

By: West

S.B. No. 624

A BILL TO BE ENTITLED

AN ACT

relating to competitive procurement and change order requirements for local governments.

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

SECTION 1. Section 44.031(a), Education Code, is amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 [~~\$25,000~~] 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;
- (2) competitive sealed proposals;
- (3) a request for proposals, for services other than construction services;
- (4) an interlocal contract;
- (5) a design/build contract;
- (6) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;
- (7) a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;
- (8) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (9) the formation of a political subdivision

1 corporation under Section 304.001, Local Government Code.

2 SECTION 2. Subchapter B, Chapter 44, Education Code, is
3 amended by adding Section 44.0313 to read as follows:

4 Sec. 44.0313. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS.

5 (a) A school district may receive bids or proposals under this
6 chapter through electronic transmission if the board of trustees of
7 the school district adopts rules to ensure the identification,
8 security, and confidentiality of electronic bids or proposals and
9 to ensure that the electronic bids or proposals remain effectively
10 unopened until the proper time.

11 (b) Notwithstanding any other provision of this chapter, an
12 electronic bid or proposal is not required to be sealed. A
13 provision of this chapter that applies to a sealed bid or proposal
14 applies to a bid or proposal received through electronic
15 transmission in accordance with the rules adopted under Subsection
16 (a).

17 SECTION 3. Section 252.048, Local Government Code, is
18 amended by amending Subsection (c) and adding Subsection (e) to
19 read as follows:

20 (c) If a change order involves a decrease or an increase of
21 \$50,000 [~~\$25,000~~] or less and is for work within the original bid,
22 the governing body may grant general authority to an administrative
23 official of the municipality to approve the change orders.

24 (e) Compensation for a contract awarded on a unit price
25 basis may not exceed the actual quantity of items supplied or
26 services provided.

27 SECTION 4. Section 262.003(a), Local Government Code, is

1 amended to read as follows:

2 (a) Any law that requires a county to follow a competitive
3 procurement [~~bidding~~] procedure in making a purchase requiring the
4 expenditure of \$50,000 [~~\$25,000~~] or less does not apply to the
5 purchase of an item available for purchase from only one supplier.

6 SECTION 5. Section 262.023(a), Local Government Code, is
7 amended to read as follows:

8 (a) Before a county may purchase one or more items under a
9 contract that will require an expenditure exceeding \$50,000
10 [~~\$25,000~~], the commissioners court of the county must:

11 (1) comply with the competitive bidding or competitive
12 proposal procedures prescribed by this subchapter;

13 (2) use the reverse auction procedure, as defined by
14 Section 2155.062(d), Government Code, for purchasing; or

15 (3) comply with a method described by Subchapter H,
16 Chapter 271.

17 SECTION 6. Section 262.0245, Local Government Code, is
18 amended to read as follows:

19 Sec. 262.0245. COMPETITIVE PROCUREMENT [~~BIDDING~~]
20 PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS. A county
21 purchasing agent shall adopt procedures that provide for
22 competitive procurement [~~bidding~~], to the extent practicable under
23 the circumstances, for the county purchase of an item [~~under a~~
24 ~~contract~~] that is not subject to competitive procurement [~~bidding~~
25 ~~under Section 262.023~~].

26 SECTION 7. Section 262.025(d), Local Government Code, is
27 amended to read as follows:

1 (d) A [~~In a county with a population of 3.3 million or more,~~
2 ~~the~~] county and any district or authority created under Article
3 XVI, Section 59, of the Texas Constitution of which the governing
4 body is the commissioners court may require that a minimum of 25
5 percent of the work be performed by the bidder and, notwithstanding
6 any other law to the contrary, may establish financial criteria for
7 the surety companies that provide payment and performance bonds.

8 SECTION 8. Section 271.024, Local Government Code, is
9 amended to read as follows:

10 Sec. 271.024. COMPETITIVE PROCUREMENT [~~BIDDING~~] PROCEDURE
11 APPLICABLE TO CONTRACT. If a governmental entity is required by
12 statute to award a contract for the construction, repair, or
13 renovation of a structure, road, highway, or other improvement or
14 addition to real property on the basis of competitive bids, and if
15 the contract requires the expenditure of more than \$50,000
16 [~~\$25,000~~] from the funds of the entity, the bidding on the contract
17 must be accomplished in the manner provided by this subchapter.

18 SECTION 9. Section 271.054, Local Government Code, is
19 amended to read as follows:

20 Sec. 271.054. COMPETITIVE PROCUREMENT [~~BIDDING~~]
21 REQUIREMENT. Before the governing body of an issuer may enter into
22 a contract requiring an expenditure by or imposing an obligation or
23 liability on the issuer, or on a subdivision of the issuer if the
24 issuer is a county, of more than \$50,000 [~~\$25,000~~], the governing
25 body must submit the proposed contract to competitive procurement
26 [~~bidding~~].

27 SECTION 10. Section 271.060, Local Government Code, is

1 amended by adding Subsection (c) to read as follows:

2 (c) A governing body may grant authority to an official or
3 employee responsible for purchasing or administering a contract to
4 approve a change order that is within the scope of the original
5 contract and involves \$50,000 or less.

6 SECTION 11. Section 281.046, Local Government Code, is
7 amended by adding Subsection (f) to read as follows:

8 (f) The board may grant authority to an official or employee
9 responsible for purchasing or administering a contract to approve a
10 change order that is within the scope of the original contract and
11 involves \$50,000 or less.

12 SECTION 12. The heading to Section 281.047, Local
13 Government Code, is amended to read as follows:

14 Sec. 281.047. CONTRACTS OVER \$50,000 [~~\$10,000~~].

15 SECTION 13. Section 281.047(a), Local Government Code, is
16 amended to read as follows:

17 (a) This section applies to a contract that is for materials
18 for, or construction of, facilities and that is for an amount
19 greater than \$50,000 [~~\$10,000~~].

20 SECTION 14. Section 325.040, Local Government Code, is
21 amended to read as follows:

22 Sec. 325.040. CHANGE ORDERS. After a construction contract
23 is awarded, if the district determines that additional work is
24 needed or if the character or type of work, facilities, or
25 improvements should be changed, the board may authorize change
26 orders to the contract on terms the board approves. A change made
27 under this section may not increase or decrease the total cost of

1 the contract by more than 25 percent. The board may grant authority
2 to an official or employee responsible for purchasing or
3 administering a contract to approve a change order that is within
4 the scope of the original contract and involves \$50,000 or less.

5 SECTION 15. Sections 351.137(b) and (c), Local Government
6 Code, are amended to read as follows:

7 (b) Construction contracts requiring an expenditure of more
8 than \$50,000 [~~\$15,000~~] may be made only after competitive bidding
9 as provided by Subchapter B, Chapter 271.

10 (c) After a construction contract is awarded, if the
11 district determines that additional work is needed or if the
12 character or type of work, facilities, or improvements should be
13 changed, the board may authorize change orders to the contract on
14 terms the board approves. The board may grant authority to an
15 official or employee responsible for purchasing or administering a
16 contract to approve a change order that is within the scope of the
17 original contract and involves \$50,000 or less. A change made under
18 this subsection may not increase or decrease the total cost of the
19 contract by more than 25 percent.

20 SECTION 16. Section 375.221, Local Government Code, is
21 amended to read as follows:

22 Sec. 375.221. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS
23 CONTRACTS. (a) A contract, other than a contract for services,
24 for more than \$50,000 [~~\$15,000~~] for the construction of
25 improvements or the purchase of material, machinery, equipment,
26 supplies, and other property, except real property, may be entered
27 into only after competitive bids. Notice of the contract for the

1 purpose of soliciting bids shall be published once a week for two
2 consecutive weeks in a newspaper with general circulation in the
3 area in which the district is located. The first publication of
4 notice must be not later than the 14th [~~15th~~] day before the date
5 set for receiving bids. The board may adopt rules governing receipt
6 of bids and the award of the contract and providing for the waiver
7 of the competitive bid requirement if:

8 (1) there is an emergency;

9 (2) the needed materials are available from only one
10 source;

11 (3) in a procurement requiring design by the supplier
12 competitive bidding would not be appropriate and competitive
13 negotiation, with proposals solicited from an adequate number of
14 qualified sources, would permit reasonable competition consistent
15 with the nature and requirements of the procurement; or

16 (4) after solicitation, it is ascertained that there
17 will be only one bidder.

18 (b) If a proposed contract for works, plant improvements,
19 facilities other than land, or the purchase of equipment,
20 appliances, materials, or supplies is for an estimated amount of
21 more than \$50,000 [~~\$15,000 but less than \$25,000~~] or for a duration
22 of more than two years, competitive sealed proposals [~~bids~~] shall
23 be asked from at least three persons.

24 SECTION 17. Section 1433.025(a), Government Code, is
25 amended to read as follows:

26 (a) A contract for construction or purchase under this
27 chapter involving the expenditure of more than \$50,000 [~~\$2,000~~] may

1 be made only after advertising in the manner provided by Chapter
2 252, Local Government Code, or Subchapter C, Chapter 262, Local
3 Government Code, as applicable.

4 SECTION 18. Sections 44.031(k) and 44.033, Education Code,
5 are repealed.

6 SECTION 19. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2009.