

1-1 By: West S.B. No. 413
1-2 (In the Senate - Filed January 25, 2011; February 2, 2011,
1-3 read first time and referred to Committee on Intergovernmental
1-4 Relations; March 29, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 March 29, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 413 By: Gallegos

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the purchasing and contracting authority of counties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 262.011, Local Government Code, is
1-13 amended by amending Subsections (f), (g), (k), (m), and (o) and
1-14 adding Subsection (q) to read as follows:

1-15 (f) A purchase made by the county purchasing agent shall be
1-16 paid for by an electronic transfer, check, or [a] warrant drawn by
1-17 the county auditor on funds in the county treasury in the manner
1-18 provided by law. The county auditor may not draw and the county
1-19 treasurer may not honor an electronic transfer, check, or [a]
1-20 warrant for a purchase unless the purchase is made by the county
1-21 purchasing agent or on competitive bid as provided by law.

1-22 (g) The county purchasing agent may cooperate with the
1-23 purchasing agent of a municipality in the county to purchase any
1-24 item in volume as may be necessary. The county treasurer shall
1-25 honor an electronic transfer, check, or [a] warrant drawn by the
1-26 county auditor to reimburse the municipality's purchasing agent
1-27 making the purchase for the county.

1-28 (k) The board that appoints the county purchasing agent
1-29 shall set the salary of the agent in an amount not less than \$5,000 a
1-30 year, payable in equal monthly installments or by any other
1-31 distribution at the option of the county. The salary shall be paid
1-32 by an electronic transfer, check, or warrant [warrants] drawn on
1-33 funds in the county treasury.

1-34 (m) A person, including an officer, agent, or employee of a
1-35 county or of a subdivision or department of a county, commits an
1-36 offense if the person violates this section. An offense under this
1-37 subsection is a misdemeanor punishable by a fine of not less than
1-38 \$10 or more than \$100 [~~, by confinement in the county jail for not~~
1-39 ~~less than 30 days or more than one year, or by both the fine and~~
1-40 ~~confinement]. Each act in violation of this section is a separate~~
1-41 offense.

1-42 (o) The county purchasing agent shall adopt the rules and
1-43 procedures necessary to implement the agent's duties under this
1-44 section subject to approval by the commissioners court.
1-45 Notwithstanding Subsection (f) or other law, rules and procedures
1-46 adopted under this subsection may include rules and procedures for
1-47 persons to use county purchasing cards to pay for county purchases
1-48 under the direction and supervision of the county purchasing agent.
1-49 Procedures for use of purchasing cards may not avoid the
1-50 competitive bidding requirements of this chapter or other
1-51 requirements of county financial law.

1-52 (q) An electronic transfer under this chapter must provide
1-53 the same level of internal controls and statutory authorizations as
1-54 required for a check or warrant.

1-55 SECTION 2. Subsections (d) and (e), Section 262.0115, Local
1-56 Government Code, are amended to read as follows:

1-57 (d) Under the supervision of the commissioners court, the
1-58 purchasing agent shall carry out the functions prescribed by law
1-59 for a purchasing agent under Section 262.011 and for any
1-60 administrative function of the county auditor in regard to county
1-61 purchases and contracts and shall administer the procedures
1-62 prescribed by law for notice and public bidding for county
1-63 purchases and contracts.

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

2-7 SECTION 3. Section 262.022, Local Government Code, is
 2-8 amended by amending Subdivisions (5) and (6) and adding
 2-9 Subdivisions (5-a) and (5-b) to read as follows:

2-10 (5) "Item" means any service, equipment, good, or
 2-11 other tangible or intangible personal property, including
 2-12 insurance and high technology items. The term does not include
 2-13 professional services as defined by Section 2254.002, Government
 2-14 Code.

2-15 (5-a) "Lowest and best" means a bid or offer providing
 2-16 the best value considering associated direct and indirect costs,
 2-17 including transport, maintenance, reliability, life cycle,
 2-18 warranties, and customer service after a sale.

2-19 (5-b) "Normal purchasing practice" means:

2-20 (A) an accepted custom, practice, or standard for
 2-21 government procurement in the state; or

2-22 (B) a practice recognized by a national
 2-23 purchasing association regarding the purchase of a particular good
 2-24 or service.

2-25 (6) "Purchase" means any kind of acquisition,
 2-26 including by a lease or revenue contract [~~, of an item~~].

2-27 SECTION 4. Section 262.0225, Local Government Code, is
 2-28 amended by adding Subsection (d) to read as follows:

2-29 (d) A county that complies in good faith with the
 2-30 competitive bidding requirements of this chapter and receives no
 2-31 responsive bids for an item may procure the item under Section
 2-32 262.0245.

2-33 SECTION 5. Section 262.0245, Local Government Code, is
 2-34 amended to read as follows:

2-35 Sec. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED
 2-36 BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county
 2-37 purchasing agent or, in a county without a purchasing agent, the
 2-38 commissioners court shall adopt procedures that provide for
 2-39 competitive procurement, to the extent practicable under the
 2-40 circumstances, for the county purchase of an item that is not
 2-41 subject to competitive procurement or for which the county receives
 2-42 no responsive bid.

2-43 SECTION 6. Section 262.0255, Local Government Code, is
 2-44 amended by adding Subsection (c) to read as follows:

2-45 (c) A commissioners court purchasing personal property
 2-46 under Section 271.083 of this code or Section 791.025, Government
 2-47 Code, may negotiate with a vendor awarded a cooperative contract
 2-48 under those sections an agreement for the vendor to purchase or
 2-49 accept as trade used equipment owned by the county.

2-50 SECTION 7. Section 262.0256, Local Government Code, as
 2-51 amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the
 2-52 78th Legislature, Regular Session, 2003, is reenacted and amended
 2-53 to read as follows:

2-54 Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A
 2-55 DISTRICT GOVERNED BY THOSE COUNTIES. (a) [~~This section applies~~
 2-56 ~~only to a county with a population of 2.8 million or more.~~

2-57 [~~(b)~~] The commissioners court of the county or the governing
 2-58 body of a district or authority created under Section 59, Article
 2-59 XVI, Texas Constitution, if the governing body is the commissioners
 2-60 court of the county in which the district is located, may require a
 2-61 principal, officer, or employee of each prospective bidder to
 2-62 attend a mandatory pre-bid conference conducted for the purpose of
 2-63 discussing contract requirements and answering questions of
 2-64 prospective bidders.

2-65 (b) [~~(c)~~] After a conference is conducted under Subsection
 2-66 (a) [~~(b)~~], any additional required notice for the proposed purchase
 2-67 may be sent by certified mail, return receipt requested, only to
 2-68 prospective bidders who attended the conference. Notice under this
 2-69 subsection is not subject to the requirements of Section 262.025.

3-1 SECTION 8. Subsection (b), Section 262.026, Local
3-2 Government Code, is amended to read as follows:

3-3 (b) Opened bids shall be kept on file and available for
3-4 inspection by anyone desiring to see them until the first
3-5 anniversary of the date of opening. Opened bids are subject to
3-6 disclosure under Chapter 552, Government Code.

3-7 SECTION 9. Section 262.027, Local Government Code, is
3-8 amended by amending Subsection (c) and adding Subsections (g) and
3-9 (h) to read as follows:

3-10 (c) A contract may not be awarded to a bidder who is not the
3-11 lowest dollar bidder meeting specifications unless, before the
3-12 award, each lower bidder is given:

3-13 (1) notice of the proposed award; and

3-14 (2) ~~[is given]~~ an opportunity to appear before the
3-15 commissioners court and present previously unconsidered evidence
3-16 concerning the lower bid as best, which may include evidence of the
3-17 bidder's responsibility.

3-18 (g) If after the award the successful bidder fails to
3-19 qualify for required bonds, or is otherwise unable to meet the
3-20 requirements of the award, the commissioners court may award the
3-21 contract to the next bidder in order of ranking as lowest and best
3-22 bid.

3-23 (h) Before a contract is awarded, a bidder must give written
3-24 notice to the officer authorized to open bids that the bidder
3-25 intends to protest an award of the contract under Subsection (c).
3-26 This subsection does not limit the ability of a bidder to speak at a
3-27 public meeting of the commissioners court under rules established
3-28 by the court.

3-29 SECTION 10. Subsection (b), Section 262.0271, Local
3-30 Government Code, is amended to read as follows:

3-31 (b) In purchasing items under this chapter through a
3-32 competitive bidding process, if a county receives one or more bids
3-33 from a bidder who provides reasonable ~~[comparable]~~ health insurance
3-34 coverage to its employees and requires a subcontractor the bidder
3-35 intends to use to provide reasonable ~~[comparable]~~ health insurance
3-36 coverage to the subcontractor's employees and whose bid is within
3-37 five percent of the lowest and best bid price received by the county
3-38 from a bidder who does not provide or require reasonable
3-39 ~~[comparable]~~ health insurance coverage, the commissioners court of
3-40 the county may give preference to the bidder who provides and
3-41 requires reasonable ~~[comparable]~~ health insurance coverage.

3-42 SECTION 11. Section 262.0276, Local Government Code, is
3-43 amended by amending Subsection (a) and adding Subsection (d) to
3-44 read as follows:

3-45 (a) By an order adopted and entered in the minutes of the
3-46 commissioners court and after notice is published in a newspaper of
3-47 general circulation in the county, the commissioners court may
3-48 adopt rules permitting the county to refuse to enter into a contract
3-49 or other transaction with a person who owes a debt ~~[indebted]~~ to the
3-50 county.

3-51 (d) In this section, "debt" includes delinquent taxes,
3-52 finances, fees, and delinquencies arising from written agreements with
3-53 the county.

3-54 SECTION 12. Subsection (d), Section 262.0295, Local
3-55 Government Code, is amended to read as follows:

3-56 (d) Within 30 days after the date the unpriced proposals are
3-57 opened under Subsection (c), the county official shall present the
3-58 priced bids to the commissioners court. The award of the contract
3-59 shall be made to the responsible offeror whose bid is determined to
3-60 be the lowest and best evaluated offer resulting from negotiation.
3-61 All proposals and bids that have been submitted shall be available
3-62 and open for public inspection after the contract is awarded.

3-63 SECTION 13. Subsection (b), Section 262.030, Local
3-64 Government Code, is amended to read as follows:

3-65 (b) Quotations must be solicited through a request for
3-66 proposals. Public notice for the request for proposals must be made
3-67 in the same manner as provided in the competitive bidding
3-68 procedure. The request for proposals must specify the relative
3-69 importance of price and other evaluation factors. The award of the

4-1 contract shall be made to the responsible offeror whose proposal is
4-2 determined to be the lowest and best evaluated offer resulting from
4-3 negotiation, taking into consideration the relative importance of
4-4 price and other evaluation factors set forth in the request for
4-5 proposals.

4-6 SECTION 14. Subsection (c), Section 262.034, Local
4-7 Government Code, is amended to read as follows:

4-8 (c) A county officer or employee commits an offense if the
4-9 officer or employee intentionally or knowingly violates this
4-10 subchapter, other than by conduct described by Subsection (a) [~~or~~
4-11 ~~(b)~~]. An offense under this subsection is a Class C misdemeanor.

4-12 SECTION 15. Subsection (a), Section 262.036, Local
4-13 Government Code, is amended to read as follows:

4-14 (a) Notwithstanding any other provision in this chapter, a
4-15 county [~~with a population of 800,000 or more~~] may select an
4-16 appropriately licensed insurance agent as the sole broker of record
4-17 to obtain proposals and coverages for insurance that provides
4-18 necessary coverage and adequate limits of coverage in all areas of
4-19 risk, including public official liability, property, casualty,
4-20 workers' compensation, and specific and aggregate stop-loss
4-21 coverage for self-funded health care.

4-22 SECTION 16. Subchapter C, Chapter 262, Local Government
4-23 Code, is amended by adding Section 262.037 to read as follows:

4-24 Sec. 262.037. QUALIFICATION. An officer authorized to make
4-25 a purchase on behalf of a county or a county department or office
4-26 may not make any purchase until providing to the county judge a
4-27 signed acknowledgment that the officer has read and understands
4-28 this chapter. This section does not apply in a county that has
4-29 appointed a purchasing agent under Subchapter B.

4-30 SECTION 17. Subsection (c), Section 271.029, Local
4-31 Government Code, is amended to read as follows:

4-32 (c) An officer or employee of a governmental entity commits
4-33 an offense if the officer or employee intentionally or knowingly
4-34 violates this subchapter, other than by conduct described by
4-35 Subsection (a) [~~or (b)~~]. An offense under this subsection is a
4-36 Class C misdemeanor.

4-37 SECTION 18. Section 271.042, Local Government Code, is
4-38 amended to read as follows:

4-39 Sec. 271.042. PURPOSE; CONFLICT. (a) It is the purpose of
4-40 this subchapter to provide:

4-41 (1) a procedure for certain financing that is an
4-42 alternative to the more cumbersome procedure under Chapter 252 or
4-43 262; and

4-44 (2) a new class of securities to be issued and
4-45 delivered within the financial capabilities of an issuer on
4-46 compliance with the procedures prescribed by this subchapter.

4-47 (b) If there is a conflict between a provision of this
4-48 subchapter and a provision of Chapter 252 or 262, an issuer may use
4-49 either provision, and it is not necessary for the governing body to
4-50 designate the law under which action is being taken.

4-51 SECTION 19. Subsection (c), Section 271.064, Local
4-52 Government Code, is amended to read as follows:

4-53 (c) An officer or employee of an issuer commits an offense
4-54 if the officer or employee intentionally or knowingly violates this
4-55 subchapter, other than by conduct described by Subsection (a) [~~or~~
4-56 ~~(b)~~]. An offense under this subsection is a Class C misdemeanor.

4-57 SECTION 20. the following provisions of the Local
4-58 Government Code are repealed:

- 4-59 (1) Subsection (a), Section 262.0271;
- 4-60 (2) Subdivision (3), Subsection (a), Section
4-61 262.0295;
- 4-62 (3) Subsection (b), Section 262.034;
- 4-63 (4) Section 262.035;
- 4-64 (5) Subsection (b), Section 271.029;
- 4-65 (6) Section 271.030;
- 4-66 (7) Subsection (b), Section 271.064; and
- 4-67 (8) Section 271.065.

4-68 SECTION 21. The changes in law made by this Act apply only
4-69 to purchases made or a bid deadline that occurs on or after

5-1 September 1, 2011. A purchase made or a bid deadline that occurs
5-2 before September 1, 2011, is governed by the law as it existed
5-3 immediately before the effective date of this Act, and that law is
5-4 continued in effect for that purpose.

5-5 SECTION 22. (a) The changes in law made by this Act to
5-6 Sections 262.034, 271.029, and 271.064, Local Government Code,
5-7 apply only to an offense committed on or after the effective date of
5-8 this Act. For purposes of this section, an offense is committed
5-9 before the effective date of this Act if any element of the offense
5-10 occurs before that date.

5-11 (b) An offense committed before the effective date of this
5-12 Act is covered by the law in effect immediately before the effective
5-13 date of this Act, and the former law is continued in effect for that
5-14 purpose.

5-15 SECTION 23. This Act takes effect September 1, 2011.

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