

SUBJECT: Allowing additional use of competitive sealed proposals by cities

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Talton, Wong, Bailey, Blake, Menendez, Rodriguez

0 nays

1 absent — A. Allen

WITNESSES: For — James Nuse, Tom Word, Municipality of Round Rock

Against — None

BACKGROUND: Before 2001, major city public works or construction projects could be awarded only on a competitive bid basis, with the contract going to the lowest responsible bidder. SB 510 by Armbrister, enacted by the 77th Legislature in 2001, authorized municipalities to use the competitive sealed proposal process for projects involving facilities.

In the competitive sealed proposal process, a municipality selects an engineer or an architect to prepare construction documents that specify competence and qualifications. The municipality seeks and evaluates proposals from contractors, ranks each proposal on a weighted basis according to requirements, then selects the contractor that offers the best value based on the published criteria and ranking.

The municipality and the selected engineer and architect negotiates a contract with the selected contractor and discusses options for scope or time modification and any price changes associated with that modification. If the municipality is unable to negotiate a contract with the selected contractor, the municipality will formally, in writing, end negotiations and proceed to the next ranked contractor.

DIGEST: HB 2661 would authorize municipalities to use the competitive sealed proposal process for contracts of \$1.5 million or less for construction of highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways,

drainage projects, related types of projects associated with civil engineering construction, or buildings or structures that were incidental to these sorts of construction projects.

The competitive sealed proposal process used to select the contractor for such projects would follow the standards established under Local Government Code, sec. 271.116.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

The competitive sealed proposal process has for some time benefited school districts and has proven effective since last session in securing low-cost, high-quality contracts for "vertical" facilities. Additional savings could be realized by authorizing cities to use competitive sealed proposals for "horizontal" projects, such as roads and water distribution.

The process allows flexibility in selecting the best value for a municipality, considering multiple dimensions that include not only price but contractor experience, delivery schedules, expected reliability, and maintainability. Adding a criterion like contractor experience could help the municipality make determinations that would ensure the quality of the project in the short term and lead to greater cost benefits in the long term by delaying the need for maintenance and repairs.

A municipality would not be stuck with the lowest bidder, who may not afford the highest quality, and would have the flexibility to hold discussions with the prospective contractors to negotiate bids. If the municipality deemed a bid not to be within cost parameters, it could negotiate the timeline and other features of the proposal to see if the contract could be altered to attain a reasonable price. If the highest-rated contractor could not meet the cost requirements, the entity could negotiate with the next contractor. This cannot be done with a basic competitive bidding process.

Because the contracts would be limited to those of \$1.5 million or less, the fiscal impact would be limited. Although some cases could arise in which the competitive sealed proposal process would lead to selection of a bid that was not the lowest in cost, this would be because it was best suited to meet certain other requirements, and the city could try to negotiate the

price before accepting the bid. Not every low-cost bid is necessarily best because not every contractor is equally equipped to provide certain benefits, such as ensuring public safety or meeting certain timelines that could benefit the community. It also would be important to consider the impact to the local economy if projects were not completed properly or if lengthy construction inhibited sales at local businesses.

The bill would be permissive. No city would be required to use a competitive sealed proposal process, but the bill would give cities the flexibility to use the process for smaller projects when appropriate and cost-effective.

**OPPONENTS
SAY:**

Choosing contractors based upon the lowest responsible bidder is the most beneficial process for taxpayers because it ensures quality at a fair price. Inherent in choosing contractors under this process is identifying the contractor who has the capability fully to perform the contract requirements with the integrity and reliability that would assure good-faith performance. Based upon these criteria, even under competitive bidding, the lowest bid is accepted only if it is apparent that no one's safety would be threatened on the basis of choosing a contract that was a good bargain.

The competitive sealed bid process can result in delays because the architect or engineer first draws up the specifications, then the bids are solicited, and finally multiple negotiations take place before a contractor is selected. Many projects, such as roads or sewage lines, could be in immediate need of repair, making it a priority to complete the process quickly. The competitive sealed bid process would require more time for bid selection, and this could be counter-productive for a time-critical project.