

BILL ANALYSIS

Senate Research Center
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S.B. 413
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Intergovernmental Relations
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, many of the provisions relating to county purchasing and procurement are out of date. S.B. 413 updates these provisions and makes other changes to clarify the duties and procedures used by county auditors and purchasing agents. It clarifies competitive bidding and related processes, including aligning penalties involving technical components of the competitive bidding statute to violations found in other law, and provides alternatives when bid processes fail to provide responsive bidders. This bill also recognizes current purchasing practices, such as use of procurement cards and aligns statutory processes with current technology, such as electronic payment. In addition, S.B. 413 removes many of the population brackets that limited certain procurement processes to certain counties and provides uniformity across county purchasing statutes.

As proposed, S.B. 413 amends current law relating to the purchasing and contracting authority of counties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the comptroller of public accounts as the successor agency to the Texas Building and Procurement Commission is rescinded in SECTION 1 (Section 262.002, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 262.002, Local Government Code, as follows:

Sec. 262.002. New heading: **AUTHORITY TO COOPERATIVELY PURCHASE GOODS AND SERVICES.** (a) Authorizes a county to purchase an item through a cooperative purchasing program that uses a competitive bidding procedure. Deletes existing text authorizing the commissioners court of a county to purchase through the comptroller of public accounts road machinery and equipment, tires, and tubes to be used by the county.

(b) Authorizes a county to purchase an item according to a competitive bidding procedure promulgated by an authorized state agency. Deletes existing text requiring the Texas Building and Procurement Commission (commission) to purchase an item under this section on competitive bids and in accordance with any rules of the commission.

(c) Authorizes a county to purchase an item cooperatively through an interlocal agreement that requires a competitive bidding procedure. Deletes existing text requiring that the purchase under this section be made on the requisition of the commissioners court. Deletes existing text requiring the court, when the court sends the requisition to the commission, to include with the requisition a general description of the item desired and a certification of the funds available to pay for the item.

(d) Provides that a cooperative purchase under this section does not violate competitive bidding statutes. Deletes existing text authorizing the commission to adopt rules to carry out the purpose of this section.

SECTION 2. Amends Section 262.011, Local Government Code, by amending Subsections (f), (g), (k), (m), and (o) and adding Subsection (q) as follows:

(f) Requires that a purchase made by the county purchasing agent be paid for by an electronic transfer, check or warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. Prohibits the county auditor from drawing and the county treasurer from honoring an electronic transfer, check, or warrant for a purchase unless the purchase is made by the county purchasing agent or on competitive bid as provided by law. Makes nonsubstantive changes.

(g) Requires the county treasurer to honor an electronic transfer, check, or warrant drawn by the county auditor to reimburse the municipality's purchasing agent making a purchase for the county. Makes a nonsubstantive change.

(k) Requires that the salary of a county purchasing agent be paid by an electronic transfer, check, or warrant drawn on funds in the county treasury, rather than requiring that the salary be paid by warrants drawn on funds in the county treasury.

(m) Provides that an offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$100, rather than punishable by a fine of not less than \$10 or more than \$100, by confinement in the county jail for not less than 30 days or more than one year, or by both the fine and confinement.

(o) Prohibits the procedures for use of purchasing cards from avoiding the competitive bidding requirements of this chapter or other requirements of county financial law.

(q) Requires that an electric transfer under this chapter provide the same level of internal controls and statutory authorizations as required for a check or warrant.

SECTION 3. Amends Sections 262.0115(d) and (e), Local Government Code, as follows:

(d) Requires the purchasing agent, under the supervision of the commissioners court, to carry out the functions prescribed by law for a purchasing agent under Section 262.011 and for any administrative function of the county auditor in regard to county purchases and contracts and to administer the procedures prescribed by law for notice and public bidding for county purchase and contracts.

(e) Authorizes a county that has established the position of county purchasing agent under this section to abolish the position at any time. Requires the county auditor, on the abolition of the position, to assume the functions previously performed by the purchasing agent regarding the notice for and opening of competitive bids or proposals under this chapter and Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments).

SECTION 4. Amends Subchapter B, Chapter 262, Local Government Code, by adding Section 262.013, as follow:

Sec. 262.013. QUALIFICATION. Prohibits a person authorized to make a purchase on behalf of a county or a county department or office from making any purchase until providing to the county judge a signed acknowledgement that the person has read and understands this chapter and Chapters 263 (Sale or Lease of Property by Counties), 270 (Miscellaneous Provisions Affecting the Acquisition, Sale, or Lease of Property by Counties), and 271.

SECTION 5. Amends Section 262.022, Local Government Code, by adding Subdivisions (5-a) and (5-b) and amending Subdivision (6) as follows:

(5-a) Defines "lowest and best."

(5-b) Defines "normal purchasing practice."

(6) Redefines "purchase."

SECTION 6. Amends Section 262.0225, Local Government Code, by adding Subsection (d), to authorize a county that complies with the competitive bidding requirements of this chapter and receives no responsive bids for an item to procure the item under Section 262.0245.

SECTION 7. Amends Section 262.024(a), Local Government Code, to provide that a contract for the purchase of any of certain items, including is exempt from the requirement established by Section 262.023 (Competitive Requirements for Certain Purchases) if the commissioners court by order grants the exemption and personal property sold at an auction by a state licensed auctioneer or in a commercial online auction available to the general public.

SECTION 8. Amends Section 262.0245, Local Government Code, as follows:

Sec. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. Requires a county purchasing agent or, in a county without a purchasing agent, the commissioners court, to adopt procedures that provide for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item that is not subject to competitive procurement or for which the county receives no responsive bid.

SECTION 9. Amends Section 262.025, Local Government Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Requires that, except as provided by Subsection (a-2), a notice of a proposed purchase be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county, with the first day of publication occurring at least 14 days before the date of the bid opening. Requires that the notice be posted in a place described by Section 51.002 (Sale of Real Property Under Contract Lien), Property Code, for 14 days before the date of the bid opening if there is no newspaper of general circulation in the county, rather than requiring that the notice be posted in the courthouse for 14 days before the date of the opening bid and posted in a prominent place if there is no newspaper of general circulation in the county. Requires that the notice published in a newspaper include:

- (1) a general statement of the proposed purchase;
- (2) the name and telephone number of the purchasing agent; and
- (3) the county website address, if any.

(a-1) Provides that Subsection (a) does not require more than two notices in one newspaper or limit the county from providing additional notice for longer periods or in more locations.

(a-2) Authorizes a county that maintains an Internet website to publish the notice required by Subsection (a) a single time if the county publishes the notice continuously on the county's Internet website for at least 14 days before the date bids are due.

SECTION 10. Amends Section 262.0255, Local Government Code, by adding Subsection (c), to authorize a commissioners court purchasing earth-moving, material-handling, road maintenance, or construction equipment under Section 271.083 (Local Government Participation) of this code or Section 791.025 (Contracts for Purchases), Government Code, to negotiate with a vendor awarded a cooperative contract under those sections an agreement for the vendor to purchase or accept as trade used equipment owned by the county.

SECTION 11. Amends Section 262.0256, Local Government, as amended by Chapters 660 (H.B 2242) and 725 (H.B 3089), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended, as follows:

Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR DISTRICT GOVERNED BY THOSE COUNTIES. (a) Deletes existing text providing that this section applies only to a county with a population of 2.8 million or more. Deletes existing Subsection (b) designation.

(b) Redesignates existing Subsection (c) as Subsection (b). Makes a conforming change.

SECTION 12. Amends Section 262.026(b), Local Government Code, to require that opened bids be kept on file and available for inspection by anyone desiring to see them until the first anniversary of the date of opening.

SECTION 13. Amends Section 262.027, Local Government Code, by amending Subsection (c) and adding Subsection (g), as follows:

(c) Prohibits a contract from being awarded to a bidder who is not the lowest bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award; and an opportunity to appear before the commissioners court and present previously unconsidered evidence concerning the lower bid as best, which may include evidence of the bidder's responsibility. Makes nonsubstantive changes.

(g) Authorizes the commissioners court to award the contract the next bidder in order of ranking as lowest and best bid if after the award the successful bidder fails to qualify for required bonds, or is otherwise unable to meet the requirements of the award.

SECTION 14. Amends Section 262.0271(b), Local Government Code, to authorize the commissioner's court of the county, in purchasing items under this chapter through a competitive bidding process, if a county receives one or more bids from a bidder who provides reasonable, rather than comparable, health insurance coverage to its employees and requires a subcontractor the bidder intends to use to provide reasonable health insurance to the subcontractor's employees and whose bid is within five percent of the lowest and best bid price received by the county from a bidder who does not provides or require reasonable health insurance coverage, to give preference to the bidder who provides and requires reasonable health insurance coverage. Makes conforming changes.

SECTION 15. Amends Section 262.0276, Local Government Code, by amending Subsection (a) and adding Subsection (d) as follows:

(a) Authorizes the commissioners court, by an order adopted and entered in the minutes of the commissioners court and after notice is published in a newspaper of general circulation in the county to adopt rules permitting the county to refuse to enter into a contract or other transaction with a person who owes a debt, rather than with a person indebted, to the county.

(b) Defines "debt," in this section.

SECTION 16. Amends Section 262.0295(d), Local Government Code, to require that the award of the contract be made to the responsible offeror whose bid is determined to be the lowest and best evaluated offer resulting from negotiation.

SECTION 17. Amends Section 262.030(b), Local Government Code, to make a conforming change.

SECTION 18. Amends Section 262.032, Local Government Code, by adding Subsection (e) to authorize the commissioners court to establish financial criteria for accepting surety companies that provide bid, payment, or performance bonds.

SECTION 19. Amends Section 262.034(c), Local Government Code, to provide that a county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a), rather than Subsection (a) or (b).

SECTION 20. Amends Section 262.036(a), Local Government Code, as follows:

(a) Authorizes a county, rather than authorizes a county with a population of 800,000 or more, notwithstanding any other provision in this chapter, to select an appropriately licensed insurance agent as the sole broker of record to obtain proposals and coverages for insurance that provides necessary coverage and adequate limits of coverage in all areas of risk, including public official liability, property, casualty, workers' compensation, and specific and aggregate stop-loss coverage for self-funded health care.

SECTION 21. Amends Section 271.029(c), Local Government Code, to provide that an officer or employee of a governmental entity commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a), rather than Subsection (a) or (b).

SECTION 22. Amends Section 271.042, Local Government Code, as follows:

Sec. 271.042. PURPOSE; CONFLICT. (a) Provides that it is the purpose of this subchapter to provide a procedure for certain financing that is an alternative to the more cumbersome procedure under Chapter 252 (Purchasing and Contracting Authority of Municipalities) or 262 (Purchasing and Contracting Authority of Counties); and a new class of securities to be issued and delivered within the financial capabilities of an issuer on compliance with the procedures prescribed by this subchapter.

(b) Authorizes an issuer, if there is a conflict between a provision of this subchapter and a provision of Chapter 252 or 262, to use either provision, and it is not necessary for the governing body to designate the law under which action is being taken.

SECTION 23. Amends Section 271.064(c), Local Government Code, to provide that an officer or employee of an issuer commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by described by Subsection (a), rather than Subsection (a) or (b).

SECTION 24. Repealer: Section 262.0271(a) (defining "comparable health insurance coverage"), Local Government Code.

Repealer: Section 262.0295(a)(3) (relating to alternative multistep competitive proposal procedures applying only to a population of 125,000 or more), Local Government Code.

Repealer: Section 262.034(b) (relating to an offense being a Class B misdemeanor), Local Government Code.

Repealer: Section 262.035 (Removal; Ineligibility), Local Government Code.

Repealer: Section 271.029(b) (relating to the criminal penalties of an officer or employee who violates the competitive bidding requirements), Local Government Code.

Repealer: Section 271.030 (Removal; Ineligibility), Local Government Code.

Repealer: Section 271.064(b) (relating to an offense being a Class B misdemeanor), Local Government Code.

Repealer: Section 271.065 (Removal; Ineligibility), Local Government Code.

SECTION 25. Provides that changes in law made by this Act apply only to purchases made or a bid deadline that occurs on or after September 1, 2011. Makes application of this Act prospective.

SECTION 26. Provides that the changes in law made by this Act to Sections 262.034, 271.029, and 271.064, Local Government Code, apply only to an offense committed on or after the effective date of this Act. Provides that for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Provides that an offense committed before the effective date of this Act is covered by the law in effect immediately before the effective date of this Act, and the former law is continued for that purpose.

SECTION 27. Effective date: September 1, 2011.