

SUBJECT: Use of competitive sealed proposals for city insurance purchases

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Hill, Ehrhardt, Staples, Thompson, Tillery, Woolley
2 nays — Bailey, Davila
1 absent — Conley

WITNESSES: For — Joe Weikerth, City of Houston; Susan Horton, Texas Municipal League
Against — George Grenias, city comptroller, Houston

BACKGROUND: Competitive sealed bidding requires potential providers of goods or services to submit bids to a city under seal. Bids are opened and compared at a specified time to assure independence of bidding. By statute cities are required to accept the lowest responsible bid. Use of sealed proposals allows cities to negotiate for modifications and additional benefits with the parties after presentation of their proposals.

Local Government Code sec. 252.021 requires Texas cities to use competitive sealed bidding for contracts costing more than \$15,000 in municipal funds, other than insurance contracts. The section allows a city to use either competitive sealed bids or sealed proposals for insurance contracts requiring city expenditures of more than \$5,000. The section also states that the sealed proposal procedure may be used only for high technology procurement.

DIGEST: HB 1178 would eliminate the requirement that a city comply with prescribed competitive sealed-bid for insurance contracts requiring city expenditures of \$5,000 or more. It would amend the Local Government Code to state that a city may use competitive sealed proposals only for high technology procurements or the purchase of insurance.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

Cities can better serve the interest of taxpayers by using sealed competitive proposals to purchase insurance. With the ability to negotiate the fine points of items such as coverage limits, deductibles and exclusions, cities could acquire the best coverage at the best price. The current law appears to allow use of sealed proposals only for high technology purchases. The amendment proposed by this bill would make clear that insurance contracts of any amount could be handled after accepting sealed proposals.

Formal competitive sealed bidding limits access to potential bidders and limits competition. Some companies do not want to submit bids because of the onerous nature of formal competitive bid laws.

Risk management and insurance consultants say it is very difficult to develop specifications for the various coverage that foresee ever-changing insurance markets. Since the bidding process does not allow correction of bids after they are opened, the lowest bids submitted to a city may not be acceptable because of a technical error in the bid. In addition, cities can draw specifications so narrowly that some otherwise-qualified insurance companies may not get to bid.

Sealed competitive proposals are already used by counties and school districts. They have also been used by cities for the purchase of high technology. There have been no problems of abuse. Current anti-corruption laws and the public nature of city purchases made in open meetings of city council would serve to prevent abuses.

**OPPONENTS
SAY:**

Competitive sealed bidding assures taxpayers that their city is purchasing insurance at the lowest responsible price, while the competitive sealed proposal process would not. No evidence suggests that using the competitive sealed proposal process for insurance would save the taxpayers money.

Since the competitive sealed proposal process lacks clear standards for city officials and contractors to follow and the city would no longer required to take the lowest bid for insurance contracts, the bill would create a potential

for abuse. Insurance companies that have made campaign contributions to elected city officials and friends of city leaders could receive special treatment. Minority-owned firms could be subjected to discrimination.

If cities have had problems with specifications in their use of the competitive bidding process to purchase insurance, then the bidding process should be improved and not replaced by the sealed competitive proposal process, which has the high potential of being abused. Just because counties can use the sealed competitive proposals process to acquire insurance coverage does not mean that cities should.

OTHER
OPPONENTS
SAY:

While this bill would serve a worthy purpose, it could do more to guard against abuses of the sealed competitive proposal. For instance, insurance companies should be prohibited from making campaign contributions to elected officials. The bill should also have clear and objective standards to guide the city and contracting parties during negotiations. The very least the bill should apply only to larger municipalities and existing restrictions kept in the law, as the Senate bill would do.

NOTES:

An amended version of SB 894 by Ellis, the companion to HB 1178, was reported favorably by the Senate Intergovernmental Relations Committee on March 29 and recommended for the Local and Uncontested Calendar. The bill was amended to allow only cities with populations in excess of 500,000 (Houston, Dallas, San Antonio and El Paso) to use the competitive sealed proposal process for the purchase of insurance contracts requiring \$5,000 or more in city expenditures.