

By: Williams

S.B. No. 1109

A BILL TO BE ENTITLED

AN ACT

relating to state agency procurement and the comptroller's procurement powers and duties.

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

SECTION 1. Section 2155.001, Government Code, is amended by amending Subdivision (2) and adding Subdivision (3) to read as follows:

(2) "Service" means the furnishing of skilled or unskilled labor or professional work, but does not include a:

(A) professional service subject to Subchapter A, Chapter 2254;

(B) service of a state agency employee;

(C) service procured by the Department of Information Resources;

(D) consulting service or service of a consultant as defined by Subchapter B, Chapter 2254; or

(E) ~~(D)~~ service of a public utility.

(3) "State agency" has the meaning assigned by Section 2151.002 unless otherwise provided by this chapter.

SECTION 2. Section 2155.002, Government Code, is amended to read as follows:

Sec. 2155.002. COMPTROLLER ~~[COMMISSION]~~ FOCUS ON LARGE EXPENDITURES. To the extent possible, the comptroller ~~[commission]~~ shall focus ~~[its efforts under this chapter and Chapters 2156,~~

1 ~~2157, and 2158~~] on purchases and contracts that involve relatively
2 large amounts of money or that leverage state spending in the most
3 efficient manner.

4 SECTION 3. Section 2155.064, Government Code, is amended to
5 read as follows:

6 Sec. 2155.064. LEVERAGED [~~SCHEDULE AND BULK~~] PURCHASING.
7 To the greatest extent possible, the comptroller shall pursue
8 statewide contracts and attempt to leverage state spending to
9 achieve cost savings for this state. [~~The commission may combine~~
10 ~~orders in a system of schedule purchasing and shall attempt to~~
11 ~~benefit from bulk purchasing.~~]

12 SECTION 4. Section 2155.068, Government Code, is amended to
13 read as follows:

14 Sec. 2155.068. UNIFORM STANDARDS AND SPECIFICATIONS.

15 (a) The comptroller [~~commission~~] may coordinate uniform standards
16 and specifications for goods purchased by this state [~~the~~
17 ~~commission~~]. The comptroller [~~commission~~] by rule may adopt
18 appropriate standards developed by a nationally recognized
19 standards-making association as part of its specifications and
20 standards program.

21 (b) On request of the comptroller, a state agency shall
22 cooperate with the comptroller [~~The commission shall enlist the~~
23 ~~cooperation of other state agencies~~] in the establishment,
24 maintenance, and revision of uniform standards and specifications.

25 (c) The comptroller [~~commission~~] shall review contracts
26 administered by the comptroller [~~commission~~] to ensure that all
27 goods and services meet contract specifications.

1 (d) As part of the standards and specifications program, the
2 comptroller [~~commission~~] shall:

3 (1) review contracts for opportunities to recycle
4 waste produced at state buildings;

5 (2) develop and update a list of equipment and
6 appliances that meet the energy efficiency standards provided by
7 Section 2158.301; and

8 (3) assist state agencies in selecting products under
9 Section 2158.301, as appropriate.

10 SECTION 5. Section 2155.070, Government Code, is amended to
11 read as follows:

12 Sec. 2155.070. FAILURE TO MEET SPECIFICATIONS. (a) A
13 state agency that determines that goods or services received under
14 a contract administered by the comptroller [~~commission~~] do not meet
15 specifications shall promptly notify the comptroller [~~commission~~]
16 in writing of the reasons for the determination. As soon as
17 possible, the comptroller [~~The commission~~] shall determine
18 [~~immediately make its own determination of~~] whether the goods and
19 services meet specifications.

20 (b) For purchases exempt from the comptroller's purchasing
21 authority, the comptroller may [~~The commission or a state agency,~~
22 ~~including an institution of higher education, has the authority to~~]
23 determine whether the purchased [~~that~~] goods and services [~~exempted~~
24 ~~from the commission's purchasing authority~~] meet or fail to meet
25 specifications. A state agency may also determine whether the
26 goods and services meet or fail to meet specifications.

27 (c) On determining that contract specifications or

1 conditions have not been met, the comptroller [~~commission~~] shall
2 act against the defaulting contractor, with the assistance of the
3 attorney general as necessary.

4 (d) If the comptroller [~~commission~~] receives repeated
5 complaints against a vendor, the comptroller [~~commission~~] shall
6 remove the vendor's name and the vendor's goods and services from
7 the comptroller's [~~commission's~~] bidders list for not longer than
8 one year. If complaints resume after the vendor is reinstated on
9 the bidders list, the comptroller [~~commission~~] may bar the vendor
10 from participating in state contracts for a period under Section
11 2155.077.

12 SECTION 6. Section 2155.072, Government Code, is amended to
13 read as follows:

14 Sec. 2155.072. STATEWIDE OR REGIONAL SERVICES CONTRACTS;
15 COMPTROLLER [~~COMMISSION~~] STUDIES. Each state fiscal year, the
16 comptroller [~~(a) The commission annually~~] shall consider one or
17 more services purchased by one or more state agencies for
18 development into statewide contracts. The comptroller shall
19 determine if a particular service may be leveraged for multiple
20 state agencies at a cost savings to this state compared to the cost
21 to this state of purchasing the service under individual state
22 agency contracts [~~select for study at least one service that is~~
23 ~~purchased by one or more state agencies~~]. The comptroller
24 [~~commission~~] shall consider awarding statewide contracts by region
25 [~~study a selected service to determine whether the state would~~
26 ~~benefit if the service were provided to appropriate state agencies~~
27 ~~under a regional or statewide contract. The commission shall give~~

1 ~~priority to studying services for which the commission has~~
2 ~~delegated the purchasing function to many state agencies].~~

3 ~~[(b) The commission is not required to enter into a~~
4 ~~statewide or regional contract for the provision of a service to~~
5 ~~state agencies if more than five bidders are willing to provide the~~
6 ~~service to the state under a statewide or regional contract.]~~

7 SECTION 7. Section 2155.074, Government Code, is amended to
8 read as follows:

9 Sec. 2155.074. PROCUREMENT MANUAL; BEST VALUE AND SOURCING
10 STANDARDS [~~STANDARD~~] FOR PURCHASE OF GOODS OR SERVICES. (a) The
11 comptroller shall publish and maintain a procurement manual for
12 state agencies to follow that incorporates the sourcing standards
13 of this section and the best practices for procurement. Before
14 publication, the procurement manual must be reviewed by the
15 contract advisory team established under Chapter 2262. Each state
16 agency shall comply with the procurement manual in its procurement
17 activities.

18 (b) For a purchase of goods and services under this chapter,
19 each state agency, including the comptroller [~~commission~~], shall
20 purchase goods and services that provide the best value for the
21 state.

22 (c) [~~(b)~~] In determining the best value for the state, the
23 purchase price and whether the goods or services meet
24 specifications are the most important considerations. However, the
25 comptroller [~~commission~~] or other state agency may, subject to
26 Subsection (d) [~~(c)~~] and Section 2155.075, consider other relevant
27 factors, including:

- 1 (1) installation costs;
- 2 (2) life cycle costs;
- 3 (3) the quality and reliability of the goods and
4 services;
- 5 (4) the delivery terms;
- 6 (5) indicators of probable vendor performance under
7 the contract such as past vendor performance, the vendor's
8 financial resources and ability to perform, the vendor's experience
9 or demonstrated capability and responsibility, and the vendor's
10 ability to provide reliable maintenance agreements and support;
- 11 (6) the cost of any employee training associated with
12 a purchase;
- 13 (7) the effect of a purchase on agency productivity;
- 14 (8) the vendor's anticipated economic impact to the
15 state or a subdivision of the state, including potential tax
16 revenue and employment; and
- 17 (9) other factors relevant to determining the best
18 value for the state in the context of a particular purchase.

19 (d) [~~(c)~~] A state agency shall consult with and receive
20 approval from the comptroller [~~commission~~] before considering
21 factors other than price and meeting specifications when the agency
22 procures through competitive bidding goods or services with a value
23 that exceeds \$100,000.

24 (e) The comptroller shall:

25 (1) identify commercially available goods and
26 services needed or used by state agencies; and

27 (2) analyze and determine whether the goods and

1 services are better provided through a statewide contract.

2 (f) If the comptroller determines that a good or service
3 identified under Subsection (e) is better provided through a
4 statewide contract, the comptroller shall require state agencies to
5 engage in any process, including competitive bidding, developed by
6 the comptroller to develop and award one or more statewide
7 contracts for the good or service.

8 (g) In performing the comptroller's duties under this
9 chapter, the comptroller may:

10 (1) require a state agency to conduct a hearing,
11 study, review, or cost estimate, including an agency in-house cost
12 estimate or a management study, concerning any aspect of a good or
13 service identified under Subsection (e);

14 (2) develop and require state agencies to use methods
15 that accurately and fairly estimate and account for the cost of
16 obtaining the identified good or service;

17 (3) require that the identified good or service be
18 submitted to competitive bidding or another process that creates
19 competition;

20 (4) prescribe, after consulting affected state
21 agencies, the specifications and conditions of the purchase and the
22 procedures that must be followed for the procurement of the
23 identified good or service; and

24 (5) determine the terms of a contract for the
25 identified good or service.

26 SECTION 8. Section 2155.078(a), Government Code, is amended
27 to read as follows:

1 (a) The comptroller [~~commission~~] shall establish and
2 administer a system of training, continuing education, and
3 certification for state agency purchasing personnel. The
4 comptroller [~~commission~~] may establish and offer appropriate
5 training to vendors on a cost recovery basis. The comptroller
6 [~~commission~~] may adopt rules to administer this section, including
7 rules relating to:

8 (1) monitoring a certified purchaser's compliance with
9 the continuing education requirements of this section; and

10 (2) suspending or revoking a purchaser's certification
11 for failure to comply with this chapter or comptroller rules.

12 SECTION 9. Section 2155.082, Government Code, is amended to
13 read as follows:

14 Sec. 2155.082. PROVIDING CERTAIN PURCHASING SERVICES ON
15 FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) The
16 comptroller [~~commission~~] may provide open market purchasing
17 services on a fee-for-service basis for state agency purchases that
18 are delegated to an agency under Section 2155.131, 2155.132,
19 [~~2155.133,~~] or 2157.121 or that are exempted from the purchasing
20 authority of the comptroller [~~commission~~]. The comptroller
21 [~~commission~~] shall set the fees in an amount that recovers the
22 comptroller's [~~commission's~~] costs in providing the services.

23 (b) The comptroller [~~commission~~] shall publish a schedule
24 of [~~its~~] fees for services that are subject to this section. The
25 schedule must include the comptroller's [~~commission's~~] fees for:

26 (1) reviewing bid and contract documents for clarity,
27 completeness, and compliance with laws and rules;

- 1 (2) developing and transmitting invitations to bid;
2 (3) receiving and tabulating bids;
3 (4) evaluating and determining which bidder offers the
4 best value to the state;
5 (5) creating and transmitting purchase orders; and
6 (6) participating in agencies' request for proposal
7 processes.

8 (c) The comptroller may engage a consultant to assist with a
9 particular procurement on behalf of a state agency and pay the
10 consultant from the cost savings realized by the state agency.

11 SECTION 10. Section 2155.083(n), Government Code, is
12 amended to read as follows:

13 (n) Notwithstanding any other provision of this section, a
14 state agency that conducts covert law enforcement operations is not
15 required to post the specifications for covert equipment in the
16 state business daily. [~~This section does not apply to a state agency~~
17 ~~to which Section 51.9335 or 73.115, Education Code, applies.~~]

18 SECTION 11. Section 2155.085, Government Code, is amended
19 to read as follows:

20 Sec. 2155.085. REVERSE AUCTION PROCEDURE. [~~(a)~~] The
21 comptroller may [~~commission shall~~]:

22 (1) purchase goods or services using the reverse
23 auction procedure whenever:

24 (A) the procedure provides the best value to the
25 state; or

26 (B) all purchasing methods provide equal value to
27 the state;

1 (2) offer historically underutilized businesses
2 assistance and training relating to the reverse auction procedure;
3 and

4 (3) advise historically underutilized businesses on
5 contracts available using the reverse auction procedure.

6 ~~[(b) The commission shall set a goal of purchasing at least
7 20 percent of the dollar value of goods or services purchased by the
8 commission using the reverse auction procedure.]~~

9 SECTION 12. Subchapter B, Chapter 2155, Government Code, is
10 amended by adding Section 2155.088 to read as follows:

11 Sec. 2155.088. PROCUREMENT PLANS FOR GOODS AND SERVICES.

12 (a) Not later than June 1 of each odd-numbered year, each state
13 agency shall provide a procurement plan to the comptroller that
14 identifies the major goods and services the agency plans to
15 purchase during the next fiscal biennium.

16 (b) The comptroller shall use the procurement plans to
17 schedule solicitations for proposals for goods and services used by
18 multiple state agencies.

19 (c) A state agency that makes a substantive change to its
20 procurement plan shall submit a revised copy of the plan to the
21 comptroller not later than the 30th day after the date of the
22 change.

23 (d) The comptroller may adopt rules to administer this
24 section.

25 SECTION 13. Section 2155.131, Government Code, is amended
26 to read as follows:

27 Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES.

1 (a) The ~~commission~~ comptroller may delegate purchasing functions
2 to a state agency.

3 (b) In delegating purchasing authority under this section
4 or Section 2155.132, the comptroller shall consider factors
5 relevant to a state agency's ability to perform purchasing
6 functions, including:

7 (1) the purchasing capabilities of the agency's
8 purchasing personnel and the existence of automated purchasing
9 tools at the agency;

10 (2) the certification levels held by the agency's
11 purchasing personnel;

12 (3) the results of the comptroller's procurement
13 review audits of an agency's purchasing practices; and

14 (4) whether the agency has adopted and published as
15 part of its purchasing rules protest procedures consistent with the
16 comptroller's protest procedures.

17 (c) The comptroller shall monitor the purchasing practices
18 of each state agency that the comptroller delegates purchasing
19 authority to under Subsection (b) or Section 2155.132 to ensure
20 that the certification levels of the agency's purchasing personnel
21 and the quality of the agency's purchasing practices continue to
22 warrant the delegated purchasing authority. The comptroller may
23 revoke for any cause, including the agency's failure to comply with
24 Section 2155.074, all or part of the delegated purchasing
25 authority. The comptroller shall adopt rules to administer this
26 subsection.

27 (d) The comptroller by rule shall prescribe:

1 (1) the procedures a state agency must follow in
2 making a delegated purchase; and

3 (2) the procedures by which a state agency may use the
4 comptroller's services for delegated purchases under Section
5 2155.082.

6 SECTION 14. Section 2155.132, Government Code, is amended
7 to read as follows:

8 Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY
9 AMOUNT. (a) A state agency is delegated the authority to purchase
10 goods and services if the purchase does not exceed \$15,000. If the
11 comptroller [~~commission~~] determines that a state agency has not
12 followed the comptroller's [~~commission's~~] rules or the laws related
13 to the delegated purchases, the comptroller [~~commission~~] shall
14 report the comptroller's [~~its~~] determination to the members of the
15 state agency's governing body and to the governor, lieutenant
16 governor, speaker of the house of representatives, and Legislative
17 Budget Board.

18 (b) The comptroller [~~commission~~] by rule may delegate to a
19 state agency the authority to purchase goods and services if the
20 purchase exceeds \$15,000. [~~In delegating purchasing authority~~
21 ~~under this subsection or Section 2155.131, the commission shall~~
22 ~~consider factors relevant to a state agency's ability to perform~~
23 ~~purchasing functions, including:~~

24 [~~(1) the capabilities of the agency's purchasing staff~~
25 ~~and the existence of automated purchasing tools at the agency,~~

26 [~~(2) the certification levels held by the agency's~~
27 ~~purchasing personnel,~~

1 ~~[(3) the results of the commission's procurement~~
2 ~~review audits of an agency's purchasing practices; and~~

3 ~~[(4) whether the agency has adopted and published~~
4 ~~protest procedures consistent with those of the commission as part~~
5 ~~of its purchasing rules.]~~

6 (c) ~~[The commission shall monitor the purchasing practices~~
7 ~~of state agencies that are making delegated purchases under~~
8 ~~Subsection (b) or Section 2155.131 to ensure that the certification~~
9 ~~levels of the agency's purchasing personnel and the quality of the~~
10 ~~agency's purchasing practices continue to warrant the amount of~~
11 ~~delegated authority provided by the commission to the agency. The~~
12 ~~commission may revoke for cause all or part of the purchasing~~
13 ~~authority that the commission delegated to a state agency. The~~
14 ~~commission shall adopt rules to administer this subsection.~~

15 ~~[(d) The commission by rule:~~

16 ~~[(1) shall prescribe procedures for a delegated~~
17 ~~purchase; and~~

18 ~~[(2) shall prescribe procedures by which agencies may~~
19 ~~use the commission's services for delegated purchases, in~~
20 ~~accordance with Section 2155.082.~~

21 ~~[(e)]~~ Competitive bidding, whether formal or informal, is
22 required for a purchase by a state agency if the purchase:

23 (1) exceeds \$5,000; and

24 (2) is made under a written contract.

25 (d) ~~[(f)]~~ Goods purchased under this section may not
26 include:

27 (1) an item for which a statewide contract has been

1 awarded by the comptroller [~~under the contract purchase procedure~~],
2 unless the quantity purchased is less than any [~~the~~] minimum
3 quantity specified in the contract;

4 (2) an item required by statute to be purchased from a
5 particular source, including through the program administered
6 under Chapter 122, Human Resources Code, or from the Texas
7 Correctional Industries under Chapter 497; or

8 (3) a scheduled item that has been designated for
9 purchase by the comptroller [~~commission~~].

10 (e) [~~(g)~~] A large purchase may not be divided into small lot
11 purchases to circumvent [~~meet~~] the dollar limits prescribed by this
12 section. The comptroller [~~commission~~] may not require that
13 unrelated purchases be combined into one purchase order to exceed
14 the dollar limits prescribed by this section.

15 (f) [~~(h)~~] A state agency making a purchase under this
16 section for which competitive bidding is required shall [~~must~~]:

17 (1) [~~attempt to~~] obtain at least three competitive
18 bids from:

19 (A) sources listed on the master bidders list
20 that normally offer for sale the goods being purchased; or

21 (B) if three vendors are not available on the
22 master bidders list, vendors in the applicable industry; and

23 (2) comply with Subchapter E.

24 SECTION 15. Subchapter C, Chapter 2155, Government Code, is
25 amended by adding Section 2155.1325 to read as follows:

26 Sec. 2155.1325. STANDARDS FOR DELEGATED PURCHASES. (a) A
27 state agency that is preparing a solicitation for proposals for a

1 purchase of goods or services with a purchase price that exceeds
2 \$100,000 that is delegated under this chapter or other law shall
3 submit to the comptroller a copy of the draft solicitation with a
4 statement of the procurement strategy for the purchase.

5 (b) The comptroller may review the draft solicitation and
6 procurement strategy to determine whether the state agency is
7 following the best value and sourcing standards of Section 2155.074
8 to the greatest extent possible. The comptroller may:

9 (1) recommend changes to the draft solicitation or
10 procurement strategy, provided the written recommended changes are
11 submitted to the state agency not later than the 30th day after the
12 date the comptroller receives the draft solicitation and
13 procurement strategy from the state agency;

14 (2) partner with the state agency to ensure the
15 standards of this chapter are followed;

16 (3) partner with the state agency to award a statewide
17 contract that results from the solicitation; or

18 (4) require the state agency to engage a consultant to
19 assist with the solicitation to be paid from the cost savings
20 realized under the contract, as authorized by Section 2155.082.

21 (c) A state agency that receives the comptroller's
22 recommended changes under Subsection (b)(1) shall:

23 (1) accept the recommended changes; or

24 (2) submit alternative suggestions to the comptroller
25 for review in accordance with this section.

26 (d) The comptroller may adopt rules to administer this
27 section.

1 SECTION 16. Subchapter D, Chapter 2155, Government Code, is
2 amended by adding Section 2155.205 to read as follows:

3 Sec. 2155.205. ACCESS BY OTHER GOVERNMENTAL ENTITIES. The
4 comptroller may allow a governmental entity of another state to
5 access the comptroller's statewide contracts.

6 SECTION 17. Section 2155.385(a), Government Code, is
7 amended to read as follows:

8 (a) The comptroller [~~If authorized by rule adopted by the~~
9 ~~comptroller under Section 403.023, the commission]~~ may contract
10 with one or more credit card issuers for state agencies to use
11 credit cards to pay for purchases. [~~The commission may not enter~~
12 ~~into a contract that conflicts with the comptroller's rules.~~]

13 SECTION 18. Section 2054.158, Government Code, is amended
14 to read as follows:

15 Sec. 2054.158. QUALITY ASSURANCE TEAM. The state auditor,
16 comptroller, attorney general, Legislative Budget Board, and
17 department shall:

18 (1) create a quality assurance team to perform the
19 duties specified in this chapter and other law; and

20 (2) specify in writing the responsibilities of the
21 state auditor, comptroller, attorney general, Legislative Budget
22 Board, and department in performing the duties.

23 SECTION 19. Section 2151.0041(c), Government Code, is
24 amended to read as follows:

25 (c) Unless otherwise provided by the legislature by law, on
26 September 1, 2013:

27 (1) the powers and duties transferred to the

1 comptroller under Section 2151.004(d) and under House Bill 3560,
2 Acts of the 80th Legislature, Regular Session, 2007, are
3 transferred to the Texas Facilities Commission;

4 (2) a reference in law to the comptroller relating to a
5 power or duty transferred under this subsection means the Texas
6 Facilities Commission;

7 (3) a rule or form adopted by the comptroller relating
8 to a power or duty transferred under this subsection is a rule or
9 form of the Texas Facilities Commission and remains in effect until
10 altered by the commission;

11 (4) all obligations, contracts, proceedings, cases,
12 negotiations, funds, and employees of the comptroller relating to a
13 power or duty transferred under this subsection are transferred to
14 the Texas Facilities Commission;

15 (5) all property and records in the custody of the
16 comptroller relating to a power or duty transferred under this
17 subsection and all funds appropriated by the legislature for
18 purposes related to a power or duty transferred under this
19 subsection are transferred to the Texas Facilities Commission; and

20 (6) Section 122.0011, Human Resources Code, and the
21 following provisions of the Government Code expire:

22 (A) Sections 2151.004(c) and (d);

23 (B) Section 2155.0011;

24 (C) [~~Section 2155.086,~~

25 [~~(D) Section 2155.087,~~

26 [~~(E)~~] Section 2156.0011;

27 (D) [~~(F)~~] Section 2157.0011;

- 1 (E) [~~(C)~~] Section 2158.0011;
- 2 (F) [~~(H)~~] Section 2161.0011;
- 3 (G) [~~(I)~~] Section 2163.0011;
- 4 (H) [~~(J)~~] Section 2170.0011;
- 5 (I) [~~(K)~~] Section 2171.0011;
- 6 (J) [~~(L)~~] Section 2172.0011;
- 7 (K) [~~(M)~~] Section 2176.0011; and
- 8 (L) [~~(N)~~] Section 2262.0011.

9 SECTION 20. Section 2166.406(i), Government Code, is
10 amended to read as follows:

11 (i) An energy savings performance contract shall be let
12 according to the procedures established for procuring certain
13 professional services by Section 2254.004. [~~Notice of the request~~
14 ~~for qualifications shall be given in the manner provided by Section~~
15 ~~2156.002.~~] The State Energy Conservation Office shall establish
16 guidelines and an approval process for awarding energy savings
17 performance contracts. The guidelines adopted under this
18 subsection must require that the cost savings projected by an
19 offeror be reviewed by a licensed professional engineer who has a
20 minimum of three years of experience in energy calculation and
21 review, is not an officer or employee of an offeror for the contract
22 under review, and is not otherwise associated with the
23 contract. In conducting the review, the engineer shall focus
24 primarily on the proposed improvements from an engineering
25 perspective, the methodology and calculations related to cost
26 savings, increases in revenue, and, if applicable, efficiency or
27 accuracy of metering equipment. An engineer who reviews a contract

1 shall maintain the confidentiality of any proprietary information
2 the engineer acquires while reviewing the contract. An energy
3 savings performance contract may not be entered into unless the
4 contract has been approved by the State Energy Conservation
5 Office. Sections 1001.053 and 1001.407, Occupations Code, apply
6 to work performed under the contract.

7 SECTION 21. Section 51.927(i), Education Code, is amended
8 to read as follows:

9 (i) An energy savings performance contract shall be let
10 according to the procedures established for procuring certain
11 professional services by Section 2254.004, Government Code.
12 ~~[Notice of the request for qualifications shall be given in the~~
13 ~~manner provided by Section 2156.002, Government Code.]~~ The Texas
14 Higher Education Coordinating Board, in consultation with the State
15 Energy Conservation Office with regard to energy and water
16 conservation measures, shall establish guidelines and an approval
17 process for awarding energy savings performance contracts. The
18 guidelines must require that the cost savings projected by an
19 offeror be reviewed by a licensed professional engineer who has a
20 minimum of three years of experience in energy calculation and
21 review, is not an officer or employee of an offeror for the contract
22 under review, and is not otherwise associated with the
23 contract. In conducting the review, the engineer shall focus
24 primarily on the proposed improvements from an engineering
25 perspective, the methodology and calculations related to cost
26 savings, increases in revenue, and, if applicable, efficiency or
27 accuracy of metering equipment. An engineer who reviews a contract

1 shall maintain the confidentiality of any proprietary information
2 the engineer acquires while reviewing the contract. A contract is
3 not required to be reviewed or approved by the State Energy
4 Conservation Office. Sections 1001.053 and 1001.407, Occupations
5 Code, apply to work performed under the contract.

6 SECTION 22. The following sections of the Government Code
7 are repealed:

- 8 (1) Section 2155.086;
- 9 (2) Section 2155.087;
- 10 (3) Section 2155.138;
- 11 (4) Section 2155.141; and
- 12 (5) Section 2156.002.

13 SECTION 23. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect September 1, 2011.