88R7921 JES-F

By:  VanDeaver H.B. No. 2710

A BILL TO BE ENTITLED

AN ACT

relating to school district purchasing of and contracting for goods and services.

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

SECTION 1.  Section 44.031, Education Code, is amended by amending Subsections (a), (f), (g), (j), and (m) and adding Subsections (g-1) and (o) to read as follows:

(a)  Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at $50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

(1)  competitive bidding for services other than construction services;

(2)  competitive sealed proposals for goods or services other than construction services;

(3)  a request for proposals, for goods or services other than construction services;

(4)  an interlocal contract;

(5)  a method provided by Chapter 2269, Government Code, for construction services;

(6)  the reverse auction procedure as defined by Section 2155.062(d), Government Code; or

(7)  the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(f)  This section does not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, [~~or~~] fiscal agent, or other professional service provider as determined by the board of trustees of the school district. A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

(g)  Except as provided by (g-1), notice [~~Notice~~] of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

(g-1)  A school district may provide notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened by posting on the state business daily under Section 2155.083, Government Code, instead of providing notice under Subsection (g).

(j)  Without complying with Subsection (a), a school district may purchase an item or service that is available from only one source, including:

(1)  an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;

(2)  a film, manuscript, or book;

(3)  a utility service, including electricity, gas, or water; [~~and~~]

(4)  a captive replacement part or component for equipment;

(5)  a proprietary maintenance service required to keep a manufactured or software product qualified under a warranty or in working condition; and

(6)  a good or service specified by the commissioner as available from only one source.

(m)  If a purchase is made at the campus level in a school district with a student enrollment of 180,000 or more that has formally adopted a site-based decision-making plan under Subchapter F, Chapter 11, that delegates purchasing decisions to the campus level, this section applies only to the campus and does not require the district to aggregate and jointly award purchasing contracts. A district that adopts site-based purchasing under this subsection shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid a [~~the~~] requirement [~~that a district aggregate purchases~~] under Subsection (a).

(o)  The commissioner shall adopt rules as necessary to implement this section.

SECTION 2.  Section 44.031(h), Education Code, as amended by Chapters 922 (H.B. 2260) and 1225 (H.B. 1445), Acts of the 76th Legislature, Regular Session, 1999, is reenacted and amended to read as follows:

(h)  On determination by the [~~If school equipment or a part of a school facility or personal property is destroyed or severely damaged, or experiences a major unforeseen operational or structural failure, or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the~~] board of trustees of a school district after the occurrence of one of the following emergencies [~~determines~~] that the delay posed by the contract methods provided for in this section would prevent or substantially impair the conduct of classes or other essential school activities, the school district may enter into contracts as necessary to respond to the emergency [~~then contracts for the replacement or repair of the equipment, school facility, or the part or portion of the school facility may be made~~] by [~~a method or~~] methods other than those [~~methods~~] required by this section:

(1)  the destruction, severe damage, or operational or structural failure of school equipment or a part of a school facility;

(2)  a health emergency declared by a governmental entity affecting the geographical area in which the school district is located; or

(3)  a cybersecurity threat involving the school district's critical infrastructure.

SECTION 3.  Section 44.0331, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a)  A school district that enters into a purchasing contract [~~valued at $25,000 or more~~] under Section 44.031(a)(5), under Subchapter F, Chapter 271, Local Government Code, or under any other cooperative purchasing program authorized for school districts by law shall document a contract-related fee, including a management fee, paid directly by [~~or to~~] the district to participate in the cooperative organization and the purpose of each fee under the contract.

(b)  The amount, purpose, and disposition of any fee described by Subsection (a) must be presented in a written report and submitted annually in an open meeting of the board of trustees of the school district. The written report must appear in the board's meeting [~~as an~~] agenda [~~item~~].

(d)  A report described by Subsection (b) is not required to include a fee paid directly to a cooperative organization by a contract vendor.

SECTION 4.  Section 44.0352(c), Education Code, is amended to read as follows:

(c)  The district shall either receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal or provide a written summary of each price stated in the proposal to an interested party on request. The [~~Not later than the 45th day after the date on which the proposals are opened, the~~] district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

SECTION 5.  Sections 44.031(k) and (l), Education Code, are repealed.

SECTION 6.  (a) The changes in law made by this Act apply only to a solicitation for which a school district first advertises or otherwise solicits bids, proposals, offers, qualifications, or similar responses on or after the effective date of this Act. A solicitation for which a school district first advertised or otherwise solicited bids, proposals, offers, qualifications, or similar responses before the effective date of this Act is governed by the law in effect when the first advertisement or solicitation was given, as applicable, and the former law is continued in effect for that purpose.

(b)  Section 44.0331, Education Code, as amended by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into and the former law is continued in effect for that purpose.

SECTION 7.  This Act takes effect September 1, 2023.