

By: Reynolds

H.B. No. 923

A BILL TO BE ENTITLED

AN ACT

relating to historically underutilized businesses and to goods and services purchased by governmental entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2155.074(b), Government Code, is amended to read as follows:

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the comptroller or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including:

- (1) installation costs;
- (2) life cycle costs;
- (3) the quality and reliability of the goods and services;
- (4) the delivery terms;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
- (6) the cost of any employee training associated with a purchase;
- (7) the effect of a purchase on agency productivity;

1 (8) the vendor's anticipated economic impact to the
2 state or a subdivision of the state, including potential tax
3 revenue and employment; ~~and~~

4 (9) whether the vendor is a historically underutilized
5 business as defined by Section 2161.001; and

6 (10) other factors relevant to determining the best
7 value for the state in the context of a particular purchase.

8 SECTION 2. Sections 2155.444(a), (b), (c), and (e),
9 Government Code, are amended to read as follows:

10 (a) The comptroller and all state agencies making purchases
11 of goods, including agricultural products, shall give preference to
12 those produced or grown in this state or offered by Texas bidders as
13 follows:

14 (1) goods produced or offered by a Texas bidder that is
15 a historically underutilized business ~~[owned by a service-disabled~~
16 ~~veteran who is a Texas resident]~~ shall be given a first preference
17 and goods produced in this state or offered by other Texas bidders
18 shall be given second preference, if the cost to the state and
19 quality are equal; and

20 (2) agricultural products grown in this state shall be
21 given first preference and agricultural products offered by Texas
22 bidders shall be given second preference, if the cost to the state
23 and quality are equal.

24 (b) If goods, including agricultural products, produced or
25 grown in this state or offered by Texas bidders exceed 105 percent
26 of the cost of other goods or are not equal in ~~[cost and]~~ quality to
27 other products, then goods, including agricultural products,

1 produced or grown in other states of the United States shall be
2 given preference over foreign products if the cost to the state and
3 quality are equal.

4 (c) In this section:

5 (1) "Agricultural products" includes textiles and
6 other similar products.

7 (2) "Historically underutilized business" has the
8 meaning assigned by Section 2161.001.

9 [~~(1-a) "Service-disabled veteran" means a person who~~
10 ~~is a veteran as defined by 38 U.S.C. Section 101(2) and who has a~~
11 ~~service-connected disability as defined by 38 U.S.C. Section~~
12 ~~101(16).~~]

13 (3) [~~(2)~~] "Texas bidder" means a business:

14 (A) incorporated in this state;

15 (B) that has its principal place of business in
16 this state; or

17 (C) that has an established physical presence in
18 this state.

19 (e) The comptroller and all state agencies procuring
20 services shall give first preference to services offered by a Texas
21 bidder that is a historically underutilized business [~~owned by a~~
22 ~~service-disabled veteran who is a Texas resident~~] and shall give
23 second preference to services offered by other Texas bidders if:

24 (1) the services meet state requirements regarding the
25 service to be performed and expected quality; and

26 (2) the cost of the service does not exceed the cost of
27 other similar services of similar expected quality that are offered

1 by a bidder that is not entitled to a preference under this
2 subsection.

3 SECTION 3. Section 2161.001, Government Code, is amended by
4 amending Subdivision (3) and adding Subdivision (5) to read as
5 follows:

6 (3) "Economically disadvantaged person" means a
7 person who:

8 (A) is economically disadvantaged because of the
9 person's identification as a member of a certain group, including:

- 10 (i) Black Americans;
- 11 (ii) Hispanic Americans;
- 12 (iii) women;
- 13 (iv) Asian Pacific Americans;
- 14 (v) Native Americans; and
- 15 (vi) veterans as defined by 38 U.S.C.
16 Section 101(2) who have [~~suffered at least~~] a [~~20 percent~~]
17 service-connected disability as defined by 38 U.S.C. Section
18 101(16); and

19 (B) has suffered the effects of discriminatory
20 practices or other similar insidious circumstances over which the
21 person has no control.

22 (5) "Professional services" has the meaning assigned
23 by Section 2254.002.

24 SECTION 4. Section 2161.064, Government Code, is amended by
25 adding Subsection (f) to read as follows:

26 (f) A state agency may use the directory to create a mailing
27 list for soliciting bids from historically underutilized

1 businesses. A state agency that determines the size of the
2 acquisition justifies rotation may rotate the businesses included
3 on the mailing list by using different portions of the directory for
4 separate acquisitions of goods or services. A state agency
5 rotating the businesses included on a solicitation mailing list
6 shall solicit bids from:

7 (1) a bidder who was previously awarded the bid for the
8 goods or services;

9 (2) each business added to the directory since the
10 last solicitation; and

11 (3) each business included in the portion of the
12 directory selected for the solicitation mailing list.

13 SECTION 5. Subchapter B, Chapter 2161, Government Code, is
14 amended by adding Section 2161.067 to read as follows:

15 Sec. 2161.067. JOINT VENTURES. (a) In this section:

16 (1) "Eligible purchase" means a purchase of goods or
17 services that:

18 (A) a state agency determines is eligible for a
19 joint venture based on work and market availability; and

20 (B) exceeds the minimum dollar value provided by
21 comptroller rule.

22 (2) "Joint venture" means an association of two or
23 more individuals or businesses, at least one of which is a
24 historically underutilized business, that is:

25 (A) established to engage in a single business
26 activity;

27 (B) certified as a joint venture by the

1 comptroller; and

2 (C) limited in scope and duration.

3 (b) Each state agency shall determine whether a purchase of
4 goods or services is an eligible purchase for which the agency is
5 required to make a good faith effort to award the contract to a
6 joint venture. The agency may not accept a contract bid submitted
7 by any bidder other than a joint venture unless the agency
8 determines, based on the relevant facts, documents, and
9 circumstances, that the agency made a good faith effort to award the
10 contract to a joint venture.

11 (c) A contract for a joint venture must be in writing and:

12 (1) be based on shared economic interests in the
13 venture, including proportionate control over management, interest
14 in capital acquired by the joint venture, and interest in earnings;

15 (2) be completed by all parties to the joint venture;

16 (3) be executed before a notary public;

17 (4) clearly delineate the rights and responsibilities
18 of each party;

19 (5) comply with any requirements of the comptroller as
20 provided in bid documents or otherwise; and

21 (6) provide that the joint venture continue for at
22 least the duration of the eligible purchase.

23 (d) The comptroller using available resources shall select
24 for review a random sampling of state agency joint venture
25 determinations made under Subsection (b).

26 (e) A state agency selected by the comptroller under
27 Subsection (d), the joint venture, and each party to the joint

1 venture shall provide the comptroller access to all records
2 pertaining to joint venture agreements before and after the
3 agency's award of a contract to the joint venture to reasonably
4 assess compliance with this section.

5 (f) A party to a joint venture who fails to comply with this
6 section, and whose failure to comply continues for at least 30 days
7 after the date the party receives written notice of the
8 noncompliance from the comptroller, is subject to any or all of the
9 following penalties:

10 (1) withholding of 10 percent of all future payments
11 for the eligible purchase until the comptroller determines the
12 party is in compliance with this section;

13 (2) withholding of all future payments under the
14 eligible purchase until the comptroller determines the party is in
15 compliance with this section;

16 (3) cancellation of the eligible purchase; and

17 (4) ineligibility for future contracts or
18 subcontracts with this state for one to five years after the date on
19 which the penalty is imposed.

20 SECTION 6. Section [2161.252](#), Government Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) A historically underutilized business subcontracting
23 plan must require the contractor to accept bids, proposals, offers,
24 or other applicable expressions from historically underutilized
25 businesses for not less than 10 working days after the date the
26 contractor notifies the businesses of the subcontracting
27 opportunity. This subsection does not apply to a professional

1 services contract.

2 SECTION 7. Section 2254.002(2), Government Code, is amended
3 to read as follows:

4 (2) "Professional services" means services:

5 (A) within the scope of the practice, as defined
6 by state law, of:

7 (i) accounting;

8 (ii) architecture;

9 (iii) landscape architecture;

10 (iv) land surveying;

11 (v) medicine;

12 (vi) optometry;

13 (vii) professional engineering;

14 (viii) real estate appraising; or

15 (ix) professional nursing;

16 (B) provided in connection with the professional
17 employment or practice of a person who is licensed or registered as:

18 (i) a certified public accountant;

19 (ii) an architect;

20 (iii) a landscape architect;

21 (iv) a land surveyor;

22 (v) a physician, including a surgeon;

23 (vi) an optometrist;

24 (vii) a professional engineer;

25 (viii) a state certified or state licensed
26 real estate appraiser; ~~or~~

27 (ix) a registered nurse; or

1 (x) an attorney; or

2 (C) provided by a person lawfully engaged in
3 interior design, regardless of whether the person is registered as
4 an interior designer under Chapter 1053, Occupations Code.

5 SECTION 8. Section 2254.154, Government Code, is repealed.

6 SECTION 9. (a) Not later than December 1, 2021, the
7 comptroller of public accounts shall adopt the rules required to
8 implement the changes in law made by this Act.

9 (b) Chapters 2155 and 2161, Government Code, as amended by
10 this Act, apply only to a purchase of goods or services or a
11 contract entered into on or after January 1, 2022.

12 SECTION 10. This Act takes effect September 1, 2021.