

1-1 By: Isett (Senate Sponsor - Deuell) H.B. No. 2918  
1-2 (In the Senate - Received from the House May 9, 2007;  
1-3 May 10, 2007, read first time and referred to Committee on  
1-4 Government Organization; May 19, 2007, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 4,  
1-6 Nays 0; May 19, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2918 By: Nelson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to state information technology contracting and  
1-11 procurement practices.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 44.031(a), Education Code, is amended to  
1-14 read as follows:

1-15 (a) Except as provided by this subchapter, all school  
1-16 district contracts, except contracts for the purchase of produce or  
1-17 vehicle fuel, valued at \$25,000 or more in the aggregate for each  
1-18 12-month period shall be made by the method, of the following  
1-19 methods, that provides the best value for the district:

1-20 (1) competitive bidding;  
1-21 (2) competitive sealed proposals;  
1-22 (3) a request for proposals, for services other than  
1-23 construction services;

1-24 (4) ~~[a catalogue purchase as provided by Subchapter B,~~  
1-25 ~~Chapter 2157, Government Code;~~

1-26 ~~[(5)]~~ an interlocal contract;

1-27 (5) ~~[(6)]~~ a design/build contract;

1-28 (6) ~~[(7)]~~ a contract to construct, rehabilitate,  
1-29 alter, or repair facilities that involves using a construction  
1-30 manager;

1-31 (7) ~~[(8)]~~ a job order contract for the minor  
1-32 construction, repair, rehabilitation, or alteration of a facility;

1-33 (8) ~~[(9)]~~ the reverse auction procedure as defined by  
1-34 Section 2155.062(d), Government Code; or

1-35 (9) ~~[(10)]~~ the formation of a political subdivision  
1-36 corporation under Section 304.001, Local Government Code.

1-37 SECTION 2. The heading to Section 2054.0565, Government  
1-38 Code, is amended to read as follows:

1-39 Sec. 2054.0565. USE OF CONTRACTS BY OTHER ~~[GOVERNMENTAL]~~  
1-40 ENTITIES.

1-41 SECTION 3. Section 2054.0565, Government Code, is amended  
1-42 by amending Subsection (a) and adding Subsections (c) and (d) to  
1-43 read as follows:

1-44 (a) The department may include terms in a procurement  
1-45 contract entered into by the department, including a contract  
1-46 entered into under Section 2157.068, that allow the contract to be  
1-47 used by another state agency, a political subdivision of this  
1-48 state, ~~[or]~~ a governmental entity of another state, or an  
1-49 assistance organization as defined by Section 2175.001.

1-50 (c) Notwithstanding any other law, a state governmental  
1-51 entity that is not a state agency as defined by Section 2054.003 may  
1-52 use a contract as provided by Subsection (a) without being subject  
1-53 to a rule, statute, or contract provision, including a provision in  
1-54 a contract entered into under Section 2157.068, that would  
1-55 otherwise require the state governmental entity to:

1-56 (1) sign an interagency agreement; or  
1-57 (2) disclose the items purchased or the value of the  
1-58 purchase.

1-59 (d) A state governmental entity that is not a state agency  
1-60 as defined by Section 2054.003 that uses a contract as provided by  
1-61 Subsection (a) may prohibit a vendor from disclosing the items  
1-62 purchased, the use of the items purchased, and the value of the  
1-63 purchase.

2-1 SECTION 4. Section 2054.301, Government Code, is amended to  
2-2 read as follows:

2-3 Sec. 2054.301. APPLICABILITY; DEFINITION. (a) This  
2-4 subchapter applies only to:

- 2-5 (1) a major information resources project; and
- 2-6 (2) a major contract.

2-7 (b) In this subchapter, "major contract" means a major  
2-8 contract as defined by Section 2262.001(4) under which a vendor  
2-9 will perform or manage an outsourced function or process.

2-10 SECTION 5. Sections 2054.303(a) and (c), Government Code,  
2-11 are amended to read as follows:

2-12 (a) For each proposed major information resources project  
2-13 or major contract, a state agency must prepare:

2-14 (1) a business case providing the initial  
2-15 justification for the project or contract, including the  
2-16 anticipated return on investment in terms of cost savings and  
2-17 efficiency for the project or contract; and

2-18 (2) a statewide impact analysis of the project's or  
2-19 contract's effect on the state's common information resources  
2-20 infrastructure, including the possibility of reusing code or other  
2-21 resources.

2-22 (c) The department shall use the analysis to ensure that the  
2-23 proposed project or major contract does not unnecessarily duplicate  
2-24 existing statewide information resources technology.

2-25 SECTION 6. Section 2054.304, Government Code, is amended to  
2-26 read as follows:

2-27 Sec. 2054.304. PROJECT PLANS. (a) A state agency shall  
2-28 develop a project plan for each major information resources project  
2-29 or major contract.

2-30 (b) Except as provided by Subsection (c), the state agency  
2-31 must file the project plan with the quality assurance team and the  
2-32 Texas Building and Procurement Commission before the agency:

- 2-33 (1) spends more than 10 percent of allocated funds for  
2-34 the project or major contract; or
- 2-35 (2) first issues a vendor solicitation for the project  
2-36 or contract.

2-37 (c) Unless the project plan has been filed under this  
2-38 section:

2-39 (1) the Texas Building and Procurement Commission may  
2-40 not issue a vendor solicitation for the project or major contract;  
2-41 and

2-42 (2) the agency may not post a vendor solicitation for  
2-43 the project or contract in the state business daily under Section  
2-44 2155.083.

2-45 SECTION 7. Section 2054.305, Government Code, is amended to  
2-46 read as follows:

2-47 Sec. 2054.305. PROCUREMENT PLAN AND METHOD FOR MONITORING  
2-48 CONTRACTS. Before issuing a vendor solicitation for a project or  
2-49 major contract, the state agency must develop, consistent with  
2-50 department guidelines:

- 2-51 (1) a procurement plan with anticipated service levels  
2-52 and performance standards for each vendor; and
- 2-53 (2) a method to monitor changes to the scope of each  
2-54 contract.

2-55 SECTION 8. Section 2155.502, Government Code, is amended by  
2-56 amending Subsections (b) and (c) and adding Subsection (e) to read  
2-57 as follows:

2-58 (b) In developing a [the] schedule under Subsection (a) or  
2-59 (e), the commission or department, as appropriate, shall modify any  
2-60 contractual terms, with the agreement of the parties to the  
2-61 contract, as necessary to comply with any federal or state  
2-62 requirements, including rules adopted under this subchapter.

2-63 (c) The commission may not list a multiple award contract on  
2-64 a schedule developed under Subsection (a) [this section] if the  
2-65 goods or services provided by that contract:

- 2-66 (1) are available from only one vendor; ~~or~~
- 2-67 (2) are telecommunications services, facilities, or  
2-68 equipment; or
- 2-69 (3) are commodity items as defined by Section

3-1 2157.068(a).

3-2 (e) The department may develop a schedule of multiple award  
3-3 contracts for commodity items as defined by Section 2157.068(a)  
3-4 using the criteria established under Subsection (a).

3-5 SECTION 9. Subchapter A, Chapter 2157, Government Code, is  
3-6 amended by adding Section 2157.006 to read as follows:

3-7 Sec. 2157.006. PURCHASING METHODS. (a) The commission or  
3-8 other state agency shall purchase an automated information system  
3-9 using:

3-10 (1) the purchasing method described by Section  
3-11 2157.068 for commodity items; or

3-12 (2) a purchasing method designated by the commission  
3-13 to obtain the best value for the state, including a request for  
3-14 offers method.

3-15 (b) A local government may purchase an automated  
3-16 information system using a method listed under Subsection (a). A  
3-17 local government that purchases an item using a method listed under  
3-18 Subsection (a) satisfies any state law requiring the local  
3-19 government to seek competitive bids for the purchase of the item.

3-20 (c) The commission shall adopt rules for designating  
3-21 purchasing methods under Subsection (a).

3-22 SECTION 10. The heading to Subchapter B, Chapter 2157,  
3-23 Government Code, is amended to read as follows:

3-24 SUBCHAPTER B. COMMODITY ITEMS [~~CATALOG PURCHASE METHOD~~]

3-25 SECTION 11. The heading to Section 2157.068, Government  
3-26 Code, is amended to read as follows:

3-27 Sec. 2157.068. PURCHASE OF INFORMATION TECHNOLOGY  
3-28 COMMODITY ITEMS.

3-29 SECTION 12. Section 2157.068, Government Code, is amended  
3-30 by amending Subsection (b) and adding Subsection (i) to read as  
3-31 follows:

3-32 (b) The department shall negotiate with [~~catalog~~  
3-33 ~~information systems~~] vendors to attempt to obtain a favorable price  
3-34 for all of state government on licenses for commodity items, based  
3-35 on the aggregate volume of purchases expected to be made by the  
3-36 state. The terms and conditions of a license agreement between a  
3-37 vendor and the department under this section may not be less  
3-38 favorable to the state than the terms of similar license agreements  
3-39 between the vendor and retail distributors.

3-40 (i) Unless the agency has express statutory authority to  
3-41 employ a best value purchasing method, a state agency shall use a  
3-42 purchasing method provided by Section 2157.006(a) when purchasing a  
3-43 commodity item if:

3-44 (1) the agency has obtained an exemption from the  
3-45 department or approval from the Legislative Budget Board under  
3-46 Subsection (f); or

3-47 (2) the agency is otherwise exempt from this section.

3-48 SECTION 13. Section 2262.051, Government Code, is amended  
3-49 by adding Subsection (h) to read as follows:

3-50 (h) The guide must establish procedures for major contracts  
3-51 that outsource a state function or process to a contractor,  
3-52 including when applicable the use of documents required under  
3-53 Subchapter J, Chapter 2054.

3-54 SECTION 14. Section 2262.053(b), Government Code, is  
3-55 amended to read as follows:

3-56 (b) The training must provide the contract manager with  
3-57 information regarding how to:

3-58 (1) fairly and objectively select and negotiate with  
3-59 the most qualified contractor;

3-60 (2) establish prices that are cost-effective and that  
3-61 reflect the cost of providing the service;

3-62 (3) include provisions in a contract that hold the  
3-63 contractor accountable for results;

3-64 (4) monitor and enforce a contract;

3-65 (5) make payments consistent with the contract; [~~and~~]

3-66 (6) comply with any requirements or goals contained in  
3-67 the contract management guide; and

3-68 (7) use and apply advanced sourcing strategies,  
3-69 techniques, and tools.

4-1 SECTION 15. Section 60.454, Water Code, is amended to read  
4-2 as follows:

4-3 Sec. 60.454. PURCHASING CONTRACT METHODS. Notwithstanding  
4-4 any other provision of this chapter or other law, a district  
4-5 contract valued at \$25,000 or more in the aggregate for each  
4-6 12-month period may be made by the method below that, in the opinion  
4-7 of the district's commission, provides the best value for the  
4-8 district:

4-9 (1) a design-build contract to construct,  
4-10 rehabilitate, alter, or repair facilities;

4-11 (2) a contract to construct, rehabilitate, alter, or  
4-12 repair facilities that involves using a construction manager-agent  
4-13 or construction manager-at-risk;

4-14 (3) competitive sealed proposals;

4-15 (4) a job order contract for the construction, repair,  
4-16 rehabilitation, or alteration of a facility;

4-17 (5) a request for proposals, if the contract is for  
4-18 services other than construction services;

4-19 (6) competitive sealed bids;

4-20 (7) ~~[a catalog purchase as provided by Subchapter B,  
4-21 Chapter 2157, Government Code;~~

4-22 ~~[(8)]~~ an interlocal contract as provided by Chapter  
4-23 791, Government Code;

4-24 (8) ~~[(9)]~~ the reverse auction procedure as defined by  
4-25 Section 2155.062(d), Government Code;

4-26 (9) ~~[(10)]~~ a contract with the United States,  
4-27 including any agency thereof; or

4-28 (10) ~~[(11)]~~ a contract with this state, including an  
4-29 agency of this state.

4-30 SECTION 16. The following sections are repealed:

4-31 (1) 2155.507, Government Code;

4-32 (2) 2157.061, Government Code;

4-33 (3) 2157.0611, Government Code;

4-34 (4) 2157.062, Government Code;

4-35 (5) 2157.063, Government Code;

4-36 (6) 2157.066, Government Code; and

4-37 (7) 2157.067, Government Code.

4-38 SECTION 17. Subchapter J, Chapter 2054, Government Code, as  
4-39 amended by this Act, applies only to a major contract entered into  
4-40 on or after the effective date of this Act. A major contract  
4-41 entered into before the effective date of this Act is governed by  
4-42 the law in effect on the date the contract was entered into, and the  
4-43 former law is continued in effect for that purpose.

4-44 SECTION 18. The Texas Building and Procurement Commission  
4-45 must comply with Sections 2157.006(c) and 2262.051(h), Government  
4-46 Code, as added by this Act, and Section 2262.053(b), Government  
4-47 Code, as amended by this Act, not later than October 1, 2007.

4-48 SECTION 19. This Act takes effect September 1, 2007.

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