

By: Zaffirini, et al.

S.B. No. 12

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 2262.157-2262.200 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, is
22 transferred to Subchapter D, Chapter 2262, Government Code, as
23 added by this Act, is redesignated as Section 2262.156, Government
24 Code, and is amended to read as follows:

25 Sec. 2262.156 [2262.003]. REQUIRED [CONTRACT] PROVISION
26 RELATING TO AUDITING. (a) Each state agency shall include in each
27 of its contracts a term that provides that:

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

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

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

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

17 (b) Subsection (a), Section 2262.201, Government Code, as
18 added by this article, applies only in relation to a contract for
19 which a state agency first solicits bids, proposals, offers, or
20 qualifications on or after the date that the Contract Advisory
21 Team's guidelines regarding potential conflicts of interest take
22 effect.

23 SECTION 1.10. Not later than March 1, 2006, the Texas
24 Building and Procurement Commission shall develop the training
25 program, including the ethics and contracting class, required by
26 Section 2262.053, Government Code, as amended by this article, and
27 Section 2262.0535, Government Code, as added by this article.

1 SECTION 1.11. A member of a governing body of a state agency
2 is not required to complete the training developed under Section
3 2262.0535, Government Code, as added by this article, until
4 September 1, 2007.

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

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

11 SECTION 1.14. (a) As soon as practicable, and not later
12 than March 1, 2006, the Contract Advisory Team shall develop the
13 forms, criteria, recommendations, and provisions required by this
14 article, including Sections 2262.104, 2262.105, 2262.152, and
15 2262.154 and Subsection (b), Section 2262.201, Government Code, as
16 added by this article.

17 (b) A state agency is not required to comply with Sections
18 2262.056 through 2262.063 and Sections 2262.153, 2262.154,
19 2262.155, and 2262.156, Government Code, as added by this article,
20 until September 1, 2007. A state agency may comply earlier if the
21 forms, electronic requirements, database, or other items are
22 available before that date.

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

25 SECTION 2.01. Subchapter C, Chapter 572, Government Code,
26 is amended by adding Section 572.060 to read as follows:

27 Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR

1 EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) In this
2 section:

3 (1) "Legislative consultant" means:

4 (A) a person providing services under contract as
5 a consultant to the senate, the house of representatives, or a
6 member or committee of either house; or

7 (B) a person providing services under contract as
8 a consultant to a state agency in connection with legislation or
9 communications with members of the legislature or legislative
10 employees.

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

12 (A) the senate, the house of representatives, or
13 a committee of either house; or

14 (B) a member of the legislature acting in the
15 member's official capacity.

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

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

21 (B) supervising other employees in the
22 governor's office whose regular job duties include those described
23 by Paragraph (A).

24 (4) "State agency legislative liaison" means an
25 employee of a state agency who serves as a legislative liaison or
26 government affairs officer or acts in a similar capacity or whose
27 regular job duties include testifying before and meeting with

1 members of the legislature.

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

6 (b) This section applies to an appointed officer, executive
7 head of a state agency, member of the governor's executive staff,
8 legislative employee, state agency legislative liaison, state
9 agency procurement agent, or legislative consultant.

10 (c) For purposes of this section, a person to whom this
11 section applies has a conflict of interest if the person has a
12 personal financial or other interest in the subject matter of a
13 governmental decision or action that compromises or has the
14 appearance of compromising the person's professional judgment or
15 integrity.

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

19 (1) disclose the conflict in writing delivered to the
20 state officer or state agency employing or contracting with the
21 person; and

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

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

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

2 (1) the imposition of a civil penalty under Chapter
3 571; or

4 (2) removal of an appointed officer under Section
5 572.058 for conduct that violates both this section and Section
6 572.058.

7 SECTION 2.02. Section 572.060, Government Code, as added by
8 this article, applies only to participation in a governmental
9 decision made or action taken on or after September 1, 2005.
10 Participation in a governmental decision made or action taken
11 before September 1, 2005, is governed by the law in effect on the
12 date the decision is made or the action is taken, and the former law
13 is continued in effect for that purpose.

14 ARTICLE 3. CHANGES RELATED TO STATE AUDIT CONTRACTS

15 SECTION 3.01. Subsection (a), Section 321.020, Government
16 Code, is amended to read as follows:

17 (a) Notwithstanding any other law, a state agency, or a
18 corporation that is dedicated to the benefit of a state agency and
19 that meets the criteria specified by Section B, Article 2.23B,
20 Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's
21 Texas Civil Statutes), may employ a private auditor to audit the
22 state agency or corporation only if:

23 (1) the agency or corporation is authorized to
24 contract with a private auditor [~~do so by law or~~] through a
25 delegation of authority from the state auditor;

26 (2) the scope of the proposed audit has been submitted
27 to the state auditor for review and comment; and

1 (3) the services of the private auditor are procured
2 through a competitive selection process in a manner allowed by law.

3 SECTION 3.02. Subsection (a), Section 2113.102, Government
4 Code, is amended to read as follows:

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

8 (1) as provided by~~+~~

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

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

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

14 ~~[(4) Chapter 361, Transportation Code, pertaining to~~
15 ~~the Texas Turnpike Authority division of the Texas Department of~~
16 ~~Transportation].~~

17 SECTION 3.03. Subsection (a), Section 321.020, Government
18 Code, as amended by this article, applies only to a contract that is
19 entered into, amended, extended, or renewed on or after the
20 effective date of this Act.

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

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

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

27 (1) the purchase price;

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

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

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

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

7 (6) the impact on the ability of the district to comply
8 with laws and rules relating to historically underutilized
9 businesses;

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

12 (8) whether the vendor provides health benefits
13 coverage to employees; and

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

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

18 Sec. 44.0421. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
19 BENEFITS COVERAGE. (a) A district procuring goods or services
20 shall give preference to goods or services of a vendor that
21 demonstrates that the vendor provides health benefits coverage that
22 is at least equivalent to a standard health benefit plan offered in
23 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
24 Insurance Code, to each of the vendor's full-time employees and
25 dependents of full-time employees if:

26 (1) the goods or services meet district specifications
27 regarding quantity and quality; and

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

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

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

13 (b) In determining what is the best value to an institution
14 of higher education, the institution shall consider:

15 (1) the purchase price;

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

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

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

21 (5) the vendor's past relationship with the
22 institution;

23 (6) the impact on the ability of the institution to
24 comply with laws and rules relating to historically underutilized
25 businesses and to the procurement of goods and services from
26 persons with disabilities;

27 (7) the total long-term cost to the institution of

1 acquiring the vendor's goods or services;

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

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

8 (10) whether the vendor provides health benefits
9 coverage to employees.

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

12 Sec. 51.9336. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
13 BENEFITS COVERAGE. (a) In this section, "institution of higher
14 education" has the meaning assigned by Section 61.003.

15 (b) An institution of higher education procuring goods or
16 services shall give preference to goods or services of a vendor that
17 demonstrates that the vendor provides health benefits coverage that
18 is at least equivalent to a standard health benefit plan offered in
19 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
20 Insurance Code, to each of the vendor's full-time employees and
21 dependents of full-time employees if:

22 (1) the goods or services meet institution
23 specifications regarding quantity and quality; and

24 (2) the cost of the goods or services does not exceed
25 the ultimate cost to the institution that would result if the
26 institution procured similar goods or services from a vendor that
27 does not demonstrate that the vendor provides health benefits

1 coverage to the vendor's employees and employees' dependents.

2 (c) An institution of higher education may not give
3 preference under this section to a vendor that provides health
4 benefits coverage to its employees over a vendor with 50 or fewer
5 employees that does not provide health benefits coverage to its
6 employees and employees' dependents.

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

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

11 (1) the purchase price;

12 (2) the reputation of the vendor and of the vendor's
13 goods or services;

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

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

17 (5) the vendor's past relationship with the
18 institution;

19 (6) the impact on the ability of the institution to
20 comply with laws and rules relating to historically underutilized
21 businesses;

22 (7) the total long-term cost to the institution of
23 acquiring the vendor's goods or services; ~~and~~

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

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

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

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

5 (1) the purchase price;

6 (2) the reputation of the vendor and of the vendor's
7 goods or services;

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

9 (4) the extent to which the goods or services meet the
10 medical branch's needs;

11 (5) the vendor's past relationship with the medical
12 branch;

13 (6) the impact on the ability of the medical branch to
14 comply with laws and rules relating to historically underutilized
15 businesses;

16 (7) the total long-term cost to the medical branch of
17 acquiring the vendor's goods or services; ~~and~~

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

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

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

24 (b) In determining the best value for the state, the
25 purchase price and whether the goods or services meet
26 specifications are the most important considerations. However, the
27 commission or other state agency may, subject to Subsection (c) and

1 Section 2155.075, consider other relevant factors, including:

2 (1) installation costs;

3 (2) life cycle costs;

4 (3) the quality and reliability of the goods and
5 services;

6 (4) the delivery terms;

7 (5) indicators of probable vendor performance under
8 the contract such as past vendor performance, the vendor's
9 financial resources and ability to perform, the vendor's experience
10 or demonstrated capability and responsibility, and the vendor's
11 ability to provide reliable maintenance agreements and support;

12 (6) the cost of any employee training associated with
13 a purchase;

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

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

18 (9) whether the vendor provides health benefits
19 coverage to employees; and

20 (10) [~~9~~] other factors relevant to determining the
21 best value for the state in the context of a particular purchase.

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

24 Sec. 2155.452. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
25 BENEFITS COVERAGE. (a) The commission and all state agencies
26 procuring goods or services shall give preference to goods or
27 services of a vendor that demonstrates that the vendor provides

1 health benefits coverage that is at least equivalent to a standard
2 health benefit plan offered in accordance with Article 3.80,
3 Article 20A.09N, or Chapter 1507, Insurance Code, to each of the
4 vendor's full-time employees and dependents of full-time employees
5 if:

6 (1) the goods or services meet state specifications
7 regarding quantity and quality; and

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

14 (b) The commission or a state agency may not give preference
15 under this section to a vendor that provides health benefits
16 coverage to its employees over a vendor with 50 or fewer employees
17 that does not provide health benefits coverage to its employees and
18 employees' dependents.

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

21 (b) In determining the best value for the municipality, the
22 municipality may consider:

23 (1) the purchase price;

24 (2) the reputation of the bidder and of the bidder's
25 goods or services;

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

27 (4) the extent to which the goods or services meet the

1 municipality's needs;

2 (5) the bidder's past relationship with the
3 municipality;

4 (6) the impact on the ability of the municipality to
5 comply with laws and rules relating to contracting with
6 historically underutilized businesses and nonprofit organizations
7 employing persons with disabilities;

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

10 (8) whether the bidder provides health benefits
11 coverage to employees; and

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

14 SECTION 4.10. Subchapter C, Chapter 252, Local Government
15 Code, is amended by adding Section 252.0431 to read as follows:

16 Sec. 252.0431. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
17 BENEFITS COVERAGE. (a) A municipality procuring goods or services
18 shall give preference to goods or services of a vendor that
19 demonstrates that the vendor provides health benefits coverage that
20 is at least equivalent to a standard health benefit plan offered in
21 accordance with Article 3.80, Article 20A.09N, or Chapter 1507,
22 Insurance Code, to each of the vendor's full-time employees and
23 dependents of full-time employees if:

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

26 (2) the cost of the goods or services does not exceed
27 the ultimate cost to the municipality that would result if the

1 municipality procured similar goods or services from a vendor that
2 does not demonstrate that the vendor provides health benefits
3 coverage to the vendor's employees and employees' dependents.

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

9 SECTION 4.11. Subchapter C, Chapter 262, Local Government
10 Code, is amended by adding Section 262.0271 to read as follows:

11 Sec. 262.0271. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
12 BENEFITS COVERAGE. (a) The commissioners court of a county
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 Article 3.80,
17 Article 20A.09N, or Chapter 1507, Insurance Code, to each of the
18 vendor's full-time employees and dependents of full-time employees
19 if:

20 (1) the goods or services meet county specifications
21 regarding quantity and quality; and

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

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

6 SECTION 4.12. Subchapter C, Chapter 271, Local Government
7 Code, is amended by adding Section 271.0571 to read as follows:

8 Sec. 271.0571. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
9 BENEFITS COVERAGE. (a) A municipality or county procuring goods
10 or services shall give preference to goods or services of a vendor
11 that demonstrates that the vendor provides health benefits coverage
12 that is at least equivalent to a standard health benefit plan
13 offered in accordance with Article 3.80, Article 20A.09N, or
14 Chapter 1507, Insurance Code, to each of the vendor's full-time
15 employees and dependents of full-time employees if:

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

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

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

1 dependents.

2 SECTION 4.13. Section 271.113, Local Government Code, is
3 amended by adding Subsection (c) to read as follows:

4 (c) In addition to other considerations under this section,
5 in determining to whom to award a contract, a municipality or county
6 may consider whether the vendor provides health benefits coverage
7 that is at least equivalent to a standard health benefit plan
8 offered in accordance with Article 3.80, Article 20A.09N, or
9 Chapter 1507, Insurance Code, to each of the vendor's full-time
10 employees and dependents of full-time employees.

11 SECTION 4.14. Subchapter H, Chapter 271, Local Government
12 Code, is amended by adding Section 271.1131 to read as follows:

13 Sec. 271.1131. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH
14 BENEFITS COVERAGE. (a) A municipality or county procuring goods
15 or services shall give preference to goods or services of a vendor
16 that demonstrates that the vendor provides health benefits coverage
17 that is at least equivalent to a standard health benefit plan
18 offered in accordance with Article 3.80, Article 20A.09N, or
19 Chapter 1507, Insurance Code, to each of the vendor's full-time
20 employees and dependents of full-time employees if:

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

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

1 dependents.

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

7 SECTION 4.15. The changes in law made by this article apply
8 only to a contract for the procurement of goods and services for
9 which the solicitation of bids or proposals, request for proposals,
10 or similar required notification as to the goods or services is
11 published on or after September 1, 2005. A contract for the
12 procurement of goods and services for which the solicitation of
13 bids or proposals, request for proposals, or similar required
14 notification as to the goods or services is published before
15 September 1, 2005, is governed by the law in effect at the time the
16 solicitation, request, or notification is published, and that law
17 is continued in effect for that purpose.

18 ARTICLE 5. EFFECTIVE DATE

19 SECTION 5.01. This Act takes effect September 1, 2005.