

BILL ANALYSIS

C.S.H.B. 1558
By: Simmons
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that some uncertainty exists regarding which types of contracts the governing body of a coordinated county transportation authority may authorize the negotiation of without competitive sealed bids or proposals. C.S.H.B. 1558 seeks to provide clarification and make this procurement process more efficient and transparent.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1558 amends the Transportation Code to specify that the authorization for a coordinated county transportation authority's governing body to authorize the negotiation of a contract without competitive sealed bids or proposals for a contract for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition includes a contract for items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; gas, water, and other utility services; and captive replacement parts or components for equipment. The bill removes that authorization with respect to a contract for services for which competitive bidding is precluded by law and includes in that authorization a contract for planning services. The bill revises that authorization with respect to a contract for an authority project awarded for alternate project delivery using the procedures under Government Code provisions relating to contracting and delivery procedures for construction projects.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1558 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sec. 460.406. , Transportation Code, is amended to read as follows:

PURCHASES: COMPETITIVE BIDDING.

(a) Except as provided by Subsection (c), an authority may not award a contract for construction, services, or property, other than real property, except through the solicitation of competitive sealed bids or proposals ensuring full and open competition.

(b) The authority shall describe in a solicitation each factor to be used to evaluate a bid or proposal and give the factor's relative importance.

(c) The board of directors may authorize the negotiation of a contract without competitive sealed bids or proposals if:

(1) the aggregate amount involved in the contract is less than the greater of:

(A) \$50,000; or

(B) the amount of an expenditure under a contract that would require a municipality to comply with Section 252.021(a), Local Government Code;

(2) the contract is for construction for which not more than one bid or proposal is received;

(3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) gas, water, and other utility services; and

(C) captive replacement parts or components for equipment.

(4) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;

(5) the contract is for personal ~~or~~ professional, or planning services ~~for which competitive bidding is precluded by law;~~

(6) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including:

(A) a credit support agreement, such as a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 460.406(c), Transportation Code, is amended to read as follows:

(c) The board of directors may authorize the negotiation of a contract without competitive sealed bids or proposals if:

(1) the aggregate amount involved in the contract is less than the greater of:

(A) \$50,000; or

(B) the amount of an expenditure under a contract that would require a municipality to comply with Section 252.021(a), Local Government Code;

(2) the contract is for construction for which not more than one bid or proposal is received;

(3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) gas, water, and other utility services; and

(C) captive replacement parts or components for equipment;

(4) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;

(5) the contract is for personal, ~~or~~ professional, or planning services ~~for which competitive bidding is precluded by law];~~

(6) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including:

(A) a credit support agreement, such as a

line or letter of credit or other debt guaranty;
 (B) a bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreement;
 (C) an agreement with a securities dealer, broker, or underwriter; and
 (D) any other contract or agreement considered by the board of directors to be appropriate or necessary in support of the authority's financing activities;
 (7) the contract is for work that is performed and paid for by the day as the work progresses;
 (8) the contract is for the lease or purchase of an interest in land;
 (9) the contract is for the purchase of personal property sold:
 (A) at an auction by a state licensed auctioneer;
 (B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or
 (C) by a political subdivision of this state, a state agency, or an entity of the federal government;
 (10) the contract is for services performed by persons who are blind or have severe disabilities;
 (11) the contract is for the purchase of electricity;
 (12) the contract is one for an authority project and awarded for alternate project delivery using the procedures under Subchapters E, F, G, H, and I, Chapter 2269, Government Code; or
 (13) the contract is for fare enforcement officer services under Section 460.1092.
 (d) For the purposes of entering into a contract authorized by Subsection (c)(12), an authority is considered a "governmental entity" as described by Section 2269.002, Government Code.

No equivalent provision.

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 (B) a bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreement;
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 (10) the contract is for services performed by persons who are blind or have severe disabilities;
 (11) the contract is for the purchase of electricity;
 (12) the contract is one for an authority project and awarded for alternate project delivery using the procedures, requirements, and limitations under Subchapters E, F, G, H, and I, Chapter 2269, Government Code; or
 (13) the contract is for fare enforcement officer services under Section 460.1092.

SECTION 2. (a) The changes in law made by this Act apply only to a contract or construction project for which a governing body of a coordinated county transportation authority created under Chapter 460, Transportation Code, first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.
 (b) A contract or construction project for

which a governing body of a coordinated county transportation authority created under Chapter 460, Transportation Code, first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, 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 2. 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, 2017.

SECTION 3. Same as introduced version.