

BILL ANALYSIS

Senate Research Center
83R19610 YDB-F

C.S.S.B. 1679
By: Zaffirini
Government Organization
4/2/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2007, the legislature transferred the procurement function of the former Texas Building and Procurement Commission to the comptroller of public accounts of the State of Texas (comptroller). This achieved increased efficiency of these central governmental operations and improved quality of services and goods to all state agencies, which in turn enhanced the quality of services and goods delivered to taxpayers of this state. This also centralized and increased the accuracy and availability of detailed financial information on the state's purchasing expenditures for the providers and users of those goods and services. With this information in hand, the state can plan and implement future innovations to reduce costs and improve quality.

C.S.S.B. 1679 is a refile of S.B. 1109, 82nd Legislature, Regular Session, 2011, relating to strengthening the state's procurement practices by requiring the comptroller to leverage state spending in the most efficient manner and establishing sourcing standards and best practices that state agencies and higher education can use to procure goods and services. The bill requires state agencies and the comptroller to cooperate in establishing, maintaining, and revising uniform standards and specifications. This bill requires the comptroller to consider one or more services for development into a statewide contract and determine if the service may be leveraged for multiple state agencies at a cost savings and other industry standard practices.

C.S.S.B. 1679 amends current law relating to state agency procurement.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas (comptroller) in SECTION 7 (Section 2155.131, Government Code), and SECTION 9 (Section 2155.1325, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Facilities Commission is transferred to the comptroller in SECTION 8 (Section 2155.132, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Facilities Commission is rescinded in SECTION 8 (Section 2155.132, Government Code) of this bill.

Rulemaking authority previously granted to the comptroller is rescinded in SECTION 10 (Section 2155.087, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2155.002, Government Code, as follows:

Sec. 2155.002. New heading: **COMPTROLLER FOCUS ON LARGE EXPENDITURES**. Requires the comptroller of public accounts of the State of Texas (comptroller), to the extent possible, to focus on purchases and contracts that involve relatively large amounts of money or that leverage state spending in the most efficient manner, rather than requiring the Texas Facilities Commission (TFC) to focus its efforts under this chapter and Chapters 2156 (Purchasing Methods), 2157 (Purchasing: Purchase of Automated Information Systems), and 2158 (Purchasing: Miscellaneous Provisions for

Purchase of Certain Goods and Services) on purchases and contracts that involve relatively large amounts of money.

SECTION 2. Amends Section 2155.064, Government Code, as follows:

Sec. 2155.064. New heading: LEVERAGED PURCHASING. Requires the comptroller, to the greatest extent possible, to pursue statewide contracts and attempt to leverage state spending to achieve cost savings for this state. Deletes existing text authorizing TFC to combine orders in a system of schedule purchasing and requiring TFC to attempt to benefit from bulk purchasing.

SECTION 3. Amends Section 2155.072, Government Code, as follows:

Sec. 2155.072. New heading: STATEWIDE OR REGIONAL GOODS OR SERVICES CONTRACTS; COMPTROLLER STUDIES. Requires the comptroller, each state fiscal year, to consider one or more goods or services purchased by one or more state agencies for development into statewide contracts. Requires the comptroller to determine if a particular good or service may be leveraged for multiple state agencies at a cost savings to this state compared to the cost to this state of purchasing the good or service under individual state agency contracts. Requires the comptroller to consider awarding statewide contracts by region. Deletes existing Subsection (a) designation and existing text requiring TFC to annually select for study at least one service that is purchased by one or more state agencies. Deletes existing text requiring TFC to study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. Deletes existing text requiring TFC to give priority to studying services for which TFC has delegated the purchasing function to many state agencies.

Deletes existing Subsection (b) providing that TFC is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract.

SECTION 4. Amends Section 2155.074, Government Code, as follows:

Sec. 2155.074. New heading: PROCUREMENT MANUAL; BEST VALUE AND SOURCING STANDARDS FOR PURCHASE OF GOODS OR SERVICES. (a) Requires the comptroller to publish and maintain a procurement manual for state agencies to follow that incorporates the sourcing standards of this section and the best practices for procurement. Requires that the procurement manual, before publication, be reviewed by the contract advisory team established under Chapter 2262 (Statewide Contract Management). Requires each state agency to comply with the procurement manual in its procurement activities.

(b) Creates this subsection from existing text. Requires each state agency, including the comptroller, rather than TFC, for a purchase of goods and services under this chapter, to purchase goods and services that provide the best value for the state.

(c) Redesignates existing Subsection (b) as Subsection (c). Provides that, in determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. Authorizes the comptroller, rather than TFC, or other state agency to, subject to Subsection (d), rather than Subsection (c), and Section 2155.075 (Requirement to Specify Value Factors in Request for Bids or Proposals), to consider other relevant factors.

(d) Redesignates existing Subsection (c) as Subsection (d). Requires a state agency to consult with and receive approval from the comptroller, rather than from TFC, before considering factors other than price and meeting specifications

when the agency procures through competitive bidding goods or services with a value that exceeds \$100,000 and maintain in its records a written explanation of the reasons other factors are more important than price and meeting specifications in the procurement of the goods or services.

(e) Requires the comptroller to identify commercially available goods and services needed or used by state agencies and analyze and determine whether the goods and services are better provided through a statewide contract.

(f) Authorizes the comptroller, if the comptroller determines that a good or service identified under Subsection (e) is better provided through a statewide contract, to partner with state agencies to implement any process, including competitive bidding, developed by the comptroller to award any one or more statewide contracts for the good or service.

SECTION 5. Amends Section 2155.083(n), Government Code, to provide that, notwithstanding any other provision of this section (State Business Daily; Notice Regarding Procurements Exceeding \$25,000), a state agency that conducts covert law enforcement operations is not required to post the specifications for covert equipment in the state business daily, rather than providing that this section does not apply to a state agency to which Section 51.9335 (Acquisition of Goods and Services) or 73.115 (Acquisition of Goods and Services), Education Code, applies.

SECTION 6. Amends Subchapter B, Chapter 2155, Government Code, by adding Section 2155.088, as follows:

Sec. 2155.088. **PROCUREMENT PLANS FOR GOODS AND SERVICES.** Requires the comptroller to partner with each state agency to facilitate efficient communications between the agency and the comptroller on the agency's procurement plans, including identifying the major purchases of goods or services the agency has planned for each fiscal biennium.

SECTION 7. Amends Section 2155.131, Government Code, as follows:

Sec. 2155.131. **DELEGATION OF AUTHORITY TO STATE AGENCIES.** (a) Creates this subsection from existing text. Authorizes the comptroller, rather than TFC, to delegate purchasing functions to a state agency.

(b) Requires the comptroller, in delegating purchasing authority under this section or Section 2155.132, to consider factors relevant to a state agency's ability to perform purchasing functions, including:

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

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

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

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

(c) Requires the comptroller to monitor the purchasing practices of each state agency that the comptroller delegates purchasing authority to under Subsection (b) or Section 2155.132 to ensure that the certification levels of the agency's purchasing personnel and the quality of the agency's purchasing practices continue to warrant the delegated purchasing authority. Authorizes the comptroller to revoke for any cause, including the agency's failure to comply with

Section 2155.074, all or part of the delegated purchasing authority. Requires the comptroller to adopt rules to administer this subsection.

(d) Requires the comptroller by rule to develop best practices for the procedures a state agency is required to follow in making a delegated purchase and the procedures by which a state agency is authorized to use the comptroller's services for delegated purchases under Section 2155.082 (Providing Certain Purchasing Services on Fee-For-Service Basis or Through Benefit Funding).

(e) Requires the comptroller on request of a state agency to provide assistance to the agency for a delegated purchase.

SECTION 8. Amends Section 2155.132, Government Code, as follows:

Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT. (a) Requires the comptroller, if the comptroller determines that a state agency has not followed the comptroller's rules or the laws related to the delegated purchases, to report the comptroller's determination to the members of the state agency's governing body and to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board, rather than requiring TFC, if TFC determines that a state agency has not followed TFC's rules or the laws related to the delegated purchases, to report its determination to the members of the state agency's governing body and to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board.

(b) Authorizes the comptroller, rather than TFC, by rule to delegate to a state agency the authority to purchase goods and services if the purchase exceeds \$15,000. Deletes existing text requiring TFC, in delegating purchasing authority under this subsection or Section 2155.131, to consider factors relevant to a state agency's ability to perform purchasing functions, including the capabilities of the agency's purchasing staff and the existence of automated purchasing tools at the agency; the certification levels held by the agency's purchasing personnel; the results of TFC's procurement review audits of an agency's purchasing practices; and whether the agency has adopted and published protest procedures consistent with those of TFC as part of its purchasing rules.

(c) Redesignates existing Subsection (e) as Subsection (c). Provides that competitive bidding, whether formal or informal, is required for a purchase by a state agency if the purchase exceeds \$5,000 and is made under a written contract. Deletes existing text requiring TFC to monitor the purchasing practices of state agencies that are making delegated purchases under Subsection (b) or Section 2155.131 to ensure that the certification levels of the agency's purchasing personnel and the quality of the agency's purchasing practices continue to warrant the amount of delegated authority provided by TFC to the agency. Deletes existing text authorizing TFC to revoke for cause all or part of the purchasing authority that TFC delegated to a state agency. Deletes existing text requiring TFC to adopt rules to administer this subsection.

(d) Redesignates existing Subsection (f) as Subsection (d). Prohibits goods purchased under this section from including:

(1) an item for which a statewide contract has been awarded by the comptroller, rather than under the contract purchase procedure, unless the quantity purchased is less than any minimum quantity, rather than the minimum quantity, specified in the contract;

(2) an item required by statute to be purchased from a particular source, including through the program administered under Chapter 122 (Texas Council on Purchasing from People with Disabilities), Human Resources

Code, or from the Texas Correctional Industries under Chapter 497 (Industry and Agriculture; Labor of Inmates); or

(3) a scheduled item that has been designated for purchase by the comptroller, rather than TFC.

Deletes existing Subsection (d) providing that TFC, by rule, is required to prescribe procedures for a delegated purchase and is required to prescribe procedures by which agencies are authorized to use TFC's services for delegated purchases, in accordance with Section 2155.082.

(e) Redesignates existing Subsection (g) as Subsection (e). Prohibits a large purchase from being divided into small lot purchases to circumvent, rather than meet, the dollar limits prescribed by this section. Prohibits the comptroller, rather than TFC, from requiring that unrelated purchases be combined into one purchase order to exceed the dollar limits prescribed by this section.

(f) Redesignates existing Subsection (h) as Subsection (f). Requires a state agency making a purchase under this section for which competitive bidding is required to:

(1) attempt to obtain at least three competitive bids from sources listed on the master bidders list that normally offer for sale the goods being purchased or, if three vendors are not available on the master bidders list, vendors in the applicable industry; and

(2) comply with Subchapter E (Master Bidders List).

SECTION 9. Amends Subchapter C, Chapter 2155, Government Code, by adding Section 2155.1325, as follows:

Sec. 2155.1325. STANDARDS FOR DELEGATED PURCHASES. (a) Requires a state agency that is preparing a solicitation for proposals for a purchase of goods or services with a purchase price that exceeds \$100,000 that is delegated under this chapter or other law to submit to the comptroller a copy of the draft solicitation with a statement of the procurement strategy for the purchase.

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

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

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

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

(4) assist the state agency in engaging professional services or a consultant, as authorized by Section 2155.082, to assist with the solicitation to be paid from the cost savings realized under the contract.

(c) Requires a state agency that receives the comptroller's recommended changes under Subsection (b)(1) to accept the recommended changes or submit alternative suggestions to the comptroller for review in accordance with this section.

(d) Authorizes the comptroller to adopt rules to administer this section.

SECTION 10. Repealers: Sections 2155.086 (Procedures for Awarding Certain Contracts), 2155.087 (Statewide Procurement Advisory Council), 2155.141 (Purchases for Auxiliary Enterprise Not Within Commission's Purchasing Authority), and 2156.002 (Solicitation of Bids Through Public Notice), Government Code.

SECTION 11. Effective date: upon passage or September 1, 2013.