

By: Zaffirini

S.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to contracting and ethics issues of governmental entities;
providing a civil penalty.

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

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Section 2262.001, Government Code, is amended
by amending Subdivision (3) and adding Subdivision (3-a) to read as
follows:

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties
for the state agency[~~, as determined by the agency in consultation
with the state auditor~~].

(3-a) "Executive director" means the administrative
head of a state agency.

SECTION 1.02. Subchapter A, Chapter 2262, Government Code,
is amended by adding Section 2262.0015 to read as follows:

Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. The
commission by rule shall establish threshold requirements that
exclude small or routine contracts, including purchase orders, from
the application of this chapter.

SECTION 1.03. The heading to Section 2262.053, Government
Code, is amended to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

1 SECTION 1.04. Section 2262.053, Government Code, is amended
2 by amending Subsections (a) and (d) and adding Subsections (e) and
3 (f) to read as follows:

4 (a) In coordination with the comptroller, Department of
5 Information Resources, ~~[and]~~ state auditor, and Health and Human
6 Services Commission, the commission or a private vendor selected by
7 the commission shall develop ~~[or administer]~~ a training program for
8 contract managers.

9 (d) The commission [~~Texas Building and Procurement~~
10 ~~Commission~~] shall administer the training program under this
11 section.

12 (e) The commission shall certify contract managers who have
13 completed the contract management training required under this
14 section and keep a list of those contract managers.

15 (f) The program developed under this section must include a
16 separate class on ethics and contracting.

17 SECTION 1.05. Subchapter B, Chapter 2262, Government Code,
18 is amended by adding Section 2262.0535 and Sections 2262.055
19 through 2262.067 to read as follows:

20 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
21 commission or a private vendor selected by the commission shall
22 adapt the program developed under Section 2262.053 to develop an
23 abbreviated program for training the members of the governing
24 bodies of state agencies. The training may be provided together
25 with other required training for members of state agency governing
26 bodies.

27 (b) All members of the governing body of a state agency

1 shall complete at least one course of the training developed under
2 this section. This subsection does not apply to a state agency that
3 does not enter into any contracts.

4 Sec. 2262.055. FEES FOR TRAINING. The commission shall set
5 and collect a fee from state agencies that receive training under
6 this subchapter in an amount that recovers the commission's costs
7 for the training.

8 Sec. 2262.056. STATE AGENCY REPOSITORY. Each state agency
9 shall maintain in a central location all contracts for that agency.

10 Sec. 2262.057. CONTRACTS DATABASE. (a) The commission
11 shall store in a database information on contracts provided by
12 state agencies under this section.

13 (b) Each state agency shall periodically provide to the
14 commission information regarding contracts entered into by the
15 agency, including:

16 (1) the name of the contractor;

17 (2) the contract value;

18 (3) the beginning date and end date of the contract;

19 (4) a description of any amendments made to the
20 contract;

21 (5) cumulative payments and encumbrances under the
22 contract;

23 (6) key contract terms that are out of compliance in
24 terms of timeliness standards; and

25 (7) any other information that the commission
26 considers necessary for the database created under this section.

27 (c) The commission shall set appropriate criteria to

1 determine when and what information should be updated.

2 (d) The commission shall make the database available to
3 state agencies and searchable by:

4 (1) contractor;

5 (2) contract value;

6 (3) state agency; and

7 (4) date, including both the beginning date and the
8 end date of the contract.

9 Sec. 2262.058. REPORTING CONTRACTOR PERFORMANCE.

10 (a) After a contract is completed or otherwise terminated, each
11 state agency shall review the contractor's performance under the
12 contract.

13 (b) Using the forms developed by the team under Sections
14 2262.104 and 2262.105, the state agency shall report to the
15 commission on the results of the review regarding the contractor's
16 performance under the contract.

17 Sec. 2262.059. CONTRACTOR PERFORMANCE DATABASE. (a) The
18 commission shall store in a database contractor performance reviews
19 as provided by this section.

20 (b) The commission shall evaluate the contractor's
21 performance based on the information reported under Section
22 2262.058 and criteria established by the commission.

23 (c) The commission shall establish an evaluation process
24 that allows vendors who receive an unfavorable performance review
25 to protest any classification given by the commission.

26 (d) The commission shall develop a database that
27 incorporates the performance reviews and aggregates the reviews for

1 each contractor.

2 (e) A state agency may use the performance review database
3 to determine whether to award a contract to a contractor reviewed in
4 the database.

5 Sec. 2262.060. EXCLUDING CONTRACTOR FROM SOLICITATION
6 PROCESS. Based on its own contractor performance reviews and on
7 information in the database developed under Section 2262.059, a
8 state agency may exclude a contractor from the solicitation process
9 for a contract if the agency determines the contractor has
10 performed poorly on a previous state contract without regard to
11 whether the contractor has been barred under Section 2155.077.

12 Sec. 2262.061. PERFORMANCE MEASURES; REPORTS. (a) Each
13 state agency shall develop a plan for incorporating performance
14 measures into all contracts entered into by the agency.

15 (b) This includes ensuring that performance measures are
16 written into each contract prior to execution.

17 (c) Not later than March 1 of each year, each state agency
18 shall report to the team, governor, lieutenant governor, and
19 speaker of the house of representatives regarding performance
20 measures in the agency's contracts. The report must describe the
21 agency's efforts to include performance-based provisions in the
22 agency's contracts.

23 (d) The state agency shall make the report accessible to the
24 public on the agency's website.

25 Sec. 2262.062. CONTRACT MANAGERS. (a) Each state agency
26 that enters into contracts other than interagency contracts shall
27 establish a career ladder program for contract management in the

1 agency.

2 (b) An employee hired as a contract manager shall oversee
3 and may, as appropriate, engage in procurement planning, contract
4 solicitation, contract formation, price establishment, and other
5 contract activities.

6 (c) Each state agency shall determine, in consultation with
7 the state auditor, the amount and significance of contract
8 management duties sufficient for an employee to be considered a
9 contract manager under this chapter.

10 Sec. 2262.063. APPROVAL OF CONTRACTS. (a) Each state
11 agency shall establish formal guidelines regarding who may approve
12 a contract for the agency.

13 (b) Each state agency shall promulgate administrative rules
14 to establish a monetary threshold above which agency contracts and
15 amendments to agency contracts require written authorization by the
16 agency executive director.

17 (c) For state agency contracts valued in excess of \$1
18 million the agency executive director must authorize a contract
19 amendment in writing.

20 (d) Each state agency shall annually report to the
21 commission a list of each person authorized to approve contracts at
22 the agency. The list must include the person's name, position, and
23 supervisory responsibility, if any.

24 Sec. 2262.064. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE
25 PROHIBITED. A state agency may not negotiate a contract with only
26 one employee engaging in the negotiation.

27 Sec. 2262.065. CONSISTENT PRICING BY CONTRACTORS. (a) The

1 commission may solicit a contract for the creation of a mechanism
2 for tracking and comparing prices that state agencies pay for
3 similar products or services.

4 (b) On behalf of the state, a contractor awarded a contract
5 under Subsection (a) may renegotiate state agency contracts for
6 products or services to obtain the best value for the state when the
7 tracking and comparing mechanism shows a disparity in the price
8 paid for similar products or services. A contract under Subsection
9 (a) may allow the selected contractor to keep a percentage of the
10 savings obtained in the renegotiated contracts.

11 (c) A state agency shall give a contractor selected under
12 Subsection (a) the information the contractor requires for the
13 purpose of tracking and comparing prices that state agencies pay
14 for similar products and services.

15 (d) A contractor selected under Subsection (a) may not sell
16 information it receives under Subsection (c) or otherwise make use
17 of the information for a purpose other than performing its contract
18 with the state.

19 Sec. 2262.066. EXCEPTION TO RENEGOTIATION REQUIREMENT.

20 (a) A state agency may exclude a contract from the application of
21 Section 2262.065 if it determines that renegotiation of the
22 contract under that section will affect the state negatively. The
23 state agency must notify the commission, lieutenant governor, and
24 speaker of the house of representatives regarding this
25 determination and explain why renegotiation of the contract is
26 contrary to the state's overall interest.

27 (b) The commission shall adopt rules and procedures to

1 document this process, including a requirement that the executive
2 directors of the commission and the state agency making the
3 determination formally approve the determination by signature or
4 other appropriate method.

5 Sec. 2262.067. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN
6 CONTRACTS. (a) If a state agency determines that a proposed
7 contract or proposed contract amendment would outsource existing
8 services or functions performed by the agency that have a value of
9 \$10,000,000 or more, or that would lead to the loss of 100 or more
10 existing state employee positions, the agency shall create an
11 optimized model for the identified functions or services to
12 determine how and at what cost the agency could most efficiently
13 provide the functions or services.

14 (b) The model must show consideration of all relevant
15 factors, including:

- 16 (1) best practices in Texas and other states;
- 17 (2) available technology;
- 18 (3) access to benefits and services for clients; and
- 19 (4) program integrity.

20 (c) An agency that develops an optimized model under this
21 section shall use it as the basis for cost comparison when deciding
22 whether to outsource the identified functions or services.

23 (d) A model developed under this section is confidential and
24 is not subject to disclosure under Chapter 552 until a final
25 determination has been made to award the contract for which the
26 model was developed.

27 SECTION 1.06. Subchapter C, Chapter 2262, Government Code,

1 is amended by adding Sections 2262.104 and 2262.105 to read as
2 follows:

3 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The
4 team shall develop and publish a uniform set of definitions for use
5 as applicable in state contracts.

6 (b) The team shall develop and publish a uniform and
7 automated set of forms that a state agency may use in the different
8 stages of the contracting process.

9 Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.
10 As part of the uniform forms published under Section 2262.104, the
11 team shall develop forms for use by state agencies in reporting a
12 contractor's performance under Section 2262.058.

13 SECTION 1.07. Chapter 2262, Government Code, is amended by
14 adding Subchapters D, E, and F to read as follows:

15 SUBCHAPTER D. CONTRACT PROVISIONS

16 Sec. 2262.151. USE OF UNIFORM FORMS. A state agency may use
17 the forms developed under Section 2262.104 as templates, guides, or
18 samples for contracts entered into by the agency.

19 Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

20 (a) The team shall develop recommendations for contract terms
21 regarding penalties for contractors who do not comply with a
22 contract, including penalties for contractors who do not disclose
23 conflicts of interest under Section 2262.201. The team may develop
24 recommended contract terms that are generally applicable to state
25 contracts and terms that are applicable to important types of state
26 contracts.

27 (b) A state agency may include applicable recommended terms

1 in a contract entered into by the agency.

2 Sec. 2262.153. REQUIRED PROVISION RELATING TO
3 SUBCONTRACTOR COMPLIANCE. Each state agency contract must require
4 that each contractor provide a list of all subcontractors and
5 include a provision that:

6 (1) holds the contractor responsible for the conduct
7 of all subcontractors in complying with the contractor's contract
8 with the state agency; and

9 (2) requires each subcontractor to disclose all
10 potential conflicts of interest to the state agency, according to
11 guidelines developed under Section 2262.201(b), when the
12 subcontractor contracts with or is otherwise hired by the
13 contractor.

14 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
15 STATE AGENCY EMPLOYEES. (a) The team shall develop a standard
16 contract provision requiring a contractor and subcontractor to
17 disclose each employee:

18 (1) who was employed by:

19 (A) the state at any time during the two years
20 before the date of the disclosure and is now employed by the
21 contractor; and

22 (B) the contractor at any time during the year
23 before the date of the disclosure and is now employed by the state;
24 and

25 (2) who is:

26 (A) materially involved in the development of the
27 contract terms or the management of the contract; or

1 (B) employed at the executive level with the
2 contractor.

3 (b) A state agency shall include the provision in a contract
4 entered into by the agency.

5 Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
6 OUTSOURCING. (a) Each contract entered into by a state agency
7 must include a provision requiring disclosure of any services
8 materially necessary to fulfill the contract, including services
9 performed by a subcontractor, that will be or are performed in a
10 country other than the United States. This section does not apply
11 to services that are incidental to fulfilling the contract.

12 (b) The contract must include a provision allowing the state
13 agency to terminate the contract and solicit a new contract if:

14 (1) the contractor or a subcontractor of the
15 contractor performs a service materially necessary to fulfill the
16 contract in a country other than the United States; and

17 (2) the contractor did not disclose in the contract at
18 the time the contract was originally entered into that the service
19 would be performed in a country other than the United States.

20 (c) A state agency that decides not to solicit a new
21 contract under circumstances in which the agency is authorized to
22 do so under a contract provision required by Subsection (b) shall
23 report this decision to:

24 (1) the governor;

25 (2) the lieutenant governor;

26 (3) the speaker of the house of representatives; and

27 (4) the team.

1 Sec. 2262.156. HIRING PREFERENCE PROVISION FOR CERTAIN
2 LARGE CONTRACTS. If a state agency determines that a proposed
3 contract or proposed contract amendment would outsource existing
4 services or functions performed by the agency that have a value of
5 \$10,000,000 or more, or that would lead to the loss of 100 or more
6 existing state employee positions, the contract or contract
7 amendment must contain a provision that requires the contractor to
8 give preference in hiring to former employees of a state agency:

9 (1) whose employment is terminated because of the
10 contract or contract amendment; and

11 (2) who satisfy the contractor's hiring criteria for
12 that position.

13 [Sections 2262.158-2262.200 reserved for expansion]

14 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

15 Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each
16 contractor who responds to a state agency's contract solicitation
17 shall disclose in its response all potential conflicts of interest
18 to the agency.

19 (b) The team shall develop guidelines to aid contractors and
20 state agencies in identifying potential conflicts of interest.

21 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING
22 CLASS. Each executive director of a state agency shall annually
23 complete the ethics and contracting class developed under Section
24 2262.053. This section does not apply to a state agency that does
25 not enter into any contracts.

26 [Sections 2262.203-2262.250 reserved for expansion]

1 SUBCHAPTER F. CHANGES TO CONTRACTS

2 Sec. 2262.251. CONTRACT AMENDMENTS AND CHANGE ORDERS.

3 (a) An amendment to a contract, including a change order, is
4 subject to the same approval processes as the original contract.

5 (b) A state agency may not amend a contract unless:

6 (1) the agency complies with the same approval
7 processes for the amendment as required for the original contract;
8 and

9 (2) a contract manager for the agency states in
10 writing why the amendment is necessary.

11 (c) This section does not require a new solicitation for a
12 new contract.

13 Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) If a
14 proposed contract amendment or extension changes the monetary value
15 of a contract by more than 10 percent, the state agency must obtain
16 review and approval from the team and the agency's executive
17 director before the agency amends or extends the contract.

18 (b) This section does not apply to contract extensions that
19 are specifically established as a component of the original
20 procurement.

21 SECTION 1.08. Section 2262.003, Government Code, as amended
22 by House Bill No. 905, Acts of the 79th Legislature, Regular
23 Session, 2005, is transferred to Subchapter D, Chapter 2262,
24 Government Code, as added by this Act, is redesignated as Section
25 2262.157, Government Code, and is amended to read as follows:

26 Sec. 2262.157 [2262.003]. REQUIRED [CONTRACT] PROVISION
27 RELATING TO AUDITING. (a) Each state agency shall include in each

1 of its contracts a term that provides that:

2 (1) the state auditor may conduct an audit or
3 investigation of any entity receiving funds from the state directly
4 under the contract or indirectly through a subcontract under the
5 contract;

6 (2) acceptance of funds directly under the contract or
7 indirectly through a subcontract under the contract acts as
8 acceptance of the authority of the state auditor, under the
9 direction of the legislative audit committee, to conduct an audit
10 or investigation in connection with those funds; and

11 (3) under the direction of the legislative audit
12 committee, an entity that is the subject of an audit or
13 investigation by the state auditor must provide the state auditor
14 with access to any information the state auditor considers relevant
15 to the investigation or audit.

16 (b) The state auditor shall provide assistance to a state
17 agency in developing the contract provisions.

18 SECTION 1.09. (a) Sections 2262.064 and 2262.067,
19 Government Code, as added by this article, apply only to a contract
20 for which a state agency first advertises or otherwise solicits
21 bids, proposals, offers, or qualifications on or after the
22 effective date of this Act.

23 (b) Subsection (a), Section 2262.201, Government Code, as
24 added by this article, applies only in relation to a contract for
25 which a state agency first solicits bids, proposals, offers, or
26 qualifications on or after the date that the Contract Advisory
27 Team's guidelines regarding potential conflicts of interest take

1 effect.

2 SECTION 1.10. Not later than May 1, 2006, the Texas Building
3 and Procurement Commission shall develop the training program,
4 including the ethics and contracting class, required by Section
5 2262.053, Government Code, as amended by this article, and Section
6 2262.0535, Government Code, as added by this article.

7 SECTION 1.11. A member of a governing body of a state agency
8 is not required to complete the training developed under Section
9 2262.0535, Government Code, as added by this article, until
10 September 1, 2007.

11 SECTION 1.12. An executive director of a state agency is not
12 required to comply with Section 2262.202, Government Code, as added
13 by this article, until September 1, 2007.

14 SECTION 1.13. A contract manager is not required to be
15 certified under Chapter 2262, Government Code, as amended by this
16 article, until September 1, 2007.

17 SECTION 1.14. (a) As soon as practicable, and not later
18 than May 1, 2006, the Contract Advisory Team shall develop the
19 forms, criteria, recommendations, and provisions required by this
20 article, including Sections 2262.104, 2262.105, 2262.152, and
21 2262.154 and Subsection (b), Section 2262.201, Government Code, as
22 added by this article.

23 (b) A state agency is not required to comply with Sections
24 2262.056 through 2262.063 and Sections 2262.153, 2262.154,
25 2262.155, and 2262.156, Government Code, as added by this article,
26 until September 1, 2007. A state agency may comply earlier if the
27 forms, electronic requirements, database, or other items are

1 available before that date.

2 ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCIAL DISCLOSURE,
3 STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

4 SECTION 2.01. Subchapter C, Chapter 572, Government Code,
5 is amended by adding Section 572.062 to read as follows:

6 Sec. 572.062. CONFLICT OF INTEREST OF STATE OFFICER OR
7 EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) In this
8 section:

9 (1) "Legislative consultant" means:

10 (A) a person providing services under contract as
11 a consultant to the senate, the house of representatives, or a
12 member or committee of either house; or

13 (B) a person providing services under contract as
14 a consultant to a state agency in connection with legislation or
15 communications with members of the legislature or legislative
16 employees.

17 (2) "Legislative employee" means a person employed by:

18 (A) the senate, the house of representatives, or
19 a committee of either house; or

20 (B) a member of the legislature acting in the
21 member's official capacity.

22 (3) "Member of the governor's executive staff" means a
23 person employed by the governor acting in the governor's official
24 capacity whose regular job duties include:

25 (A) the formulation of policy or testifying
26 before and meeting with members of the legislature; or

27 (B) supervising other employees in the

1 governor's office whose regular job duties include those described
2 by Paragraph (A).

3 (4) "State agency legislative liaison" means an
4 employee of a state agency who serves as a legislative liaison or
5 government affairs officer or acts in a similar capacity or whose
6 regular job duties include testifying before and meeting with
7 members of the legislature.

8 (5) "State agency procurement agent" means an employee
9 of a state agency whose regular job duties include soliciting,
10 evaluating, or awarding bids, proposals, or contracts for the
11 procurement by the state agency of property or services.

12 (b) This section applies to an appointed officer, executive
13 head of a state agency, member of the governor's executive staff,
14 legislative employee, state agency legislative liaison, state
15 agency procurement agent, or legislative consultant.

16 (c) For purposes of this section, a person to whom this
17 section applies has a conflict of interest if the person has a
18 personal financial or other interest in the subject matter of a
19 governmental decision or action that compromises or has the
20 appearance of compromising the person's professional judgment or
21 integrity.

22 (d) A person to whom this section applies who has a conflict
23 of interest with respect to a governmental decision or action
24 shall:

25 (1) disclose the conflict in writing delivered to the
26 state officer or state agency employing or contracting with the
27 person; and

1 (2) abstain from further participation in the
2 governmental decision or action.

3 (e) A person who violates this section is liable for a civil
4 penalty of not less than \$500 and not more than the value of a
5 monetary gain the person receives because of the governmental
6 decision or action.

7 (f) Subsection (e) does not prohibit:

8 (1) the imposition of a civil penalty under Chapter
9 571; or

10 (2) removal of an appointed officer under Section
11 572.058 for conduct that violates both this section and Section
12 572.058.

13 SECTION 2.02. Section 572.062, Government Code, as added by
14 this article, applies only to participation in a governmental
15 decision made or action taken on or after November 1, 2005.
16 Participation in a governmental decision made or action taken
17 before November 1, 2005, is governed by the law in effect on the
18 date the decision is made or the action is taken, and the former law
19 is continued in effect for that purpose.

20 ARTICLE 3. CHANGES RELATED TO STATE AUDIT CONTRACTS

21 SECTION 3.01. Subsection (a), Section 2113.102, Government
22 Code, is amended to read as follows:

23 (a) A state agency may not use appropriated money to
24 contract with a person to audit [~~the financial records or accounts~~
25 ~~of~~] the agency except:

26 (1) as provided by[+]

27 [~~(1)~~] Subsections (b), (c), and (d); and

1 (2) in accordance with Section 321.020 [~~Chapter 466,~~
2 ~~pertaining to the state lottery,~~

3 ~~[(3) Chapter 2306, pertaining to the Texas Department~~
4 ~~of Housing and Community Affairs, and~~

5 ~~[(4) Chapter 361, Transportation Code, pertaining to~~
6 ~~the Texas Turnpike Authority division of the Texas Department of~~
7 ~~Transportation].~~

8 ARTICLE 4. PREFERENCE IN GOVERNMENTAL PURCHASING DECISIONS FOR
9 VENDORS THAT PROVIDE HEALTH BENEFITS TO EMPLOYEES

10 SECTION 4.01. Subsection (b), Section 44.031, Education
11 Code, is amended to read as follows:

12 (b) Except as provided by this subchapter, in determining to
13 whom to award a contract, the district may consider:

14 (1) the purchase price;

15 (2) the reputation of the vendor and of the vendor's
16 goods or services;

17 (3) the quality of the vendor's goods or services;

18 (4) the extent to which the goods or services meet the
19 district's needs;

20 (5) the vendor's past relationship with the district;

21 (6) the impact on the ability of the district to comply
22 with laws and rules relating to historically underutilized
23 businesses;

24 (7) the total long-term cost to the district to
25 acquire the vendor's goods or services; ~~and~~

26 (8) whether the vendor provides health benefits
27 coverage to employees; and

1 (9) any other relevant factor specifically listed in
2 the request for bids or proposals.

3 SECTION 4.02. Subchapter B, Chapter 44, Education Code, is
4 amended by adding Section 44.0421 to read as follows:

5 Sec. 44.0421. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
6 BENEFITS COVERAGE. (a) A district procuring goods or services
7 shall give preference to goods or services of a vendor that
8 demonstrates that the vendor provides health benefits coverage that
9 is at least equivalent to a standard health benefit plan offered in
10 accordance with Chapter 1507, Insurance Code, to each of the
11 vendor's full-time employees and dependents of full-time employees
12 if:

13 (1) the goods or services meet district specifications
14 regarding quantity and quality; and

15 (2) the cost of the goods or services does not exceed
16 the ultimate cost to the district that would result if the district
17 procured similar goods or services from a vendor that does not
18 demonstrate that the vendor provides health benefits coverage to
19 the vendor's employees and employees' dependents.

20 (b) A district may not give preference under this section to
21 a vendor that provides health benefits coverage to its employees
22 over a vendor with 50 or fewer employees that does not provide
23 health benefits coverage to its employees and employees'
24 dependents.

25 SECTION 4.03. Subsection (b), Section 51.9335, Education
26 Code, is amended to read as follows:

27 (b) In determining what is the best value to an institution

1 of higher education, the institution shall consider:

2 (1) the purchase price;

3 (2) the reputation of the vendor and of the vendor's
4 goods or services;

5 (3) the quality of the vendor's goods or services;

6 (4) the extent to which the goods or services meet the
7 institution's needs;

8 (5) the vendor's past relationship with the
9 institution;

10 (6) the impact on the ability of the institution to
11 comply with laws and rules relating to historically underutilized
12 businesses and to the procurement of goods and services from
13 persons with disabilities;

14 (7) the total long-term cost to the institution of
15 acquiring the vendor's goods or services;

16 (8) any other relevant factor that a private business
17 entity would consider in selecting a vendor; ~~and~~

18 (9) the use of material in construction or repair to
19 real property that is not proprietary to a single vendor unless the
20 institution provides written justification in the request for bids
21 for use of the unique material specified; and

22 (10) whether the vendor provides health benefits
23 coverage to employees.

24 SECTION 4.04. Subchapter Z, Chapter 51, Education Code, is
25 amended by adding Section 51.9336 to read as follows:

26 Sec. 51.9336. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
27 BENEFITS COVERAGE. (a) In this section, "institution of higher

1 education" has the meaning assigned by Section 61.003.

2 (b) An institution of higher education procuring goods or
3 services shall give preference to goods or services of a vendor that
4 demonstrates that the vendor provides health benefits coverage that
5 is at least equivalent to a standard health benefit plan offered in
6 accordance with Chapter 1507, Insurance Code, to each of the
7 vendor's full-time employees and dependents of full-time employees
8 if:

9 (1) the goods or services meet institution
10 specifications regarding quantity and quality; and

11 (2) the cost of the goods or services does not exceed
12 the ultimate cost to the institution that would result if the
13 institution procured similar goods or services from a vendor that
14 does not demonstrate that the vendor provides health benefits
15 coverage to the vendor's employees and employees' dependents.

16 (c) An institution of higher education may not give
17 preference under this section to a vendor that provides health
18 benefits coverage to its employees over a vendor with 50 or fewer
19 employees that does not provide health benefits coverage to its
20 employees and employees' dependents.

21 SECTION 4.05. Subsection (b), Section 73.115, Education
22 Code, is amended to read as follows:

23 (b) In determining what is the best value to the
24 institution, the institution shall consider:

25 (1) the purchase price;

26 (2) the reputation of the vendor and of the vendor's
27 goods or services;

- 1 (3) the quality of the vendor's goods or services;
- 2 (4) the extent to which the goods or services meet the
3 institution's needs;
- 4 (5) the vendor's past relationship with the
5 institution;
- 6 (6) the impact on the ability of the institution to
7 comply with laws and rules relating to historically underutilized
8 businesses;
- 9 (7) the total long-term cost to the institution of
10 acquiring the vendor's goods or services; ~~and~~
- 11 (8) as provided by Section 51.9336, whether the vendor
12 provides health benefits coverage to employees; and
- 13 (9) any other relevant factor that a private business
14 entity would consider in selecting a vendor.

15 SECTION 4.06. Subsection (b), Section 74.008, Education
16 Code, is amended to read as follows:

17 (b) In determining what is the best value to the medical
18 branch, the medical branch shall consider:

- 19 (1) the purchase price;
- 20 (2) the reputation of the vendor and of the vendor's
21 goods or services;
- 22 (3) the quality of the vendor's goods or services;
- 23 (4) the extent to which the goods or services meet the
24 medical branch's needs;
- 25 (5) the vendor's past relationship with the medical
26 branch;
- 27 (6) the impact on the ability of the medical branch to

1 comply with laws and rules relating to historically underutilized
2 businesses;

3 (7) the total long-term cost to the medical branch of
4 acquiring the vendor's goods or services; [~~and~~]

5 (8) as provided by Section 51.9336, whether the vendor
6 provides health benefits coverage to employees; and

7 (9) any other relevant factor that a private business
8 entity would consider in selecting a vendor.

9 SECTION 4.07. Subsection (b), Section 2155.074, Government
10 Code, is amended to read as follows:

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

16 (1) installation costs;

17 (2) life cycle costs;

18 (3) the quality and reliability of the goods and
19 services;

20 (4) the delivery terms;

21 (5) indicators of probable vendor performance under
22 the contract such as past vendor performance, the vendor's
23 financial resources and ability to perform, the vendor's experience
24 or demonstrated capability and responsibility, and the vendor's
25 ability to provide reliable maintenance agreements and support;

26 (6) the cost of any employee training associated with
27 a purchase;

1 (7) the effect of a purchase on agency productivity;

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

5 (9) whether the vendor provides health benefits
6 coverage to employees; and

7 (10) [~~9~~] other factors relevant to determining the
8 best value for the state in the context of a particular purchase.

9 SECTION 4.08. Subchapter H, Chapter 2155, Government Code,
10 is amended by adding Section 2155.452 to read as follows:

11 Sec. 2155.452. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
12 BENEFITS COVERAGE. (a) The commission and all state agencies
13 procuring goods or services shall give preference to goods or
14 services of a vendor that demonstrates that the vendor provides
15 health benefits coverage that is at least equivalent to a standard
16 health benefit plan offered in accordance with Chapter 1507,
17 Insurance Code, to each of the vendor's full-time employees and
18 dependents of full-time employees if:

19 (1) the goods or services meet state specifications
20 regarding quantity and quality; and

21 (2) the cost of the goods or services does not exceed
22 the ultimate cost to the commission or state agency that would
23 result if the commission or state agency procured similar goods or
24 services from a vendor that does not demonstrate that the vendor
25 provides health benefits coverage to the vendor's employees and
26 employees' dependents.

27 (b) The commission or a state agency may not give preference

1 under this section to a vendor that provides health benefits
2 coverage to its employees over a vendor with 50 or fewer employees
3 that does not provide health benefits coverage to its employees and
4 employees' dependents.

5 SECTION 4.09. Subsection (b), Section 252.043, Local
6 Government Code, is amended to read as follows:

7 (b) In determining the best value for the municipality, the
8 municipality may consider:

9 (1) the purchase price;

10 (2) the reputation of the bidder and of the bidder's
11 goods or services;

12 (3) the quality of the bidder's goods or services;

13 (4) the extent to which the goods or services meet the
14 municipality's needs;

15 (5) the bidder's past relationship with the
16 municipality;

17 (6) the impact on the ability of the municipality to
18 comply with laws and rules relating to contracting with
19 historically underutilized businesses and nonprofit organizations
20 employing persons with disabilities;

21 (7) the total long-term cost to the municipality to
22 acquire the bidder's goods or services; ~~and~~

23 (8) whether the bidder provides health benefits
24 coverage to employees; and

25 (9) any relevant criteria specifically listed in the
26 request for bids or proposals.

27 SECTION 4.10. Subchapter C, Chapter 252, Local Government

Code, is amended by adding Section 252.0431 to read as follows:

Sec. 252.0431. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) A municipality procuring goods or services shall give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees if:

(1) the goods or services meet municipality specifications regarding quantity and quality; and

(2) the cost of the goods or services does not exceed the ultimate cost to the municipality that would result if the municipality procured similar goods or services from a vendor that does not demonstrate that the vendor provides health benefits coverage to the vendor's employees and employees' dependents.

(b) A municipality may not give preference under this section to a vendor that provides health benefits coverage to its employees over a vendor with 50 or fewer employees that does not provide health benefits coverage to its employees and employees' dependents.

SECTION 4.11. Subchapter C, Chapter 271, Local Government Code, is amended by adding Section 271.0571 to read as follows:

Sec. 271.0571. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) A municipality or county procuring goods or services shall give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage

1 that is at least equivalent to a standard health benefit plan
2 offered in accordance with Chapter 1507, Insurance Code, to each of
3 the vendor's full-time employees and dependents of full-time
4 employees if:

5 (1) the goods or services meet municipality or county
6 specifications regarding quantity and quality; and

7 (2) the cost of the goods or services does not exceed
8 the ultimate cost to the municipality or county that would result if
9 the municipality or county procured similar goods or services from
10 a vendor that does not demonstrate that the vendor provides health
11 benefits coverage to the vendor's employees and employees'
12 dependents.

13 (b) A municipality or county may not give preference under
14 this section to a vendor that provides health benefits coverage to
15 its employees over a vendor with 50 or fewer employees that does not
16 provide health benefits coverage to its employees and employees'
17 dependents.

18 SECTION 4.12. Section 271.113, Local Government Code, is
19 amended by adding Subsection (c) to read as follows:

20 (c) In addition to other considerations under this section,
21 in determining to whom to award a contract, a municipality or county
22 may consider whether the vendor provides health benefits coverage
23 that is at least equivalent to a standard health benefit plan
24 offered in accordance with Chapter 1507, Insurance Code, to each of
25 the vendor's full-time employees and dependents of full-time
26 employees.

27 SECTION 4.13. Subchapter H, Chapter 271, Local Government

1 Code, is amended by adding Section 271.1131 to read as follows:

2 Sec. 271.1131. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
3 BENEFITS COVERAGE. (a) A municipality or county procuring goods
4 or services shall give preference to goods or services of a vendor
5 that demonstrates that the vendor provides health benefits coverage
6 that is at least equivalent to a standard health benefit plan
7 offered in accordance with Chapter 1507, Insurance Code, to each of
8 the vendor's full-time employees and dependents of full-time
9 employees if:

10 (1) the goods or services meet municipality or county
11 specifications regarding quantity and quality; and

12 (2) the cost of the goods or services does not exceed
13 the ultimate cost to the municipality or county that would result if
14 the municipality or county procured similar goods or services from
15 a vendor that does not demonstrate that the vendor provides health
16 benefits coverage to the vendor's employees and employees'
17 dependents.

18 (b) A municipality or county may not give preference under
19 this section to a vendor that provides health benefits coverage to
20 its employees over a vendor with 50 or fewer employees that does not
21 provide health benefits coverage to its employees and employees'
22 dependents.

23 SECTION 4.14. The changes in law made by this article apply
24 only to a contract for the procurement of goods and services for
25 which the solicitation of bids or proposals, request for proposals,
26 or similar required notification as to the goods or services is
27 published on or after November 1, 2005. A contract for the

1 procurement of goods and services for which the solicitation of
2 bids or proposals, request for proposals, or similar required
3 notification as to the goods or services is published before
4 November 1, 2005, is governed by the law in effect at the time the
5 solicitation, request, or notification is published, and that law
6 is continued in effect for that purpose.

7 ARTICLE 5. EFFECTIVE DATE

8 SECTION 5.01. This Act takes effect November 1, 2005.