

**SUBJECT:** Considering bidder's principal place of business for certain contracts.

**COMMITTEE:** County Affairs — committee substitute recommended

**VOTE:** 6 ayes — R. Allen, W. Smith, Casteel, Laney, Naishtat, Olivo

0 nays

3 absent — Coleman, Farabee, Otto

**WITNESSES:** None

**BACKGROUND:** Local Government Code, ch. 271, authorizes municipalities with populations of 200,000 or less, in contracts for real or personal property, to consider bids from local businesses when awarding contracts if the bidder's price is within 3 percent of the lowest bid. Counties with populations of 400,000 or less are included in this provision, but school districts are not.

Under Education Code, sec. 44.031, most school district purchasing contracts must be formed by the method that provides the best value for the district. In determining with whom to contract, except as otherwise provided, a school district may consider price, vendor reputation, quality of goods and services, whether goods or services meet the district's needs, the district's past relationship with the vendor, rules on historically underutilized businesses, long-term costs, and other relevant factors.

**DIGEST:** CSHB 664 would authorize municipalities with populations of 250,000 or less and the school districts within those municipalities to purchase real property, personal property, or services in a competitive sealed bid process by contracting with:

- the lowest bidder; or
- a local business offering a bid within 5 percent of the lowest bid, if the local bidder provided the best combination of price and economic development opportunity, including employment for residents and tax revenue for the municipality.

A municipality or school district also could reject all bids.

This bill would take effect September 1, 2005, and would apply only to contracts for which the notice soliciting bids was issued on or after that date.

**SUPPORTERS  
SAY:**

CSHB 664 would enhance local economies. By giving local businesses an opportunity to contract with the cities in which they do business, local economies could grow and diversify to support local employees and productivity, while making efficient use of materials and energy. Political subdivisions now often contract with out-of-town or out-of-state businesses rather than local businesses because they must contract with the lowest bidder or are not authorized to consider a bidder's principal place of business.

Expanding the permissible difference between the lowest bid and a local bid to 5 percent would create a more competitive bidding process for local businesses. Raising the population threshold from 200,000 to 250,000 would allow cities that already contract with local businesses to continue this practice as their population grows. School districts also could take advantage of an expanded bidding process to support local economies.

The bill would allow flexibility in selecting the best value for municipalities and school districts, considering multiple factors that include not only price but contractor location and local economic development. Allowing municipalities and school districts to favor local businesses could help them provide for the quality of the project in the short term and greater local prosperity in the long term. Although this would mean in some cases that the selected bid was not the lowest, this presumably would be because the bidder met certain other requirements and because the contract could lead to greater tax revenue and local jobs in the future. To ensure this flexibility in accepting local bids was used as intended, the bill would require that a city or school district specify in writing how a local bid that was higher than a non-local bid would benefit the local economy.

Municipalities and school districts would not be stuck with the lowest bidder, who may not afford the highest quality, and could consider local businesses whose bids were slightly higher but offered both great quality and economic development opportunities.

The bill would be permissive. No city or school district would be required to use a local bidder or to turn down the lowest responsible bidder.

OPPONENTS  
SAY:

CSHB 664 could jeopardize the fairness and economic efficiency built into the current bidding system. Basing contracts on the lowest responsible bidder benefits taxpayers because it ensures quality at a fair price. Inherent in choosing contractors under this process is identifying the contractor who fully could perform the contract with the integrity and reliability to assure good-faith performance. Even under competitive bidding, the lowest bid would be accepted only if it were apparent that quality and public well-being would not be threatened because of choosing a contract that was a good bargain.

The current process already builds in flexibility. Local businesses may offer bids and receive contracts from municipalities even when their bids are not the lowest. Cities should not be able to contract with local businesses that cannot afford to lower bids to within 3 percent of the lowest bid. Bids above that level would generate excessive costs to cities. Applying broader discretion to school districts could further strain already limited school district budgets.

NOTES:

The substitute raised the population threshold for municipalities from 200,000 to 250,00 and would authorize municipalities and school districts to reject all bids.