

By: Zaffirini

S.B. No. 1679

A BILL TO BE ENTITLED

AN ACT

relating to state agency procurement.

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

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

SECTION 2. Section 2155.064, Government Code, is amended to read as follows:

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

SECTION 3. Section 2155.072, Government Code, is amended to read as follows:

Sec. 2155.072. STATEWIDE OR REGIONAL GOODS OR SERVICES CONTRACTS; COMPTROLLER [~~COMMISSION~~] STUDIES. Each state fiscal year, the comptroller [~~(a) The commission annually~~] shall consider

1 one or more goods or services purchased by one or more state  
2 agencies for development into statewide contracts. The comptroller  
3 shall determine if a particular good or service may be leveraged for  
4 multiple state agencies at a cost savings to this state compared to  
5 the cost to this state of purchasing the good or service under  
6 individual state agency contracts [~~select for study at least one~~  
7 ~~service that is purchased by one or more state agencies~~]. The  
8 comptroller [~~commission~~] shall consider awarding statewide  
9 contracts by region [~~study a selected service to determine whether~~  
10 ~~the state would benefit if the service were provided to appropriate~~  
11 ~~state agencies under a regional or statewide contract. The~~  
12 ~~commission shall give priority to studying services for which the~~  
13 ~~commission has delegated the purchasing function to many state~~  
14 ~~agencies~~].

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

19 SECTION 4. Section 2155.074, Government Code, is amended to  
20 read as follows:

21 Sec. 2155.074. PROCUREMENT MANUAL; BEST VALUE AND SOURCING  
22 STANDARDS [~~STANDARD~~] FOR PURCHASE OF GOODS OR SERVICES. (a) The  
23 comptroller shall publish and maintain a procurement manual for  
24 state agencies to follow that incorporates the sourcing standards  
25 of this section and the best practices for procurement. Before  
26 publication, the procurement manual must be reviewed by the  
27 Contract Advisory Team established under Chapter 2262. Each state

1 agency shall comply with the procurement manual in its procurement  
2 activities.

3       **(b)** For a purchase of goods and services under this chapter,  
4 each state agency, including the comptroller [~~commission~~], shall  
5 purchase goods and services that provide the best value for the  
6 state.

7       **(c)** [~~(b)~~] In determining the best value for the state, the  
8 purchase price and whether the goods or services meet  
9 specifications are the most important considerations. However, the  
10 comptroller [~~commission~~] or other state agency may, subject to  
11 Subsection **(d)** [~~(c)~~] and Section 2155.075, consider other relevant  
12 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;
- 25           (7) the effect of a purchase on agency productivity;
- 26           (8) the vendor's anticipated economic impact to the  
27 state or a subdivision of the state, including potential tax

1 revenue and employment; and

2 (9) other factors relevant to determining the best  
3 value for the state in the context of a particular purchase.

4 (d) [~~(c)~~] A state agency shall:

5 (1) consult with and receive approval from the  
6 comptroller [~~commission~~] before considering factors other than  
7 price and meeting specifications when the agency procures through  
8 competitive bidding goods or services with a value that exceeds  
9 \$100,000; and

10 (2) maintain in its records a written explanation of  
11 the reasons other factors are more important than price and meeting  
12 specifications in the procurement of the goods or services.

13 (e) The comptroller shall:

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

16 (2) analyze and determine whether the goods and  
17 services are better provided through a statewide contract.

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

24 SECTION 5. Subsection (n), Section 2155.083, Government  
25 Code, is amended to read as follows:

26 (n) Notwithstanding any other provision of this section, a  
27 state agency that conducts covert law enforcement operations is not

1 required to post the specifications for covert equipment in the  
2 state business daily. [~~This section does not apply to a state~~  
3 ~~agency to which Section 51.9335 or 73.115, Education Code,~~  
4 ~~applies.~~]

5 SECTION 6. Subchapter B, Chapter 2155, Government Code, is  
6 amended by adding Section 2155.088 to read as follows:

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

13 SECTION 7. Section 2155.131, Government Code, is amended to  
14 read as follows:

15 Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES.  
16 (a) The comptroller [~~commission~~] may delegate purchasing  
17 functions to a state agency.

18 (b) In delegating purchasing authority under this section  
19 or Section 2155.132, the comptroller shall consider factors  
20 relevant to a state agency's ability to perform purchasing  
21 functions, including:

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

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

27 (3) the results of the comptroller's procurement

1 review audits of an agency's purchasing practices; and

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

5 (c) The comptroller shall monitor the purchasing practices  
6 of each state agency that the comptroller delegates purchasing  
7 authority to under Subsection (b) or Section 2155.132 to ensure  
8 that the certification levels of the agency's purchasing personnel  
9 and the quality of the agency's purchasing practices continue to  
10 warrant the delegated purchasing authority. The comptroller may  
11 revoke for any cause, including the agency's failure to comply with  
12 Section 2155.074, all or part of the delegated purchasing  
13 authority. The comptroller shall adopt rules to administer this  
14 subsection.

15 (d) The comptroller by rule shall develop best practices  
16 for:

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

19 (2) the procedures by which a state agency may use the  
20 comptroller's services for delegated purchases under Section  
21 2155.082.

22 (e) The comptroller on request of a state agency shall  
23 provide assistance to the agency for a delegated purchase.

24 SECTION 8. Section 2155.132, Government Code, is amended to  
25 read as follows:

26 Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY  
27 AMOUNT. (a) A state agency is delegated the authority to purchase

1 goods and services if the purchase does not exceed \$15,000. If the  
2 comptroller [~~commission~~] determines that a state agency has not  
3 followed the comptroller's [~~commission's~~] rules or the laws related  
4 to the delegated purchases, the comptroller [~~commission~~] shall  
5 report the comptroller's [~~its~~] determination to the members of the  
6 state agency's governing body and to the governor, lieutenant  
7 governor, speaker of the house of representatives, and Legislative  
8 Budget Board.

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

15 [~~(1) the capabilities of the agency's purchasing staff~~  
16 ~~and the existence of automated purchasing tools at the agency;~~

17 [~~(2) the certification levels held by the agency's~~  
18 ~~purchasing personnel;~~

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

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

24 (c) [~~The commission shall monitor the purchasing practices~~  
25 ~~of state agencies that are making delegated purchases under~~  
26 ~~Subsection (b) or Section 2155.131 to ensure that the certification~~  
27 ~~levels of the agency's purchasing personnel and the quality of the~~

1 ~~agency's purchasing practices continue to warrant the amount of~~  
2 ~~delegated authority provided by the commission to the agency. The~~  
3 ~~commission may revoke for cause all or part of the purchasing~~  
4 ~~authority that the commission delegated to a state agency. The~~  
5 ~~commission shall adopt rules to administer this subsection.~~

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

7 ~~[(1) shall prescribe procedures for a delegated~~  
8 ~~purchase; and~~

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

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

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

15 (2) is made under a written contract.

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

18 (1) an item for which a statewide contract has been  
19 awarded by the comptroller ~~[under the contract purchase procedure]~~,  
20 unless the quantity purchased is less than any ~~[the]~~ minimum  
21 quantity specified in the contract;

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

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



1        (e) [~~(g)~~] A large purchase may not be divided into small lot  
2 purchases to circumvent [~~meet~~] the dollar limits prescribed by this  
3 section. The comptroller [~~commission~~] may not require that  
4 unrelated purchases be combined into one purchase order to exceed  
5 the dollar limits prescribed by this section.

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

8            (1) attempt to obtain at least three competitive bids  
9 from:

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

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

14            (2) comply with Subchapter E.

15        SECTION 9. The following sections of the Government Code  
16 are repealed:

17            (1) Section 2155.086;

18            (2) Section 2155.087; and

19            (3) Section 2155.141.

20        SECTION 10. This Act takes effect immediately if it  
21 receives a vote of two-thirds of all the members elected to each  
22 house, as provided by Section 39, Article III, Texas Constitution.  
23 If this Act does not receive the vote necessary for immediate  
24 effect, this Act takes effect September 1, 2013.