

CHAPTER 353

H.B. No. 994

AN ACT

relating to purchasing requirements by certain navigation districts and port authorities; providing criminal penalties.

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

SECTION 1. Chapter 60, Water Code, is amended by adding Subchapter N to read as follows:

*SUBCHAPTER N. COMPETITIVE BIDDING REQUIREMENTS*

*Sec. 60.401. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to a port authority district only if the port commission of that district or port authority by resolution adopts this subchapter.*

*(b) A district may adopt this subchapter for a particular purchase or period or for all purchases and contracts.*

*(c) Except as specifically provided by this subchapter, a district that adopts this subchapter is not subject to the purchasing requirements of other laws governing purchases by navigation districts and port authorities.*

*Sec. 60.402. DEFINITIONS. In this chapter:*

*(1) "Port authority" means a port authority created or operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.*

*(2) "Port commission" means the governing body of a navigation district or port authority.*

*(3) "Current funds" means funds in the treasury of a district or port authority that are available in the current tax year, revenue that may be anticipated with reasonable certainty to come into the treasury during the current tax year, and emergency funds.*

*(4) "Bond funds" means money in the treasury of a district or port authority received from the sale of bonds, and proceeds of bonds that have been voted but have not been issued and delivered.*

*(5) "Item" means any service, equipment, goods, or other tangible or intangible personal property, including insurance and high technology items.*

*(6) "High technology item" means a service, equipment, or goods of a highly technical nature, including data processing equipment and software and firmware used in conjunction with data processing equipment; telecommunications, radio, and microwave systems; electronic distributed control systems including building energy management systems; and technical services related to those items.*

*(7) "Public works contracts" means a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property.*

(8) "Purchase" means the acquisition of an item by a port authority, a contract for construction, or performance of services.

*Sec. 60.403. CONTRACTS: PURCHASES.* A port commission or authorized designated officer of the port commission may make routine purchases or contracts in an amount not to exceed \$10,000. Before a purchase is made, a purchase order must be signed by the executive director of the district or the port authority or the authorized designated officer. The purchase order must be executed in duplicate with one copy delivered to the person from whom the purchase is made and one copy remaining on file in the district or port authority.

*Sec. 60.404. COMPETITIVE BIDDING REQUIREMENTS.* (a) If the materials, supplies, machinery, equipment, or other items to be purchased or contracted for exceed \$10,000, notice shall be published as provided by this section.

(b) A notice of proposed purchase must be published once a week for two consecutive weeks in a newspaper with general circulation in each county in which the district or port authority is located. The first notice must be published not later than the 14th day before the date the bids are to be opened. If there is no newspaper of general circulation in a county in which the district or port authority is located, the notice for that county must be given by posting the notice in a prominent place in the courthouse of that county for not less than 14 days before the date the bids are to be opened.

(c) The notice must include:

(1) the specifications as prescribed by Subsection (d) of this section or the location at which those specifications may be obtained;

(2) the time and place for receiving and opening bids;

(3) the name and position of the official or employee to whom the bids are to be sent;

(4) whether the purchase will be made on a lump-sum or unit-pricing basis or a combination of a lump-sum basis and a unit-pricing basis;

(5) if a unit-pricing basis is to be used, the information required by Section 60.409(b) of this code; and

(6) the type of bonds required of the bidder.

(d) The specifications must:

(1) describe in detail the item to be acquired;

(2) require that bids be sealed; and

(3) require the attachment to the bid of a certified check, cashier's check, or bidders bond.

(e) A certified check or cashier's check required under Subsection (d)(3) of this section must be drawn on a bank that is a member of the Federal Reserve System. A bidders bond required by that subsection must be acceptable to and payable to the district or port authority in an amount that is five percent of the total amount of the bid, conditioned that the successful bidder will enter into a contract and give bond if required by the specifications or law.

*Sec. 60.405. PROPOSAL PROCEDURES.* (a) Insurance or high technology items may be purchased under the procedure provided by this section.

(b) Quotations shall be solicited through a request for proposals from as many sources as are reasonably available. The request for proposals must specify the relative importance of price and all other factors of evaluation.

(c) Public notice of the request for proposal must be made in the same manner as provided by Section 60.404 of this code.

(d) The award of the contract shall be made to the responsible offerer whose proposal is determined to be the lowest evaluated offer resulting from negotiation giving consideration to evaluation factors set forth in the request for proposals.

(e) *If provided in the request for proposals, information in proposals may not be disclosed to competing offerers until the contract is awarded. After a contract is awarded, proposals shall be open for public inspection, except that information contained in a proposal identified as a trade secret or as confidential shall be kept confidential.*

(f) *A port commission may adopt rules relating to negotiations to be conducted with responsible offerers submitting proposals. Offerers must be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. Revisions may be permitted after submission of a proposal and before award of the contract.*

**Sec. 60.406. COMPETITIVE BIDDING AND PROPOSAL PROCEDURES REQUIRED FOR CERTAIN CONTRACTS.** (a) *Before a district or port authority may purchase one or more items under a contract that will require an expenditure of more than \$10,000, the port commission of that district or port authority must comply with the competitive bidding requirements or proposal procedures provided by Sections 60.404 and 60.405 of this code. All bids must be sealed.*

(b) *The competitive bidding and proposal requirements provided by Sections 60.404 and 60.405 of this code apply only to contracts for which payment will be made from current funds or bond funds.*

(c) *In applying the competitive bidding procedures and proposal procedures, all separate, sequential, or component purchases of items ordered or purchased from the same supplier by the same officer, entity, or department, purchased with the intent of avoiding the requirements of Section 60.404 or 60.405 of this code, shall be treated as if they are part of a single purchase and a single contract.*

**Sec. 60.407. OPENING BIDS.** (a) *An official of the district or port authority shall open the bids on the date specified in the notice. If an error is discovered in the original specifications or the nature of the item to be purchased requires an extension, the date may be extended.*

(b) *Opened bids shall be kept on file and available for public inspection.*

**Sec. 60.408. CONTRACT AWARD.** (a) *The bids shall be presented to the port commission in session.*

(b) *The port commission may award the contract to the responsible bidder submitting the lowest and best bid, or the port commission may reject any or all bids.*

(c) *If two responsible bidders submit the lowest and best bid, the port commission shall decide between the two bids by drawing lots in a manner prescribed by rule by the chairman of the port commission.*

(d) *A contract may not be awarded to a bidder who does not submit the lowest dollar bid meeting specifications unless, before the award, each person with a lower bid is given notice of the proposed award and an opportunity to appear before the port commission and present evidence concerning his responsibility.*

(e) *A contract shall be awarded at a regularly scheduled or specially called meeting of the port commission.*

(f) *The contract must be in writing, executed for the district or port authority by its executive or designated officer, and filed with the proper officer of the district or port authority.*

(g) *Before a contract takes effect or is binding on a district or port authority, the appropriate financial officer of the district or port authority must certify that funds are or will be available to meet the contract when due.*

(h) *A requisition or purchase order must be issued in duplicate with one copy delivered to the contractor and one copy remaining on file with the district or port authority.*

(i) *A purchase or contract that is not in compliance with this subchapter is void and unenforceable.*

*Sec. 60.409. PRICING METHOD. (a) A purchase may be proposed on a lump-sum or unit-price basis or a combination of a lump-sum basis and a unit-price basis.*

*(b) If a district or port authority uses unit pricing in its notice, the information furnished bidders shall specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.*

*Sec. 60.410. CHANGES IN PLANS AND SPECIFICATIONS. (a) A port commission may change the plans, specifications, proposal, or quantities of items purchased after a contract has been awarded, but the total contract price may not be changed unless the cost can be paid from available funds.*

*(b) If a change order involves an increase or decrease in cost of \$15,000 or less, a port commission may grant general authority to an employee to approve the change order. However, the original contract price may not be increased by more than 25 percent or decreased by 18 percent or more without the consent of the contractor.*

*Sec. 60.411. BOND REQUIREMENTS. (a) If a contract is for the construction of public works or a contract amount exceeds \$50,000, the bid specifications or request for proposal may require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the total contract price. A district or port authority may require that the bond be executed with a surety company authorized to do business in this state.*

*(b) Not later than the 10th day after the date of the signing of a contract or issuance of a purchase order if required by a district or port authority, the bidder or proposal offerer shall furnish a performance bond to the district or port authority for the full amount of the contract if the contract exceeds \$50,000.*

*(c) If a contract is for \$50,000 or less, a district or port authority may provide in the bid notice or request for proposal that money will not be paid to the contractor until completion and acceptance of the work or fulfillment of the purchase obligation to the district or port authority.*

*(d) Bidders or proposal offerers for contracts subject to Article 5160, Revised Statutes, are required to furnish a bond as provided by that article.*

*Sec. 60.412. EXEMPTIONS. (a) A contract for a purchase is exempt from the requirements of Sections 60.404 and 60.405 of this code if a contract is for the purchase of:*

*(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 district or port authority;*

*(2) an item necessary to preserve or protect the public health or the safety of the residents of the district or port authority;*

*(3) an item made necessary by unforeseen damage to the property of the district or port authority;*

*(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 only from one source, including:*

*(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies;*

*(B) films, manuscripts, or books;*

*(C) public utility services; and*

*(D) captive replacement parts or components for equipment.*

*(b) If an item exempt under Subsection (a)(7) of this section is purchased, the person making the purchase must sign a statement as to the existence of only one source for the purchase and a district or port authority must enter the statement into the records of that purchase.*

*Sec. 60.413. CRIMINAL PENALTY. (a) Except as provided by Subsection (b) of this section, a district or port authority officer or employee commits an offense if the person knowingly or intentionally violates a provision of this subchapter. An offense under this subsection is a Class C misdemeanor.*

*(b) A district or port authority officer or employee commits an offense if the person makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding or proposal procedure requirements of Section 60.404 or 60.405 of this code. An offense under this subsection is a Class B misdemeanor.*

*Sec. 60.414. APPLICATION OF OTHER LAW. If a district or port authority is subject to the requirements of Chapter 770, Acts of the 66th Legislature, Regular Session, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes), those requirements are in addition to the requirements of this subchapter.*

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; that the House refused to concur in Senate amendments to H.B. No. 994 on May 28, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 994 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 25, 1987, by the following vote: Yeas 29, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 994 on May 31, 1987, by the following vote: Yeas 27, Nays 0.

Approved June 11, 1987.

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