

## CHAPTER 802

H.B. No. 1931

## AN ACT

relating to the procedures governing purchases made by counties; amending Sections 3, 4, 10, and 12, County Purchasing Act (Article 2368a.5, Vernon's Texas Civil Statutes).

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

SECTION 1. Sections 3, 4, 10, and 12, County Purchasing Act (Article 2368a.5, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 3. **COMPETITIVE BIDDING REQUIREMENT.** (a) Before a county may purchase, *lease or otherwise acquire* one or more items under a contract that will require an expenditure exceeding \$5,000, the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this Act. All bids or proposals must be sealed.

(b) The competitive bidding and competitive proposal requirements established by Subsection (a) of this section apply only to contracts for which payment will be made from current funds or bond funds or through time warrants. However, contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes).

(c) In applying the competitive bidding and competitive proposal requirements established by Subsection (a) of this section, all separate, sequential, and/or component purchases of items ordered or purchased, with the intent of avoiding the competitive bidding and competitive proposal requirements of this Act, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract.

Sec. 4. **EXEMPTIONS.** (a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 3 of this Act if the commissioners court by order grants the exemption:

(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;

(2) an item necessary to preserve or protect the public health or safety of the residents of the county;

(3) an item made necessary by unforeseen damage to public property;

(4) a personal or professional service;

(5) any work performed and paid for by the day, as the work progresses;

(6) any land or right-of-way; ~~[or]~~

(7) an item that can be obtained from only one source, including: items for which competition is precluded because of the existence of patents, copyrights, secret processes, or ~~natural~~ monopolies; films, manuscripts, or books; electric power, gas, water, and other utility services; and captive replacement parts or components for equipment; *or*

(8) *lease renewals or equipment maintenance agreements which have previously gone through the competitive bid process within the preceding year; provided however, that such extension or renewal period shall not exceed one year and that there shall not be more than one extension or renewal of such agreement.*

(b) If an item exempted under Subdivision (7) of Subsection (a) of this section is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

Sec. 10. **ALTERNATIVE COMPETITIVE PROPOSAL PROCEDURE FOR CERTAIN PURCHASES.** (a) The competitive proposal procedure as provided in this section may be used for the purchase of insurance or high technology items. Quotations shall be solicited through a request for proposals. Public notice for the request for proposals

must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

(b) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. However, all proposals that have been submitted shall be *available and open* for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

(c) As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

Sec. 12. BOND REQUIREMENTS FOR BIDDERS. (a) If the contract is for the construction of public works or is ~~under~~ a contract exceeding \$50,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond or cashier's check in the amount of five percent of the total contract price. *Bid bonds will be* ~~and~~ executed with a surety company authorized to do business in this state.

(b) Not later than the 10th day after the day of the signing of a contract or issuance of a purchase order following the acceptance of a bid or proposal, the bidder or proposal offeror shall furnish a performance bond to the county, if required by the county, for the full amount of the contract if that contract exceeds \$50,000.

(c) For those contracts that are for \$50,000 or less, the county may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the county.

(d) A bidder or proposal offeror whose rates are subject to regulation by a state agency may not be required to furnish a performance bond or a bid bond under this section.

SECTION 2. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 8, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1931 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 30, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.