

By: West

S.B. No. 413

A BILL TO BE ENTITLED

AN ACT

relating to the purchasing and contracting authority of counties.

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

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

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

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

(c) A county may purchase an item cooperatively through an interlocal agreement that requires a competitive bidding procedure. ~~[A purchase under this section must be made on the requisition of the commissioners court. When the court sends the requisition to the commission, the court must include with the requisition a general description of the item desired and a certification of the funds available to pay for the item.]~~

(d) A cooperative purchase under this section does not

1 violate competitive bidding statutes. [~~The commission may adopt~~
2 ~~rules to carry out the purpose of this section.~~]

3 SECTION 2. Section 262.011, Local Government Code, is
4 amended by amending Subsections (f), (g), (k), (m), and (o) and
5 adding Subsection (q) to read as follows:

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

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

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

25 (m) A person, including an officer, agent, or employee of a
26 county or of a subdivision or department of a county, commits an
27 offense if the person violates this section. An offense under this

1 subsection is a misdemeanor punishable by a fine of not less than
2 \$10 or more than \$100[~~, by confinement in the county jail for not~~
3 ~~less than 30 days or more than one year, or by both the fine and~~
4 ~~confinement~~]. Each act in violation of this section is a separate
5 offense.

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

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

19 SECTION 3. Sections 262.0115(d) and (e), Local Government
20 Code, are amended to read as follows:

21 (d) Under the supervision of the commissioners court, the
22 purchasing agent shall carry out the functions prescribed by law
23 for a purchasing agent under Section 262.011 and for any
24 administrative function of the county auditor in regard to county
25 purchases and contracts and shall administer the procedures
26 prescribed by law for notice and public bidding for county
27 purchases and contracts.

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

7 SECTION 4. Subchapter B, Chapter 262, Local Government
8 Code, is amended by adding Section 262.013 to read as follows:

9 Sec. 262.013. QUALIFICATION. A person authorized to make a
10 purchase on behalf of a county or a county department or office may
11 not make any purchase until providing to the county judge a signed
12 acknowledgment that the person has read and understands this
13 chapter and Chapters 263, 270, and 271.

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

17 (5-a) "Lowest and best" means a bid or offer providing
18 the best value considering associated direct and indirect costs,
19 including transport, maintenance, reliability, life cycle,
20 warranties, and customer service after a sale.

21 (5-b) "Normal purchasing practice" means:

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

24 (B) a practice recognized by a national
25 purchasing association regarding the purchase of a particular good
26 or service.

27 (6) "Purchase" means any kind of acquisition,

1 including a lease, of an item regardless of the generation or return
2 of revenue to the county.

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

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

8 SECTION 7. Section 262.024(a), Local Government Code, is
9 amended to read as follows:

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

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

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

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

21 (4) a personal or professional service;

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

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

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

1 including:

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

5 (B) films, manuscripts, or books;

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

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

10 (8) an item of food;

11 (9) personal property sold:

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

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

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

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

21 (11) vehicle and equipment repairs.

22 SECTION 8. Section 262.0245, Local Government Code, is
23 amended to read as follows:

24 Sec. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED
25 BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county
26 purchasing agent or, in a county without a purchasing agent, the
27 commissioners court shall adopt procedures that provide for

1 competitive procurement, to the extent practicable under the
2 circumstances, for the county purchase of an item that is not
3 subject to competitive procurement or for which the county receives
4 no responsive bid.

5 SECTION 9. Section 262.025, Local Government Code, is
6 amended by amending Subsection (a) and adding Subsections (a-1) and
7 (a-2) to read as follows:

8 (a) Except as provided by Subsection (a-2), a [A] notice of
9 a proposed purchase must be published at least once a week for two
10 consecutive weeks in a newspaper of general circulation in the
11 county, with the first day of publication occurring at least 14 days
12 before the [14th day before the] date of the bid opening. If there
13 is no newspaper of general circulation in the county, the notice
14 must be posted in a [~~prominent~~] place described by Section 51.002,
15 Property Code, [in the courthouse] for 14 days before the date of
16 the bid opening. Notice published in a newspaper must include:

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

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

24 (a-2) A county that maintains an Internet website may
25 publish the notice required by Subsection (a) a single time if the
26 county publishes the notice continuously on the county's Internet
27 website for at least 14 days before the date bids are due.

1 SECTION 10. Section 262.0255, Local Government Code, is
2 amended by adding Subsection (c) to read as follows:

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

9 SECTION 11. Section 262.0256, Local Government Code, as
10 amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the
11 78th Legislature, Regular Session, 2003, is reenacted and amended
12 to read as follows:

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

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

24 (b) ~~[(c)]~~ After a conference is conducted under Subsection
25 (a) ~~[(b)]~~, any additional required notice for the proposed purchase
26 may be sent by certified mail, return receipt requested, only to
27 prospective bidders who attended the conference. Notice under this

1 subsection is not subject to the requirements of Section 262.025.

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

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

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

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

13 (1) notice of the proposed award; and

14 (2) [is given] an opportunity to appear before the
15 commissioners court and present previously unconsidered evidence
16 concerning the lower bid as best, which may include evidence of the
17 bidder's responsibility.

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

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

25 (b) In purchasing items under this chapter through a
26 competitive bidding process, if a county receives one or more bids
27 from a bidder who provides reasonable ~~[comparable]~~ health insurance

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

9 SECTION 15. Section 262.0276, Local Government Code, is
10 amended by amending Subsection (a) and adding Subsection (d) to
11 read as follows:

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

18 (d) In this section, "debt" includes delinquent taxes,
19 finances, fees, and other delinquencies arising from written
20 agreements with the county.

21 SECTION 16. Section 262.0295(d), Local Government Code, is
22 amended to read as follows:

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

1 All proposals and bids that have been submitted shall be available
2 and open for public inspection after the contract is awarded.

3 SECTION 17. Section 262.030(b), Local Government Code, is
4 amended to read as follows:

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

15 SECTION 18. Section 262.032, Local Government Code, is
16 amended by adding Subsection (e) to read as follows:

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

20 SECTION 19. Section 262.034(c), Local Government Code, is
21 amended to read as follows:

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

26 SECTION 20. Section 262.036(a), Local Government Code, is
27 amended to read as follows:

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

9 SECTION 21. Section 271.029(c), Local Government Code, is
10 amended to read as follows:

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

16 SECTION 22. Section 271.042, Local Government Code, is
17 amended to read as follows:

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

20 (1) a procedure for certain financing that is an
21 alternative to the more cumbersome procedure under Chapter 252 or
22 262; and

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

26 (b) If there is a conflict between a provision of this
27 subchapter and a provision of Chapter 252 or 262, an issuer may use

1 either provision, and it is not necessary for the governing body to
2 designate the law under which action is being taken.

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

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

9 SECTION 24. Sections 262.0271(a), 262.0295(a)(3),
10 262.034(b), 262.035, 271.029(b), 271.030, 271.064(b), and 271.065,
11 Local Government Code, are repealed.

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

18 SECTION 26. (a) The changes in law made by this Act to
19 Sections 262.034, 271.029, and 271.064, Local Government Code,
20 apply only to an offense committed on or after the effective date of
21 this Act. For purposes of this section, an offense is committed
22 before the effective date of this Act if any element of the offense
23 occurs before that date.

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

1 SECTION 27. This Act takes effect September 1, 2011.