

- SUBJECT:** Raising a county's threshold for requiring competitive bidding
- COMMITTEE:** County Affairs — favorable, without amendment
- VOTE:** 7 ayes — Coleman, Berman, Castro, J. Davis, Marquez, Sheffield, W. Smith
- 0 nays
- 2 absent — Morrison, Bolton
- WITNESSES:** For — Jim Allison, County Judges and Commissioners Association of Texas; April Bacon, Texas Association of County Auditors; Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify:* Michael Chatron, AGC Texas Building Branch; Deece Eckstein, Travis County; Mark Mendez, Tarrant County; Michael Peterson, AT&T Texas; Virginia "V.A." Stephens, Brewster County)
- Against — Milton Morin, Daily Court Review; (*Registered, but did not testify:* GK Sprinkle, Daily Court Review, Daily Commercial Record)
- BACKGROUND:** Local Government Code, chs. 262 and 271 require counties to use competitive bidding procedures for the acquisition, sale, or lease of property or the award of a contract related to the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property if the total expenditure of county funds needed exceeds \$25,000. The same bidding requirement applies under Local Government Code, ch. 363 to acquisitions and contracts made by a governing board of a crime control and prevention district created by a county.
- Local Government Code, ch. 252 requires competitive bidding procedures if a municipality's total expenditure of funds for the acquisition, sale, or lease of property exceeds \$50,000. This threshold also applies to purchasing contracts made by a governing board of a crime control and prevention district created by a municipality. For contracts related to the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property, the threshold for municipalities is the same (\$25,000) as for counties.

Under competitive bidding procedures, a county must publish a notice of a proposed acquisition or contract in a newspaper of general circulation in the county at least once a week beginning no later than the 14th day before the date of the bid opening, as required by Local Government Code, sec. 262.025. If a county does not have a newspaper of general circulation, then the notice must be published in a prominent place in the county courthouse for 14 days before the bid opening. Local Government Code, sec. 262.067(a) requires a county to award a competitive bidding contract to the bidder who submits “the lowest and best bid.”

**DIGEST:**

HB 78 would increase from \$25,000 to \$50,000 the amount that a county could expend for the acquisition, sale, or lease of property or for the award of a contract related to the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property before being required to use competitive bidding procedures.

The bill also would increase from \$25,000 to \$50,000 the amount that a crime control and prevention district created by a county could expend on a purchasing contract before having to use competitive procedures.

The bill would apply only to a contract awarded on or after the bill’s September 1, 2009 effective date.

**SUPPORTERS  
SAY:**

HB 78 would make county procurement and contracting procedures more efficient and less costly by giving to counties the same flexibility as municipalities to make acquisitions and contracts between \$25,000 and \$50,000. Due to inflation and administrative expenses, the current expenditure limit of \$25,000 has made competitive bidding for low and mid-dollar purchases burdensome and impractical. Counties now have no choice but to spend taxpayer dollars on costly notice publications and implementation procedures for routine purchases. HB 78 simply would restore a county’s purchasing power roughly to where it stood in 1999, when the Legislature last modified the bidding threshold.

Until 2007, the competitive bidding expenditure threshold had been the same (\$25,000) for municipalities and counties. The 80th Legislature increased the threshold for municipalities to \$50,000 but did not change the threshold for counties. The disparity between competitive bidding thresholds for counties and municipalities has confused vendors and placed counties at a competitive disadvantage. The bill also would align the competitive bidding threshold for crime control and prevention

districts created by counties with those created by cities — there is no justification for these types of districts to have different thresholds based solely on how they were created.

Increasingly, counties encounter situations in which a competitive bidding process results in no bids. This forces counties to choose between foregoing a purchase and beginning the competitive bidding process over again. Both options are inefficient and waste taxpayer funds.

HB 78 would not decrease a county's ability to attract low-cost, high-quality purchase and contract bids. The argument that competitive bidding always produces superior bids does not hold up to practical experience, which demonstrates that the competitive bidding process is ill-suited for some low and mid-dollar purchases. County purchasing agents have had great success in using negotiation and solicitation to attract bids lower than those acquired through competitive bidding. The advantages of competitive bidding are seen mostly in high-cost purchases. In addition, the bill still would allow counties to use competitive bidding procedures for purchases of \$50,000 or less if a county decided to do so.

Concerns that HB 78 would reduce public transparency of county expenditures are unfounded. The lack of a newspaper notice does not mean lack of all notice. The law requires that all county purchases and contracts, whether subject to competitive bidding or not, be recorded and made available to the public. County websites often display this information, and the public always may request to view county records.

**OPPONENTS  
SAY:**

By raising the threshold for competitive bidding, HB 78 would reduce a county's ability to attract low bids and increase purchasing and contracting costs that ultimately would affect county taxpayers. Competitive bidding produces low-cost, high quality bids, benefitting taxpayers. It also helps prevent corruption and "capture" of county officials by contractors who do repeat business with counties and sometimes exploit close relationships with officials.

This bill would make county purchasing and contracting practices less transparent. Publishing competitive bidding notices in daily newspapers gives the public a convenient means of tracking county government bidding and spending practices. Eliminating this requirement for county expenditures of between \$25,000 and \$50,000 would make it more

difficult for concerned citizens to hold elected county officials responsible for their spending of taxpayer money.

NOTES:

The companion bill, SB 253 by Estes, has been referred to the Senate Intergovernmental Relations Committee.

An identical bill, HB 2573 by Gonzalez Toureilles, was set on the General State Calendar for second reading on April 23 and was postponed until May 1.