

AN ACT

relating to the award and performance of certain state contracts.

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

SECTION 1. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.088 to read as follows:

Sec. 2155.088. MATERIAL CHANGES TO CONTRACTS. (a)

Notwithstanding any other law, the performance of a contract for goods or services awarded under this chapter must substantially comply with the terms contained in the written solicitation for the contract and the terms considered in awarding the contract, including terms regarding cost of materials or labor, duration, price, schedule, and scope.

(b) After a contract for goods or services is awarded under this chapter, the governing body of a state agency, if applicable, must hold a meeting to consider a material change to the contract and why that change is necessary. For purposes of this section, a material change includes:

(1) extending the length of or postponing the completion of a contract for six months or more; or

(2) increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services.

SECTION 2. Section 2252.002, Government Code, is amended to read as follows:

1 Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A
2 governmental entity may not award a governmental contract to a
3 nonresident bidder unless the nonresident underbids the lowest bid
4 submitted by a responsible resident bidder by an amount that is not
5 less than the greater of the following:

6 (1) the amount by which a resident bidder would be
7 required to underbid the nonresident bidder to obtain a comparable
8 contract in the state in which the nonresident's principal place of
9 business is located; or

10 (2) the amount by which a resident bidder would be
11 required to underbid the nonresident bidder to obtain a comparable
12 contract in the state in which a majority of the manufacturing
13 relating to the contract will be performed.

14 SECTION 3. Subchapter B, Chapter 223, Transportation Code,
15 is amended by adding Section 223.050 to read as follows:

16 Sec. 223.050. PREFERENCE FOR CERTAIN PROVIDERS. (a)
17 Except as provided by Subsection (d), in awarding a contract to a
18 private sector provider, the department shall give preference to a
19 private sector provider if:

20 (1) the preference serves to create a positive
21 economic impact on job growth and job retention in this state;

22 (2) the transportation project for which the contract
23 is being awarded is funded entirely from:

24 (A) state funds;

25 (B) local funds; or

26 (C) a combination of state and local funds; and

27 (3) the amount of the bid or proposal of the provider

1 does not exceed an amount equal to 105 percent of the lowest bid or
2 proposal received by the department for the transportation project.

3 (b) The department, in determining whether the preference
4 under Subsection (a) serves to create a positive economic impact on
5 job growth and job retention in this state, may consider a private
6 sector provider's employment presence and business establishments
7 in this state.

8 (c) This section does not apply to the procurement of
9 professional services under Subchapter A, Chapter 2254, Government
10 Code.

11 (d) The department may not give a preference under this
12 section if:

13 (1) as a result of the preference, a private sector
14 provider would not be awarded a contract; and

15 (2) the principal place of business of the private
16 sector provider described by Subdivision (1) is located in a state
17 that:

18 (A) borders this state; and

19 (B) does not give a preference to private sector
20 providers in a manner similar to this section.

21 SECTION 4. (a) Section 2155.088, Government Code, as added
22 by this Act, applies only to a contract for goods or services
23 awarded under Chapter 2155, Government Code, on or after the
24 effective date of this Act.

25 (b) Section 2252.002, Government Code, as amended by this
26 Act, applies only to the award of a governmental contract to a
27 nonresident bidder on or after the effective date of this Act. The

1 award of a governmental contract to a nonresident bidder made
2 before the effective date of this Act is governed by the law in
3 effect at the time the contract was awarded, and the former law is
4 continued in effect for that purpose.

5 SECTION 5. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 3648 was passed by the House on May 9, 2013, by the following vote: Yeas 141, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3648 on May 23, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3648 on May 26, 2013, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 3648

I certify that H.B. No. 3648 was passed by the Senate, with amendments, on May 21, 2013, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3648 on May 26, 2013, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor