

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 corporation under Section 304.001, Local Government Code.

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

Sec. 44.0313. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS. (a) A school district may

SENATE VERSION

Same as House version.

Same as House version.

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

receive bids or proposals under this chapter through electronic transmission if the board of trustees of the school district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

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

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

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

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

SECTION 4. Section 262.003(a), Local Government

SENATE VERSION

No equivalent provision.

SECTION 3. Same as House version.

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Code, is amended to read as follows:

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

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

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

- (1) comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter;
- (2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing;
- or
- (3) comply with a method described by Subchapter H, Chapter 271.

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

Sec. 262.0245. COMPETITIVE PROCUREMENT [~~BIDDING~~] PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS. A county purchasing agent shall adopt procedures that provide for competitive

SECTION 4. Same as House version.

SECTION 5. Same as House version.

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~procurement [bidding]~~, to the extent practicable under the circumstances, for the county purchase of an item ~~[under a contract]~~ that is not subject to competitive ~~procurement [bidding under Section 262.023]~~.

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

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

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

Sec. 271.024. COMPETITIVE PROCUREMENT ~~[BIDDING]~~ PROCEDURE APPLICABLE TO CONTRACT. If a governmental entity is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$50,000 ~~[\$25,000]~~ from the

SENATE VERSION

No equivalent provision.

SECTION 6. Same as House version.

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

funds of the entity, the bidding on the contract must be accomplished in the manner provided by this subchapter.

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

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

SECTION 10. Section 271.060, Local Government Code, is amended by adding Subsection (c) to read as follows:

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

No equivalent provision.

SENATE VERSION

SECTION 7. Same as House version.

No equivalent provision.

SECTION 8. Section 271.153(a), Local Government Code, is amended to read as follows:

(a) The total amount of money awarded in an

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

adjudication brought against a local governmental entity for breach of a contract subject to this subchapter is limited to the following:

- (1) the balance due and owed by the local governmental entity under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
- (2) the amount owed for change orders or additional work the contractor is directed to perform by a local governmental entity in connection with the contract;
[and]
- (3) reasonable and necessary attorney's fees that are equitable and just; and
- (4) interest as allowed by law.

SECTION 11. Section 271.9051(b), Local Government Code, is amended to read as follows:

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for an expenditure of less than \$100,000 with:

- (1) the lowest bidder; or

SECTION 9. Same as House version.

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

SECTION 12. Section 281.046, Local Government Code, is amended by adding Subsection (f) to read as follows:

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

SECTION 13. The heading to Section 281.047, Local Government Code, is amended to read as follows:
Sec. 281.047. CONTRACTS OVER \$50,000 [~~\$10,000~~].

SECTION 14. Section 281.047(a), Local Government Code, is amended to read as follows:

(a) This section applies to a contract that is for materials for, or construction of, facilities and that is for an amount

SENATE VERSION

No equivalent provision.

SECTION 10. Same as House version.

SECTION 11. Same as House version.

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

greater than \$50,000 [~~\$10,000~~].

SECTION 15. Section 325.040, Local Government Code, is amended to read as follows:

Sec. 325.040. CHANGE ORDERS. After a construction contract is awarded, if the district determines that additional work is needed or if the character or type of work, facilities, or improvements should be changed, the board may authorize change orders to the contract on terms the board approves. A change made under this section may not increase or decrease the total cost of the contract by more than 25 percent. The board may grant authority to an official or employee responsible for purchasing or administering a contract to approve a change order that is within the scope of the original contract and involves \$50,000 or less.

SECTION 16. Sections 351.137(b) and (c), Local Government Code, are amended to read as follows:

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

(c) After a construction contract is awarded, if the district determines that additional work is needed or if the character or type of work, facilities, or improvements

No equivalent provision.

SECTION 12. Section 351.137(b), Local Government Code, is amended to read as follows:

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

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

should be changed, the board may authorize change orders to the contract on terms the board approves. The board may grant authority to an official or employee responsible for purchasing or administering a contract to approve a change order that is within the scope of the original contract and involves \$50,000 or less. A change made under this subsection may not increase or decrease the total cost of the contract by more than 25 percent.

SECTION 17. Section 375.221, Local Government Code, is amended to read as follows:

Sec. 375.221. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS. (a) A contract, other than a contract for services, for more than \$50,000 [~~\$15,000~~] for the construction of improvements or the purchase of material, machinery, equipment, supplies, and other property, except real property, may be entered into only after competitive bids. Notice of the contract for the purpose of soliciting bids shall be published once a week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. The first publication of notice must be not later than the 14th [~~15th~~] day before the date set for receiving bids. The board may adopt rules governing receipt of bids and the award of the contract and providing for the waiver of the competitive bid requirement if:

(1) there is an emergency;

SENATE VERSION

SECTION 13. Section 375.221, Local Government Code, is amended to read as follows:

Sec. 375.221. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS. (a) A contract, other than a contract for services, for more than \$50,000 [~~\$15,000~~] for the construction of improvements or the purchase of material, machinery, equipment, supplies, and other property, except real property, may be entered into only after competitive bids. Notice of the contract for the purpose of soliciting bids shall be published once a week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. The first publication of notice must be not later than the 14th [~~15th~~] day before the date set for receiving bids. The board may adopt rules governing receipt of bids and the award of the contract and providing for the waiver of the competitive bid requirement if:

(1) there is an emergency;

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (2) the needed materials are available from only one source;
- (3) in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or
- (4) after solicitation, it is ascertained that there will be only one bidder.
- (b) If a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials, or supplies is for an estimated amount of more than \$50,000 [~~\$15,000 but less than \$25,000~~] or for a duration of more than two years, competitive sealed proposals [~~bids~~] shall be asked from at least three persons.

(c) The board of a district created by special law may by resolution elect to contract, in accordance with the resolution, for services for the construction of improvements or for the purchase of equipment, materials, machinery, supplies, and components of plants, works, facilities, or improvements of the district, notwithstanding a conflicting provision in the district's special law.

SECTION 18. Section 1433.025(a), Government Code, is amended to read as follows:

SENATE VERSION

- (2) the needed materials are available from only one source;
- (3) in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or
- (4) after solicitation, it is ascertained that there will be only one bidder.
- (b) If a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials, or supplies is for an estimated amount of more than \$50,000 [~~\$15,000 but less than \$25,000~~] or for a duration of more than two years, competitive sealed proposals [~~bids~~] shall be asked from at least three persons.

No equivalent provision.

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(a) A contract for construction or purchase under this chapter involving the expenditure of more than \$50,000 [~~\$2,000~~] may be made only after advertising in the manner provided by Chapter 252, Local Government Code, or Subchapter C, Chapter 262, Local Government Code, as applicable.

SECTION 19. Section 54.054(a), Transportation Code, is amended to read as follows:

(a) Except as otherwise provided by this chapter, the board may award a contract involving the expenditure of funds in excess of the amount applicable to an expenditure of funds by a municipality under Section 252.021(a), Local Government Code, [more than \$25,000] only by competitive bidding.

SECTION 20. Sections **44.031(k) and** 44.033, Education Code, are repealed.

No equivalent provision.

No equivalent provision.

SENATE VERSION

SECTION 14. Same as House version.

SECTION 15. Section 44.033, Education Code, is repealed.

SECTION 16. Section 271.159, Local Government Code, is repealed.

SECTION 17. The change in law made by this Act applies only to a claim that arises under a contract executed on or after the effective date of this Act. A

CONFERENCE

House Bill 987
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 21. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

SENATE VERSION

claim that arises under a contract executed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 18. Same as House version.

CONFERENCE