

CHAPTER 749

S.B. No. 226

AN ACT

relating to the competitive bidding requirements of governmental entities and certain duties of the Office of Small Business Assistance.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 252.021, Local Government Code, is amended to read as follows:

Sec. 252.021. COMPETITIVE BIDDING AND COMPETITIVE PROPOSAL REQUIREMENTS. (a) Before a municipality [~~with 50,000 or more inhabitants~~] may enter into a contract, *other than a contract for insurance*, that requires an expenditure of more than \$15,000 [~~\$10,000~~] from one or more municipal funds, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding or competitive sealed proposals.

(b) Before a municipality [~~with fewer than 50,000 inhabitants~~] may enter into a contract for *insurance* that requires an expenditure of more than \$5,000 *from one or more municipal funds*, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding or competitive sealed proposals.

(c) A municipality may use the competitive sealed proposal procedure only for high technology procurements.

SECTION 2. Section 271.024, Local Government Code, is amended to read as follows:

Sec. 271.024. COMPETITIVE BIDDING PROCEDURE APPLICABLE TO CONTRACT. If a governmental entity is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than \$15,000 [~~\$10,000~~] from the funds of the entity, the bidding on the contract must be accomplished in the manner provided by this subchapter.

SECTION 3. Subchapter B, Chapter 252, Local Government Code, is amended by adding Section 252.0215 to read as follows:

Sec. 252.0215. COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS. *A municipality, in making an expenditure of more than \$3,000 but less than \$15,000, shall contact at least two disadvantaged businesses on a rotating basis, based on information provided by the Office of Small Business Assistance of the Texas Department of Commerce pursuant to Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). If the list fails to identify a disadvantaged business in the county in which the city is situated, the city is exempt from this section.*

SECTION 4. Subsection (a), Section 252.041, Local Government Code, is amended to read as follows:

(a) If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the *bids will be publicly opened and read aloud* [~~contract will be let~~] must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to *publicly open the bids and read them aloud* [~~let the contract~~]. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to *publicly open the bids and read them aloud* [~~let the contract~~].

SECTION 5. Section 252.002, Local Government Code, is amended to read as follows:

Sec. 252.002. MUNICIPAL CHARTER CONTROLS IN CASE OF CONFLICT. Any provision in the charter of a home-rule municipality that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, [~~or~~] the manner of *publicly opening bids or reading them aloud*, or the manner of letting contracts and that is in conflict with this chapter controls over this chapter *unless the municipality elects to have this chapter supersede the charter*.

SECTION 6. Subsections (a) and (b), Section 271.055, Local Government Code, are amended to read as follows:

(a) An issuer must give notice of the time, date, and place at which the issuer will *publicly open the bids on a contract* [~~let a contract~~] for which competitive bidding is required by this subchapter *and read the bids aloud*. The notice must be given in accordance with Subsection (b) or in accordance with:

- (1) Chapter 252, if the issuer is a municipality;
- (2) the municipal charter of the issuer, if the issuer is a home-rule municipality; or

- (3) the County Purchasing Act (Subchapter C, Chapter 262), if the issuer is a county.
- (b) If an issuer gives notice under this subsection, the notice must:

(1) be published once a week for two consecutive weeks in a newspaper, as defined by Chapter 84, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 28a, Vernon's Texas Civil Statutes), that is of general circulation in the area of the issuer, with the date of the first publication to be before the 14th day before the date set for the *public opening of the bids and the reading of the bids aloud* [~~receipt of bids~~]; and

(2) state that plans and specifications for the work to be done or specifications for the machinery, supplies, equipment, or materials to be purchased are on file with a designated official of the issuer and may be examined without charge.

SECTION 7. Subsection (a), Section 252.022, Local Government Code, is amended to read as follows:

(a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal or professional services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) electricity, gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212; [~~and~~]

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; *and*

(13) *services performed by blind or severely disabled persons.*

SECTION 8. Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) The office shall provide a copy of the directory to every incorporated city twice annually, in January and July.

SECTION 9. The change in law made by this Act to Sections 252.021 and 271.024, Local Government Code, relating to the contractual amount that requires a municipality to solicit competitive bids or proposals, applies only to a contract for which the notice soliciting bids or proposals is first published or posted on or after September 1, 1993. A contract for which the notice is first published or posted before September 1, 1993, is subject to the law as it existed at the time the notice was first published or posted, and the former law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 1993.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 6, 1993, by a viva-voce vote; May 25, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 1993, House granted request of the Senate; May 28, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 22, 1993, by a non-record vote; May 27, 1993, House granted request of the Senate for appointment of Conference Committee; May 29, 1993, House adopted Conference Committee Report by a non-record vote.

Approved June 17, 1993.

Effective Sept. 1, 1993.