

SUBJECT: Procurement and change order requirements for local governments

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego, Geren, Harless, Jones, Maldonado, Oliveira, Swinford, S. Turner

0 nays

2 absent — Hilderbran, Lucio

WITNESSES: For — Carol Cooper, Texas Public Purchasing Association, City of Garland, Texas Municipal League; (*Registered but did not testify*: April Bacon, Texas Association of County Auditors; Jon Fisher, Associated Builders and Contractors of Texas; Geoffrey Gay, Cities Aggregation Power Project, South Texas Aggregation Project; Ruben Longoria, Texas Association of School Boards; Mindy Martinez, Teresa Pollock, City of Garland; Mark Mendez, Tarrant County; Pat Reynolds, City of Leander; Jennifer Rodriguez, City of College Station; Michael Vasquez, Texas Conference on Urban Counties

Against — Ken Whalen, Texas Daily Newspaper Association, Texas Press Association; (*Registered, but did not testify*: GK Sprinkle, Daily Court Review, Daily Commercial Record)

BACKGROUND: Local Government Code, sec. 252.021 requires a municipality to comply with certain competitive bidding procedures before entering a contract that requires an expenditure of more than \$50,000.

The Local Government and Education codes require school districts and other local governmental entities to comply with competitive bidding procedures when making certain contracts for more than \$25,000. County jail construction and certain public works contracts have competitive bidding thresholds of \$15,000.

The governing body of a municipality may authorize an administrative official of the municipality to approve change orders that involve a decrease or increase of \$25,000 or less.

Government Code, sec. 1433.025(a) requires local governmental entities to advertise notice of bid solicitation before certain construction or purchase contracts for more than \$2,000 may be made.

Education Code, sec. 44.031(j) allows school districts to purchase an item available from only one source without complying with certain competitive bidding procedures. Education Code, sec. 44.031(k) makes sec. 44.031(j) inapplicable where the item is mainframe processing equipment or peripheral attachments with a per-item purchase price of more than \$15,000.

Education Code, sec. 43.033 governs a school district's purchase of personal property with a total value between \$10,000 and \$25,000 per year.

Local Government Code, sec. 262.025 applies to counties with a population over 3.3 million and 281.047 applies to contracts over \$10,000.

**DIGEST:**

HB 987 would require local government entities to follow competitive bidding or procurement procedures when entering the following contracts over \$50,000:

- school district contracts for the purchase of items other than produce or vehicle fuel;
- county purchase contracts;
- county jail facility construction contracts;
- county, municipality, or hospital contracts for the sale, lease, or acquisition of property;
- public works contracts for material, machinery, equipment, supplies, property other than real property, and construction of improvements;
- contracts for the construction, repair, or renovation of a structure, road, highway, or improvement of real property, where a statute requires competitive bidding

If a public works contract for plant improvements, facilities, equipment, appliances, materials, or supplies was over \$50,000, competitive sealed proposals would have to be sought from at least three persons.

A governing body of a municipality or government agency, or the board of directors of a civic center authority, sports facility district, or jail district

could authorize an official or employee to approve change orders that involved a decrease or increase of \$50,000 or less and were for work within the scope of the original contract.

A school district could receive bids and proposals by electronic transmission if the district's board of trustees adopted rules to ensure the confidentiality of the bids and proposals and ensure they would remain unopened until the proper time. Electronic bids and proposals would not be required to be sealed.

The governing body of a municipality could not provide compensation for a contract awarded on a unit price basis that exceeded the quantity of items or services procured.

A competitive bidding notice for certain public works contracts would have to be published by the 14th day before the date set for receiving bids.

HB 987 would amend Local Government Code, sec. 281.047 and Government Code, sec. 1433.025(a) to apply to contracts over \$50,000, and amend Local Government Code, sec. 262.025(d) to apply to all counties, regardless of population. It also would repeal Education Code, sec. 44.031(k) and sec. 43.033.

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, 2009.

**SUPPORTERS  
SAY:**

By raising the competitive bidding and change order thresholds, HB 987 would standardize the procurement requirements for local governmental entities. Standardization would streamline the purchasing process for local governments and simplify the process for vendors doing business with a variety of governmental entities.

Allowing governmental entities to appoint one person to approve change orders under \$50,000 would make the process faster, more efficient, and save money.

Raising the threshold simply would account for inflation, as in some cases the thresholds have not been raised in over a decade.

While HB 987 would raise the threshold amounts for when certain state standards apply, local governmental entities could choose to maintain lower limits.

Though the bill would raise the threshold for competitive sealed proposals, transparency of government would not diminish. Anyone seeking information about the transaction could contact the local governmental entity and request the information.

**OPPONENTS  
SAY:**

By allowing competitive sealed proposals for contracts up to \$50,000, HB 987 would diminish transparency of government and give the public less information about how tax dollars are being spent. Decreasing the information available to the public would lessen the opportunity for citizens to object to government decisions with which they disagrees.

Despite inflation, raising the threshold is unnecessary because \$25,000 is still a large sum of money.

**NOTES:**

The companion bill, SB 624 by West, has been referred to the Senate Intergovernmental Relations Committee.