

SUBJECT: Prohibiting vendor contact with ISD trustees during procurement

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Allen, Bohac, Deshotel, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Dutton, Farney

WITNESSES: For — Al Arreola, South San Antonio Chamber of Commerce; Stacey Estrada, South San Antonio ISD School Board; (*Registered, but did not testify*: Lindsay Gustafson, Texas Classroom Teachers Association; Portia Bosse, Texas State Teachers Association; Monty Exter, The Association of Texas Professional Educators)

Against — Grover Campbell, Texas Association of School Boards

On — Lisa Dawn-Fisher, Texas Education Agency; (*Registered, but did not testify*: Von Byer, Texas Education Agency)

BACKGROUND: Education Code, secs. 44.031(b) and 44.0351 authorize school districts to use competitive bidding to select vendors for certain services and require a district to award a competitively bid contract to the bidder offering the best value. In determining the best value, the district is not restricted to considering price alone but may consider other factors, including the reputation of the vendor, quality of the vendor's goods and services, the vendor's past relationship with the district, and other factors.

DIGEST: CSHB 1486 would apply only to school districts located in a county that met the description in the bill (Bexar County). Trustees of those districts would be prohibited from having direct or indirect communication outside of a public board meeting with an actual or prospective bidder or offeror during the period after the district had issued a request for proposals (RFP) or bid advertisement and before the board had awarded the

contract. The board would be required to reject a prospective vendor's bid or offer if prohibited contact with a trustee occurred.

A trustee would be allowed to communicate with an actual or prospective bidder or offeror if the trustee had a substantial interest in a business entity or in real property and complied with Local Government Code requirements pertaining to the regulation of conflicts of interest and:

- the communication related to the business entity's response to the district's RFP or bid advertisement; or
- the communication related to the real property offered in response to the district's RFP or bid advertisement.

Communication also would be allowed between trustees and bidders or offerors registered as participants at a trade show or convention if at a public board meeting the trustee disclosed that the communication occurred and did so no later than one week after the communication occurred or the date on which the board voted on the RFP or bid advertisement, whichever was earlier.

This bill would take effect September 1, 2015, and would apply only to a contract for which the RFP or bid was issued on or after that date.

**SUPPORTERS
SAY:**

CSHB 1486 would help avoid perceptions of "back room deals" by preventing school board trustees in Bexar County from having communications with prospective bidders during the procurement process. The perception of corruption in awarding contracts undermines the public's trust in the management of local schools. The bill would codify what is considered a best practice by other local governmental entities to bar discussions between purchasing decision-makers and potential vendors.

The bill would increase transparency by requiring that communication between trustees and potential vendors be conducted in open meetings where the public could be informed of the contracting process. Trustees would not be prevented from sharing their expertise with a prospective

vendor, but they would have to do so in a public meeting.

Trustees could still discuss goods and services with registered vendors at trade shows and conventions as long as they disclosed such communication at a public meeting.

**OPPONENTS
SAY:**

CSHB 1486 would add unnecessary restrictions on communications between school trustees and prospective vendors. Texas has existing laws on purchasing and conflicts of interest that could be used to sanction wayward board members. Trustees could be referred to law enforcement for investigations of contracting irregularities.

Trustees inadvertently could engage in prohibited contacts because they might not always know if the district had an outstanding RFP that did not go through the board. Trustees who have expertise with a specific product or service for which their district is seeking bids could be restricted from sharing their knowledge with bidders or offerors. This could prevent the district from receiving bids from vendors who could offer the best value to the district.