects in any fiscal year;

1 (2) a local governmental entity with a population of
2 100,000 or more but less than 500,000 and a board of trustees under
3 Chapter 54, Transportation Code, may, under this subchapter, enter
4 into contracts for not more than two projects in any fiscal year;
5 and

6 (3) a municipally owned water utility with a separate
7 governing board appointed by the governing body of a municipality
8 with a population of 500,000 or more may:

9 (A) independently enter into a contract for not
10 more than one civil works project in any fiscal year; and

11 (B) enter into contracts for additional civil
12 works projects in any fiscal year, but not more than the number of
13 civil works projects prescribed by the limit in Subdivision (1) for
14 the municipality, provided that:

15 (i) the additional contracts for the civil
16 works projects entered into by the utility under this paragraph are
17 allocated to the number of contracts the municipality that appoints
18 the utility's governing board may enter under Subdivision (1); and

19 (ii) the governing body of the municipality
20 must approve the contracts.

21 (b) After the period described by Subsection (a):

22 (1) a local governmental entity with a population of
23 500,000 or more may, under this subchapter, enter into contracts
24 for not more than six projects in any fiscal year;

25 (2) a local governmental entity with a population of
26 100,000 or more but less than 500,000 and a board of trustees under
27 Chapter 54, Transportation Code, may, under this subchapter, enter

1 into contracts for not more than four projects in any fiscal year;
2 and

3 (3) a municipally owned water utility with a separate
4 governing board appointed by the governing body of a municipality
5 with a population of 500,000 or more may:

6 (A) independently enter into contracts for not
7 more than two civil works projects in any fiscal year; and

8 (B) enter into contracts for additional civil
9 works projects in any fiscal year, but not more than the number of
10 civil works projects prescribed by the limit in Subdivision (1) for
11 the municipality, provided that:

12 (i) the additional contracts for the civil
13 works projects entered into by the utility under this paragraph are
14 allocated to the number of contracts the municipality that appoints
15 the utility's governing board may enter under Subdivision (1); and

16 (ii) the governing body of the municipality
17 must approve the contracts.

18 SECTION 24. Sections 262.0271(a), 262.0295(a)(3),
19 262.034(b), 262.035, 271.029(b), 271.030, 271.064(b), and 271.065,
20 Local Government Code, are repealed.

21 SECTION 25. The changes in law made by this Act apply only
22 to purchases made or a bid deadline that occurs on or after
23 September 1, 2011. A purchase made or a bid deadline that occurs
24 before September 1, 2011, is governed by the law as it existed
25 immediately before the effective date of this Act, and that law is
26 continued in effect for that purpose.

27 SECTION 26. (a) The changes in law made by this Act to

1 Sections 262.034, 271.029, and 271.064, Local Government Code,
2 apply only to an offense committed on or after the effective date of
3 this Act. For purposes of this section, an offense is committed
4 before the effective date of this Act if any element of the offense
5 occurs before that date.

6 (b) An offense committed before the effective date of this
7 Act is covered by the law in effect immediately before the effective
8 date of this Act, and the former law is continued in effect for that
9 purpose.

10 SECTION 27. To the extent of any conflict, this Act prevails
11 over another Act of the 82nd Legislature, Regular Session, 2011,
12 relating to nonsubstantive additions to and corrections in enacted
13 codes.

14 SECTION 28. This Act takes effect September 1, 2011.