

By: Isett

H.B. No. 3274

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the award of state contracts for commercially available
3 services.

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

5 SECTION 1. Subchapter C, Chapter 2155, Government Code, is
6 amended by adding Section 2155.1445 to read as follows:

7 Sec. 2155.1445. ANALYSIS OF SERVICES AND FUNCTIONS. (a) In
8 this section, "inherently governmental in nature" means a function
9 or service that involves the exercise or use of governmental
10 authority or discretion.

11 (b) This section applies only to the Health and Human
12 Services Commission and to each health and human services agency.

13 (c) If the Health and Human Services Commission determines
14 that a proposed contract or proposed contract amendment would lead
15 to the loss of at least 50 current state employee positions, then
16 before the commission may issue a competitive solicitation for the
17 contract or amend the contract the State Council on Competitive
18 Government shall perform an analysis to determine if any of the
19 services or functions to be performed under the contract or
20 contract amendment are inherently governmental in nature.

21 (d) If the State Council on Competitive Government
22 determines that a service or function to be performed under the
23 contract or contract amendment is inherently governmental in
24 nature, the Health and Human Services Commission may not:

1 (1) contract with a private entity to perform the
2 service or function; or

3 (2) amend the contract, if a private entity is to
4 perform the service or function under the contract amendment.

5 (e) The analysis required under this section must use the
6 standards and policies contained in the Office of Federal
7 Procurement Policy, Policy Letter 92-1, or comparable guidelines
8 developed by the State Council on Competitive Government.

9 SECTION 2. Section 2162.102, Government Code, is amended by
10 amending Subsection (c) and adding Subsections (e), (f), and (g) to
11 read as follows:

12 (c) In performing its duties under this chapter, the council
13 may:

14 (1) require a state agency to conduct a hearing,
15 study, review, or cost estimate, including an agency in-house cost
16 estimate or a management study, concerning any aspect of a service
17 identified under Subsection (a);

18 (2) develop and require state agencies to use methods
19 to accurately and fairly estimate and account for the cost of
20 providing a service identified under Subsection (a);

21 (3) require that a service identified under Subsection
22 (a) be submitted to competitive bidding or another process that
23 creates competition with private commercial sources;

24 (4) prescribe, after consulting affected state
25 agencies, the specifications and conditions of purchase procedures
26 that must be followed by the commission and a state agency or a
27 private commercial source engaged in competitive bidding to provide

1 a service identified under Subsection (a);

2 (5) award a contract to a state agency providing the
3 service, another state agency, a private commercial source, or a
4 combination of those entities [~~7, if the bidder presents the best and~~
5 ~~most reasonable bid, which is not necessarily the lowest bid~~]; and

6 (6) determine the terms of a contract for service or
7 interagency contract to provide a service identified under
8 Subsection (a).

9 (e) In performing its duties under this section, the council
10 shall create a confidential model for each commercially available
11 service identified to determine how and at what cost a state agency
12 could most efficiently provide the service.

13 (f) The council may not award a contract under this section
14 to a private commercial contractor unless the contractor can
15 perform the service with a comparable or better level of quality at
16 a cost that is at least 10 percent lower than the model cost created
17 under Subsection (e). If the council determines that the contract
18 involves excessive financial risk, the council may require that the
19 contractor provide greater cost savings to compensate for that
20 risk.

21 (g) When filling employee positions under a contract
22 awarded under this section, a contractor shall give first
23 consideration to an applicant formerly employed with a state agency
24 whose employee position was terminated as a result of the award of
25 the contract.

26 SECTION 3. Section 2162.103, Government Code, is amended to
27 read as follows:

1 Sec. 2162.103. COST COMPARISON AND CONTRACT
2 CONSIDERATIONS. (a) In comparing the cost of providing a service,
3 the council shall consider the:

4 (1) cost of supervising the work of a private
5 contractor; ~~and~~

6 (2) cost of a state agency's performance of the
7 service, including:

8 (A) the costs of the comptroller, attorney
9 general, and other support agencies; and

10 (B) other indirect costs related to the agency's
11 performance of the service; and

12 (3) cost of state unemployment claims for state
13 employee positions that would be terminated if a private contractor
14 was awarded the contract.

15 (b) A bid or contract must include an analysis of ~~[health~~
16 ~~care benefits]~~ retirement [~~7~~] and workers' compensation insurance
17 for a contractor's employees that are reasonably comparable to the
18 ~~[health care benefits]~~ retirement [~~7~~] and workers' compensation
19 insurance benefits of the state.

20 (c) In comparing the cost of providing a service, the
21 council shall:

22 (1) require a bid of a private contractor, including
23 any subcontractors, to include health care benefits for the
24 employees performing the services under the contract; or

25 (2) add to a bid amount of a private contractor that
26 does not include health care benefits for the contractor's
27 employees, including subcontractor's employees, the cost of health

1 care benefits for employees performing the services under the
2 contract based on individual premium costs for employees covered by
3 the Employees Retirement System of Texas.

4 SECTION 4. Section 2163.001, Government Code, is amended by
5 adding Subsection (e) to read as follows:

6 (e) In performing its duties under this section, the
7 commission shall create a confidential model for each commercially
8 available service identified to determine how and at what cost the
9 commission could most efficiently provide the service.

10 SECTION 5. Section 2163.002, Government Code, is amended by
11 amending Subsection (b) and by adding Subsection (c) to read as
12 follows:

13 (b) In comparing the cost of providing a service, the
14 commission must include the:

15 (1) cost of supervising the work of a private
16 contractor; ~~and~~

17 (2) cost to the state of the commission's performance
18 of the service, including:

19 (A) the costs of the office of the attorney
20 general and other support agencies; and

21 (B) other indirect costs related to the
22 commission's performance of the service; and

23 (3) cost of state unemployment claims for state
24 employee positions that would be terminated if a private contractor
25 were awarded the contract.

26 (c) In comparing the cost of providing a service, the
27 commission shall:

1 (1) require a bid of a private contractor, including
2 any subcontractors, to include health care benefits for the
3 employees performing services under the contract; or

4 (2) add to a bid amount of a private contractor that
5 does not include health care benefits for the contractor's
6 employees, including subcontractor's employees, the cost of health
7 care benefits for employees performing services under the contract
8 based on individual premium costs for employees covered by the
9 Employees Retirement System of Texas.

10 SECTION 6. Section 2163.003, Government Code, is amended by
11 adding Subsections (c) and (d) to read as follows:

12 (c) The commission may not award a contract under this
13 section to a private commercial contractor unless the contractor
14 can perform the service at a cost that is at least 10 percent lower
15 than the model cost created under Section 2163.001(e). If the
16 commission determines that the contract involves excessive
17 financial risk, the commission may require that the contractor
18 provide greater cost savings to compensate for that risk.

19 (d) When filling employee positions under a contract
20 awarded under this section, a contractor shall give first
21 consideration to an applicant formerly employed with a state agency
22 whose employee position was terminated as a result of the award of
23 the contract.

24 SECTION 7. The changes in law made by Section 1 of this Act
25 apply only to a contract or contract amendment for which a state
26 agency first advertises or otherwise solicits bids, proposals,
27 offers, or qualifications on or after the effective date of this

1 Act. A contract or contract amendment for which a state agency
2 first advertised or otherwise solicited bids, proposals, offers, or
3 qualifications before that date is governed by the law in effect
4 when the first advertisement or solicitation was given and the
5 former law is continued in effect for that purpose.

6 SECTION 8. This Act takes effect September 1, 2005.