

By: Reynolds

H.B. No. 959

A BILL TO BE ENTITLED

1 AN ACT
2 relating to historically underutilized businesses and the
3 preference given for goods and services purchased by state
4 agencies; providing penalties.

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

6 SECTION 1. Section 2155.074(b), Government Code, is amended
7 to read as follows:

8 (b) In determining the best value for the state, the
9 purchase price and whether the goods or services meet
10 specifications are the most important considerations. However, the
11 commission or other state agency may, subject to Subsection (c) and
12 Section 2155.075, consider other relevant factors, including:

13 (1) installation costs;
14 (2) life cycle costs;
15 (3) the quality and reliability of the goods and
16 services;

17 (4) the delivery terms;

18 (5) indicators of probable vendor performance under
19 the contract such as past vendor performance, the vendor's
20 financial resources and ability to perform, the vendor's experience
21 or demonstrated capability and responsibility, and the vendor's
22 ability to provide reliable maintenance agreements and support;

23 (6) the cost of any employee training associated with
24 a purchase;

- 1 (7) the effect of a purchase on agency productivity;
- 2 (8) the vendor's anticipated economic impact to the
3 state or a subdivision of the state, including potential tax
4 revenue and employment; ~~and~~
- 5 (9) whether the business is a historically
6 underutilized business as defined by Section 2161.001; and
- 7 (10) other factors relevant to determining the best
8 value for the state in the context of a particular purchase.

9 SECTION 2. Sections 2155.444(a), (b), (c), and (e),
10 Government Code, are amended to read as follows:

11 (a) The comptroller ~~[commission]~~ and all state agencies
12 making purchases of goods, including agricultural products, shall
13 give preference to those produced or grown in this state or offered
14 by Texas bidders as follows:

15 (1) goods produced or offered by a Texas bidder that is
16 a historically underutilized business ~~[owned by a service-disabled~~
17 ~~veteran who is a Texas resident]~~ shall be given a first preference
18 and goods produced in this state or offered by other Texas bidders
19 shall be given second preference, if the cost to the state and
20 quality are equal; and

21 (2) agricultural products grown in this state shall be
22 given first preference and agricultural products offered by Texas
23 bidders shall be given second preference, if the cost to the state
24 and quality are equal.

25 (b) If goods, including agricultural products, produced or
26 grown in this state or offered by Texas bidders exceed 105 percent
27 of the cost of other goods or are not equal in ~~[cost and]~~ quality to

1 other products, then goods, including agricultural products,
2 produced or grown in other states of the United States shall be
3 given preference over foreign products if the cost to the state and
4 quality are equal.

5 (c) In this section:

6 (1) "Agricultural products" includes textiles and
7 other similar products.

8 (2) "Historically underutilized business" has the
9 meaning assigned by Section 2161.001.

10 [~~(1-a) "Service-disabled veteran" means a person who~~
11 ~~is a veteran as defined by 38 U.S.C. Section 101(2) and who has a~~
12 ~~service-connected disability as defined by 38 U.S.C. Section~~
13 ~~101(16).]~~

14 (3) [(2)] "Texas bidder" means a business:

15 (A) incorporated in this state;

16 (B) that has its principal place of business in
17 this state; or

18 (C) that has an established physical presence in
19 this state.

20 (e) The comptroller [~~commission~~] and all state agencies
21 procuring services shall give first preference to services offered
22 by a Texas bidder that is a historically underutilized business
23 [~~owned by a service-disabled veteran who is a Texas resident~~] and
24 shall give second preference to services offered by other Texas
25 bidders if:

26 (1) the services meet state requirements regarding the
27 service to be performed and expected quality; and

1 (2) the cost of the service does not exceed the cost of
2 other similar services of similar expected quality that are offered
3 by a bidder that is not entitled to a preference under this
4 subsection.

5 SECTION 3. Section 2161.001, Government Code, is amended by
6 amending Subdivision (3) and adding Subdivision (5) to read as
7 follows:

8 (3) "Economically disadvantaged person" means a
9 person who is economically disadvantaged because of the person's
10 identification as a member of a certain group, including Black
11 Americans, Hispanic Americans, women, Asian Pacific Americans,
12 ~~and~~ Native Americans, and veterans as defined by 38 U.S.C.
13 Section 101(2) who have a service-connected disability as defined
14 by 38 U.S.C. Section 101(16), and who has suffered the effects of
15 discriminatory practices or other similar insidious circumstances
16 over which the person has no control.

17 (5) "Professional services" has the meaning assigned
18 by Section 2254.002.

19 SECTION 4. Section 2161.064, Government Code, is amended by
20 adding Subsection (f) to read as follows:

21 (f) A state agency may use the directory compiled under this
22 section to create a mailing list for soliciting bids from
23 historically underutilized businesses. The state agency may rotate
24 the businesses included on the mailing list by using different
25 portions of the directory for separate acquisitions of goods or
26 services if the agency determines that the size of the acquisition
27 justifies the rotation. If the state agency rotates the businesses

1 included on a solicitation mailing list, bids must be solicited
2 from:

3 (1) a bidder who was previously awarded the bid for the
4 goods or services;

5 (2) businesses that have been added to the directory
6 since the last solicitation; and

7 (3) businesses included in the portion of the
8 directory selected to be included in the solicitation mailing
9 list.

10 SECTION 5. Subchapter B, Chapter 2161, Government Code, is
11 amended by adding Section 2161.067 to read as follows:

12 Sec. 2161.067. JOINT VENTURES. (a) In this section:

13 (1) "Eligible purchase" means a purchase of goods or
14 services that:

15 (A) a state agency determines is eligible for a
16 joint venture based on work and market availability; and

17 (B) exceeds the minimum dollar value provided by
18 comptroller rule.

19 (2) "Joint venture" means an association of two or
20 more individuals or businesses, at least one of which is a
21 historically underutilized business, that is:

22 (A) established to carry on a single business
23 activity;

24 (B) certified as a joint venture by the
25 comptroller; and

26 (C) limited in scope and duration.

27 (b) Each state agency shall determine whether a purchase of

1 goods or services is an eligible purchase for which the agency is
2 required to make a good faith effort to award the contract to a
3 joint venture. The agency may not accept a contract bid submitted
4 by any bidder other than a joint venture unless the agency
5 determines, based on the relevant facts, documents, and
6 circumstances, that the agency has made a good faith effort to award
7 the contract to a joint venture.

8 (c) A contract for a joint venture must be in writing and
9 must:

10 (1) be based on the sharing of real economic interest
11 in the venture that includes proportionate control over management,
12 interest in capital acquired by the joint venture, and interest in
13 earnings;

14 (2) be completed by all parties to the joint venture;

15 (3) be executed before a notary public;

16 (4) clearly delineate the rights and responsibilities
17 of each member or partner;

18 (5) comply with any requirements of the comptroller as
19 provided in bid documents or otherwise; and

20 (6) provide that the joint venture continue for, at a
21 minimum, the duration of the eligible purchase.

22 (d) The comptroller using available resources shall select
23 for review a random sampling of state agency joint venture
24 determinations made under Subsection (b).

25 (e) A state agency selected by the comptroller under
26 Subsection (d), the joint venture, and each member of the joint
27 venture shall provide the comptroller access to review all records

1 pertaining to joint venture agreements before and after the award
2 of a contract to the joint venture by the agency in order to
3 reasonably assess compliance with this section.

4 (f) A member of a joint venture who fails to comply with this
5 section, and whose failure to comply continues for at least 30 days
6 after receiving written notice of the noncompliance from the
7 comptroller, is subject to any or all of the following penalties:

8 (1) withholding of 10 percent of all future payments
9 for the eligible purchase until the comptroller determines the
10 member of the joint venture is in compliance with this section;

11 (2) withholding of all future payments under the
12 eligible purchase until the comptroller determines the member of
13 the joint venture is in compliance with this section;

14 (3) cancellation of the eligible purchase; and

15 (4) ineligibility for future contracts or
16 subcontracts with this state for one to five years from the date on
17 which the penalty is imposed.

18 SECTION 6. Section 2161.252, Government Code, is amended by
19 adding Subsection (c) to read as follows:

20 (c) A subcontracting plan must require the contractor to
21 accept bids, proposals, offers, or other applicable expressions
22 from historically underutilized businesses for not less than 10
23 working days after the date the contractor notifies the business of
24 the subcontracting opportunity. This subsection does not apply to
25 a professional services contract.

26 SECTION 7. Section 2254.002(2), Government Code, is amended
27 to read as follows:

- 1 (2) "Professional services" means services:
2 (A) within the scope of the practice, as defined
3 by state law, of:
4 (i) accounting;
5 (ii) architecture;
6 (iii) landscape architecture;
7 (iv) land surveying;
8 (v) medicine;
9 (vi) optometry;
10 (vii) professional engineering;
11 (viii) real estate appraising; or
12 (ix) professional nursing; or
13 (B) provided in connection with the professional
14 employment or practice of a person who is licensed or registered as:
15 (i) a certified public accountant;
16 (ii) an architect;
17 (iii) a landscape architect;
18 (iv) a land surveyor;
19 (v) a physician, including a surgeon;
20 (vi) an optometrist;
21 (vii) a professional engineer;
22 (viii) a state certified or state licensed
23 real estate appraiser; ~~or~~
24 (ix) a registered nurse; or
25 (x) an attorney.

26 SECTION 8. (a) Not later than December 1, 2013, the
27 comptroller of public accounts shall adopt the rules required to

1 implement the changes in law made by this Act.

2 (b) Chapters 2155 and 2161, Government Code, as amended by
3 this Act, apply only to a purchase of goods or services or a
4 contract entered into on or after January 1, 2014.

5 SECTION 9. This Act takes effect September 1, 2013.