

## **BILL ANALYSIS**

Senate Research Center  
83R1217 MXM-F

S.B. 438  
By: Birdwell  
Intergovernmental Relations  
4/18/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Public entities such as school districts, municipalities, and counties, among others, often utilize purchasing cooperatives when procuring goods and services in order to increase buying power and leverage economies of scale. Purchasing cooperatives conduct preliminary competitive bidding processes and sign contracts with companies to deliver the goods and services that clients of the cooperative will need. Cooperatives often consult a design professional when issuing a request for proposals (RFP) to determine technical specifications for roofing projects. There have been reported cases of contractors providing design services to a cooperative, and specifying that jobs must utilize proprietary techniques or materials that the contractor has sole rights to provide. In essence, this process eliminates competition and allows a company to overcharge for services.

This bill states that an interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase roofing materials or services from a person who provided consulting services to the cooperative for development of the RFP. This will require cooperatives to consult a third party when seeking consultation on a bidding process, and ensure competitiveness.

As proposed, S.B. 438 amends current law relating to an interlocal contract between a governmental entity and a purchasing cooperative to purchase roofing materials or services.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 791.011, Government Code, by adding Subsections (h-1) and (h-2), as follows:

(h-1) Defines "roofing materials or services" in this section. Prohibits an interlocal contract between a governmental entity and a purchasing cooperative from being used to purchase roofing materials or services from a person who provided consulting services to the cooperative on the contract, including providing specifications for bids on the contract. Provides that this prohibition also applies to a person that is an agent, subsidiary, or parent company of the person who consulted with the cooperative or a person related in the second degree of consanguinity or affinity to a person who consulted with the cooperative.

(h-2) Provides that the prohibition under Subsection (h-1) does not apply to a renewal of a contract based on a request for proposal submitted, or substantially similar to a request for proposal submitted, before October 1, 2013, if the contract is renewed before October 1, 2014. Provides that this subsection expires October 1, 2014.

SECTION 2. Provides that the change in law made by this Act to Section 791.011, Government Code, applies only to an interlocal contract or an amendment to, supplement to, or waiver of a provision of a contract made on or after the effective date of this Act. Provides that an interlocal

contact or an amendment to, supplement to, or waiver of a provision of a contract made before the effective date of this Act is governed by the law in effect when the contract or amendment, supplement, or waiver was made, and the former law is continued for that purpose.

SECTION 3. Effective date: October 1, 2013.