

SUBJECT: Barring interlocal roofing purchase from purchasing coop consultant

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 5 ayes — Callegari, Cain, Frullo, Harper-Brown, Zedler
2 nays — Lucio, Muñoz

WITNESSES: For — Derron Cook, Carlisle Construction Materials; Paul C. Crews, Amtech Building Sciences, Inc., Roofing and Building Envelope Consultants; Brian Gardiner, Austech Roof Consultants, Inc.; K. Paul Holt, Central Texas Chapter AGC - Associated General Contractors; Joel King, U.S. PLY, Inc.; Edis Oliver, Gerhardt Schulle Jr., Professional Roofing Standards Council; Dennis Wilson, CCAP Representing Firestone Building Products; (*Registered, but did not testify:* Kathy Barber, NFIB; Frank Coble, TAMKO Building Products, Inc.; Brent Connett, Texas Conservative Coalition; Jon Fisher, Associated Builders and Contractors of Texas; David Scheirer, Johns Manville; Jim Sewell, Gallagher Construction; Peggy Venable, Americans for Prosperity)

Against — Brian Burden, Tremco Incorporated; Steve Fisher, Texas Association of School Boards; Adrian Garcia, San Benito C.IS.D. NAPM-RGV; David Kennedy, Westhoff ISD; Richard Kilgore, Bruceville-Eddy ISD; Jimmie Malone; Ken McCraw, Texas Association of Community Schools; Anthony Price, Rosebud-Lott ISD; Don Rogers, Texas Rural Education Association; Patrick Sullivan; (*Registered, but did not testify:* David Anderson, Texas Fast Growth Schools Coalition; Gloria Barrera; Ramiro Canales, Texas Association of School Administrators; Colleen Dziuban, DFW Airport; Victor M Escobedo; Leslie Farmer; Oscar Galvan, GS Advantage USAA Inc; Cyd Grimes, Pat Reynolds, Texas Public Purchasing Association and Travis County; Philip Gustafson; Sam Heffernan, The Garland Company, Inc.; Gary Herbert, Bruceville Eddy ISD; Fred Gil Lillard Jr.; David Naylor; Stuart Parsons; T.J. Patterson, City of Fort Worth; Michael Perry; Michael Rasmussen, Rosebud-Lott ISD; Fred Schroeder, Houston's Waterproofing and Sheet Metal Specialist, LLC; Paul Sugg, Texas Association of Counties; Craig Tindle; Ken Wells; William Wilson)

On — Lance Kinney, Texas Board of Professional Engineers; Wes Ogilvie, Comptroller of Public Accounts

BACKGROUND: Interlocal contracts are authorized by Government Code, ch. 791, to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with state agencies.

DIGEST: Under CSHB 800, an interlocal contract between a governmental entity and a purchasing cooperative could not be used to purchase roofing materials or services from a person who provided consulting services to the cooperative on the contract, including the provision of bid specifications on the contract.

This prohibition also would apply to a person who was an agent, subsidiary, or parent company of the person who consulted with the cooperative and a person related in the second degree of consanguinity or affinity to a person who consulted with the cooperative.

“Roofing materials or services” would mean materials or services for repair or replacement of a roof.

The prohibition would not apply to a renewal of a contract based on a request for proposal submitted, or substantially similar to a request for proposal submitted, before September 1, 2011, if the contract was renewed before September 1, 2012.

The bill would take effect September 1, 2011, and would apply only to an interlocal contract made, amended, supplemented, or provision waived, on or after that date.

SUPPORTERS SAY: CSHB 800 would not allow a government entity to buy roofing materials from a vendor on the purchasing cooperative list if that vendor was a consultant to the purchasing cooperative, including if the vendor provided bid specifications. CSHB 800 is a response to a bid-rigging practice that costs our local governments and school boards millions. When a purchasing cooperative includes a vendor, the local government agency or school district assumes it is getting the best deal after a fair competitive bidding practice, but that is not always true. Cases have been reported of vendors working with purchasing cooperatives as expert consultants who write the bid specs so that only their materials meet specifications. When

the purportedly fair bidding process happens, the die already is cast, and the only vendors chosen use the materials in the specs, which were written by those vendors, even though other materials would be less expensive and just as good. The higher costs of the materials are buried within the cost of the whole project, which ultimately is more expensive overall.

Although CSHB 800 would require the purchasing cooperative to pay for independent help in drafting bid specifications, this would be preferable to hiding the costs in the contract via higher-cost materials. In the long run, a more transparent process would produce a truly fair competitive bidding process, resulting in the best price for cooperative members.

Purchasing cooperatives created through interlocal agreements serve a very important purpose. For small and rural government entities, they provide vetted and low-cost options for many goods and services that the small entity could not possibly bid for on its own for comparable prices. Unfortunately, a few unscrupulous roofing vendors are manipulating the purchasing cooperatives to enrich themselves at the expense of small government entities, and CSHB 800 would stop that practice.

OPPONENTS
SAY:

CSHB 800 would prevent purchasing cooperatives from getting the expert advice needed to provide the best possible value to their members. Purchasing cooperatives handle a myriad of products and services and often must rely on the experts with knowledge of those products and services to be able to write specifications at no cost to the cooperatives and provide the best possible value for customers.

Purchasing cooperatives have a responsibility to their members to get the best value through a competitive bidding procedure, so they make sure that no proprietary materials are included in the specifications. CSHB 800 addresses roofing, but the next bill might address flooring, and before long the purchasing cooperative would be subject to bureaucratic red tape from product to product, stifling competition and hampering the mission of the purchasing cooperative, which is to obtain the best value for its members.