

By: Isett

H.B. No. 2918

Substitute the following for H.B. No. 2918:

By: Berman

C.S.H.B. No. 2918

A BILL TO BE ENTITLED

AN ACT

relating to state information technology contracting and procurement practices.

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

SECTION 1. Section 44.031(a), Education Code, is amended to read as follows:

(a) Except as provided by this subchapter, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at \$25,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

(1) competitive bidding;

(2) competitive sealed proposals;

(3) a request for proposals, for services other than construction services;

~~(4) [a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code,~~

~~(5)]~~ an interlocal contract;

(5) ~~[(6)]~~ a design/build contract;

(6) ~~[(7)]~~ a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager;

(7) ~~[(8)]~~ a job order contract for the minor construction, repair, rehabilitation, or alteration of a facility;

1 (8) [~~(9)~~] the reverse auction procedure as defined by
2 Section 2155.062(d), Government Code; or

3 (9) [~~(10)~~] the formation of a political subdivision
4 corporation under Section 304.001, Local Government Code.

5 SECTION 2. The heading to Section 2054.0565, Government
6 Code, is amended to read as follows:

7 Sec. 2054.0565. USE OF CONTRACTS BY OTHER [~~GOVERNMENTAL~~]
8 ENTITIES.

9 SECTION 3. Section 2054.0565, Government Code, is amended
10 by amending Subsection (a) and adding Subsections (c) and (d) to
11 read as follows:

12 (a) The department may include terms in a procurement
13 contract entered into by the department, including a contract
14 entered into under Section 2157.068, that allow the contract to be
15 used by another state agency, a political subdivision of this
16 state, [~~or~~] a governmental entity of another state, or an
17 assistance organization as defined by Section 2175.001.

18 (c) Notwithstanding any other law, a state governmental
19 entity that is not a state agency as defined by Section 2054.003 may
20 use a contract as provided by Subsection (a) without being subject
21 to a rule, statute, or contract provision, including a provision in
22 a contract entered into under Section 2157.068, that would
23 otherwise require the state governmental entity to:

24 (1) sign an interagency agreement; or
25 (2) disclose the items purchased or the value of the
26 purchase.

27 (d) A state governmental entity that is not a state agency

1 as defined by Section 2054.003 that uses a contract as provided by
2 Subsection (a) may prohibit a vendor from disclosing the items
3 purchased, the use of the items purchased, and the value of the
4 purchase.

5 SECTION 4. Section 2054.301, Government Code, is amended to
6 read as follows:

7 Sec. 2054.301. APPLICABILITY; DEFINITION. (a) This
8 subchapter applies only to:

- 9 (1) a major information resources project; and
10 (2) a major contract.

11 (b) In this subchapter, "major contract" means a major
12 contract as defined by Section 2262.001(4) under which a vendor
13 will perform or manage an outsourced function or process.

14 SECTION 5. Sections 2054.303(a) and (c), Government Code,
15 are amended to read as follows:

16 (a) For each proposed major information resources project
17 or major contract, a state agency must prepare:

18 (1) a business case providing the initial
19 justification for the project or contract, including the
20 anticipated return on investment in terms of cost savings and
21 efficiency for the project or contract; and

22 (2) a statewide impact analysis of the project's or
23 contract's effect on the state's common information resources
24 infrastructure, including the possibility of reusing code or other
25 resources.

26 (c) The department shall use the analysis to ensure that the
27 proposed project or major contract does not unnecessarily duplicate

1 existing statewide information resources technology.

2 SECTION 6. Section 2054.304, Government Code, is amended to
3 read as follows:

4 Sec. 2054.304. PROJECT PLANS. (a) A state agency shall
5 develop a project plan for each major information resources project
6 or major contract.

7 (b) Except as provided by Subsection (c), the state agency
8 must file the project plan with the quality assurance team and the
9 Texas Building and Procurement Commission before the agency:

10 (1) spends more than 10 percent of allocated funds for
11 the project or major contract; or

12 (2) first issues a vendor solicitation for the project
13 or contract.

14 (c) Unless the project plan has been filed under this
15 section:

16 (1) the Texas Building and Procurement Commission may
17 not issue a vendor solicitation for the project or major contract;
18 and

19 (2) the agency may not post a vendor solicitation for
20 the project or contract in the state business daily under Section
21 2155.083.

22 SECTION 7. Section 2054.305, Government Code, is amended to
23 read as follows:

24 Sec. 2054.305. PROCUREMENT PLAN AND METHOD FOR MONITORING
25 CONTRACTS. Before issuing a vendor solicitation for a project or
26 major contract, the state agency must develop, consistent with
27 department guidelines:

1 (1) a procurement plan with anticipated service levels
2 and performance standards for each vendor; and

3 (2) a method to monitor changes to the scope of each
4 contract.

5 SECTION 8. Section 2155.502, Government Code, is amended by
6 amending Subsections (b) and (c) and adding Subsection (e) to read
7 as follows:

8 (b) In developing a [the] schedule under Subsection (a) or
9 (e), the commission or department, as appropriate, shall modify any
10 contractual terms, with the agreement of the parties to the
11 contract, as necessary to comply with any federal or state
12 requirements, including rules adopted under this subchapter.

13 (c) The commission may not list a multiple award contract on
14 a schedule developed under Subsection (a) [this section] if the
15 goods or services provided by that contract:

16 (1) are available from only one vendor; ~~[or]~~

17 (2) are telecommunications services, facilities, or
18 equipment; or

19 (3) are commodity items as defined by Section
20 2157.068(a).

21 (e) The department may develop a schedule of multiple award
22 contracts for commodity items as defined by Section 2157.068(a)
23 using the criteria established under Subsection (a).

24 SECTION 9. Subchapter A, Chapter 2157, Government Code, is
25 amended by adding Section 2157.006 to read as follows:

26 Sec. 2157.006. PURCHASING METHODS. (a) The commission or
27 other state agency shall purchase an automated information system

1 using:

2 (1) the purchasing method described by Section
3 2157.068 for commodity items; or

4 (2) a purchasing method designated by the commission
5 to obtain the best value for the state, including a request for
6 offers method.

7 (b) A local government may purchase an automated
8 information system using a method listed under Subsection (a). A
9 local government that purchases an item using a method listed under
10 Subsection (a) satisfies any state law requiring the local
11 government to seek competitive bids for the purchase of the item.

12 (c) The commission shall adopt rules for designating
13 purchasing methods under Subsection (a).

14 SECTION 10. The heading to Subchapter B, Chapter 2157,
15 Government Code, is amended to read as follows:

16 SUBCHAPTER B. COMMODITY ITEMS [~~CATALOG PURCHASE METHOD~~]

17 SECTION 11. The heading to Section 2157.068, Government
18 Code, is amended to read as follows:

19 Sec. 2157.068. PURCHASE OF INFORMATION TECHNOLOGY
20 COMMODITY ITEMS.

21 SECTION 12. Section 2157.068, Government Code, is amended
22 by amending Subsection (b) and adding Subsection (i) to read as
23 follows:

24 (b) The department shall negotiate with [~~catalog~~
25 ~~information systems~~] vendors to attempt to obtain a favorable price
26 for all of state government on licenses for commodity items, based
27 on the aggregate volume of purchases expected to be made by the

1 state. The terms and conditions of a license agreement between a
2 vendor and the department under this section may not be less
3 favorable to the state than the terms of similar license agreements
4 between the vendor and retail distributors.

5 (i) A state agency shall use a purchasing method provided by
6 Section 2157.006(a) when purchasing a commodity item if:

7 (1) the agency has obtained an exemption from the
8 department or approval from the Legislative Budget Board under
9 Subsection (f); or

10 (2) the agency is otherwise exempt from this section.

11 SECTION 13. Section 2262.051, Government Code, is amended
12 by adding Subsection (h) to read as follows:

13 (h) The guide must establish procedures for major contracts
14 that outsource a state function or process to a contractor,
15 including when applicable the use of documents required under
16 Subchapter J, Chapter 2054.

17 SECTION 14. Section 2262.053(b), Government Code, is
18 amended to read as follows:

19 (b) The training must provide the contract manager with
20 information regarding how to:

21 (1) fairly and objectively select and negotiate with
22 the most qualified contractor;

23 (2) establish prices that are cost-effective and that
24 reflect the cost of providing the service;

25 (3) include provisions in a contract that hold the
26 contractor accountable for results;

27 (4) monitor and enforce a contract;

- 1 (5) make payments consistent with the contract; ~~and~~
- 2 (6) comply with any requirements or goals contained in
- 3 the contract management guide; and
- 4 (7) use and apply advanced sourcing strategies,
- 5 techniques, and tools.

6 SECTION 15. Section 60.454, Water Code, is amended to read
7 as follows:

8 Sec. 60.454. PURCHASING CONTRACT METHODS. Notwithstanding
9 any other provision of this chapter or other law, a district
10 contract valued at \$25,000 or more in the aggregate for each
11 12-month period may be made by the method below that, in the opinion
12 of the district's commission, provides the best value for the
13 district:

- 14 (1) a design-build contract to construct,
- 15 rehabilitate, alter, or repair facilities;
- 16 (2) a contract to construct, rehabilitate, alter, or
- 17 repair facilities that involves using a construction manager-agent
- 18 or construction manager-at-risk;
- 19 (3) competitive sealed proposals;
- 20 (4) a job order contract for the construction, repair,
- 21 rehabilitation, or alteration of a facility;
- 22 (5) a request for proposals, if the contract is for
- 23 services other than construction services;
- 24 (6) competitive sealed bids;
- 25 (7) ~~[a catalog purchase as provided by Subchapter B,~~
- 26 ~~Chapter 2157, Government Code,~~
- 27 ~~[(8)]~~ an interlocal contract as provided by Chapter

1 791, Government Code;

2 (8) [~~(9)~~] the reverse auction procedure as defined by
3 Section 2155.062(d), Government Code;

4 (9) [~~(10)~~] a contract with the United States,
5 including any agency thereof; or

6 (10) [~~(11)~~] a contract with this state, including an
7 agency of this state.

8 SECTION 16. The following sections are repealed:

9 (1) 2155.507, Government Code;

10 (2) 2157.061, Government Code;

11 (3) 2157.0611, Government Code;

12 (4) 2157.062, Government Code;

13 (5) 2157.063, Government Code;

14 (6) 2157.066, Government Code; and

15 (7) 2157.067, Government Code.

16 SECTION 17. Subchapter J, Chapter 2054, Government Code, as
17 amended by this Act, applies only to a major contract entered into
18 on or after the effective date of this Act. A major contract
19 entered into before the effective date of this Act is governed by
20 the law in effect on the date the contract was entered into, and the
21 former law is continued in effect for that purpose.

22 SECTION 18. The Texas Building and Procurement Commission
23 must comply with Sections 2157.006(c) and 2262.051(h), Government
24 Code, as added by this Act, and Section 2262.053(b), Government
25 Code, as amended by this Act, not later than October 1, 2007.

26 SECTION 19. This Act takes effect September 1, 2007.