

By: Herrero

H.B. No. 3942

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the use of foreign contractors in the performance of certain government service contracts that relate to health and human services.

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

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2264 to read as follows:

CHAPTER 2264. RESTRICTIONS ON USE OF FOREIGN CONTRACTORS IN CERTAIN
HEALTH AND HUMAN SERVICES CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Domestic contractor" means a contractor or subcontractor incorporated, organized, formed, or based in the United States.

(3) "Foreign contractor" means a contractor or subcontractor incorporated, organized, formed, or based in a country other than the United States.

(4) "Public agency" means this state or an agency, instrumentality, or political subdivision of this state.

Sec. 2264.002. APPLICABILITY OF CHAPTER. This chapter applies only in relation to a contract that:

(1) is primarily a contract for services entered into

1 by a public agency for which the agency will spend money derived
2 directly or indirectly from the state treasury; and

3 (2) relates to a health or human services program
4 provided by the public agency.

5 [Sections 2264.003-2264.050 reserved for expansion]

6 SUBCHAPTER B. DOMESTIC CONTRACTOR REQUIREMENTS FOR SERVICE

7 CONTRACTS

8 Sec. 2264.051. PROHIBITION ON CERTAIN HEALTH AND HUMAN
9 SERVICES CONTRACTS INVOLVING FOREIGN CONTRACTORS. A public agency
10 may not award a contract to which this chapter applies to a foreign
11 contractor.

12 Sec. 2264.052. STATEMENT IN CERTAIN BIDS FOR HEALTH AND
13 HUMAN SERVICES CONTRACTS. A contractor or subcontractor that
14 submits a bid, proposal, or other offer to a public agency for a
15 contract to which this chapter applies must include in the bid,
16 proposal, or other offer a verified statement identifying the
17 contractor's place of incorporation, formation, or organization
18 and certifying that the work required by the contract and any
19 subcontract performed under that contract will be performed only by
20 domestic contractors. The contractor must:

21 (1) require each subcontractor that submits a bid,
22 proposal, or other offer in relation to the contract to include in
23 the bid, proposal, or other offer a verified statement that
24 identifies the public contract and the subcontractor, identifies
25 the subcontractor's place of incorporation, formation, or
26 organization, and certifies that the subcontractor is a domestic
27 contractor; and

1 (2) send a copy of each verified statement received
2 under Subdivision (1) to the public agency in the manner prescribed
3 by the agency.

4 Sec. 2264.053. PROVISION IN CERTAIN HEALTH AND HUMAN
5 SERVICES CONTRACTS. A public agency that enters into a contract
6 must include in the contract a provision stating that, in the event
7 a contractor or subcontractor performs any part of the contract or a
8 subcontract with foreign contractors, the contract shall be
9 terminated and the contractor or subcontractor shall be liable to
10 the public agency in an amount equal to the amount paid by the
11 public agency for the percentage of work that was performed with
12 foreign contractors.

13 [Sections 2264.054-2264.100 reserved for expansion]

14 SUBCHAPTER C. WAIVER OF DOMESTIC CONTRACTOR REQUIREMENTS FOR
15 CERTAIN HEALTH AND HUMAN SERVICES CONTRACTS

16 Sec. 2264.101. AUTOMATIC WAIVER IN CERTAIN CIRCUMSTANCES.
17 The requirements of Subchapter B are automatically waived in
18 circumstances under which compliance with Subchapter B would create
19 a violation of the specific terms of the Agreement on Government
20 Procurement of the World Trade Organization or any bilateral or
21 regional free trade agreement with which the State of Texas must
22 comply.

23 SECTION 2. (a) The changes in law made by this Act to public
24 contracting procedures for certain health and human services
25 contracts apply only to a contract for which a public agency first
26 advertises or otherwise solicits bids, proposals, offers, or
27 qualifications, as applicable, on or after September 1, 2007.

1 (b) A contract for which a public agency first advertised or
2 otherwise solicited bids, proposals, offers, or qualifications, as
3 applicable, before September 1, 2007, is governed by the law as it
4 existed immediately before the effective date of this Act, and that
5 law is continued in effect for that purpose.

6 SECTION 3. This Act takes effect September 1, 2007.