

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 SERVICES CONTRACTS; COMPTROLLER [~~COMMISSION~~] STUDIES. Each state fiscal year, the comptroller [~~(a) The commission annually~~] shall consider one or

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

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

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

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

1 activities.

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

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

- 12 (1) installation costs;
- 13 (2) life cycle costs;
- 14 (3) the quality and reliability of the goods and
15 services;
- 16 (4) the delivery terms;
- 17 (5) indicators of probable vendor performance under
18 the contract such as past vendor performance, the vendor's
19 financial resources and ability to perform, the vendor's experience
20 or demonstrated capability and responsibility, and the vendor's
21 ability to provide reliable maintenance agreements and support;
- 22 (6) the cost of any employee training associated with
23 a purchase;
- 24 (7) the effect of a purchase on agency productivity;
- 25 (8) the vendor's anticipated economic impact to the
26 state or a subdivision of the state, including potential tax
27 revenue and employment; and

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

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

8 (e) The comptroller shall:

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

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

13 (f) If the comptroller determines that a good or service
14 identified under Subsection (e) is better provided through a
15 statewide contract, the comptroller may require state agencies to
16 engage in any process, including competitive bidding, developed by
17 the comptroller to develop and award one or more statewide
18 contracts for the good or service.

19 SECTION 5. Section 2155.083(n), Government Code, is amended
20 to read as follows:

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

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

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

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

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

9 (c) A state agency that makes a substantive change to its
10 procurement plan shall submit a revised copy of the plan to the
11 comptroller not later than the 30th day after the date of the
12 change.

13 (d) The comptroller may adopt rules to administer this
14 section.

15 SECTION 7. Section 2155.131, Government Code, is amended to
16 read as follows:

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

18 (a) The comptroller [~~commission~~] may delegate purchasing functions
19 to a state agency.

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

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

27 (2) the certification levels held by the agency's

1 purchasing personnel;

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

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

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

17 (d) The comptroller by rule shall prescribe:

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

20 (2) the procedures by which a state agency may use the
21 comptroller's services for delegated purchases under Section
22 2155.082.

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

25 Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY
26 AMOUNT. (a) A state agency is delegated the authority to purchase
27 goods and services if the purchase does not exceed \$15,000. If the

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) is made under a written contract.

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

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

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

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

27 (e) ~~[(g)]~~ A large purchase may not be divided into small lot

1 purchases to circumvent [~~meet~~] the dollar limits prescribed by this
2 section. The comptroller [~~commission~~] may not require that
3 unrelated purchases be combined into one purchase order to exceed
4 the dollar limits prescribed by this section.

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

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

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

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

13 (2) comply with Subchapter E.

14 SECTION 9. Subchapter C, Chapter 2155, Government Code, is
15 amended by adding Section 2155.1325 to read as follows:

16 Sec. 2155.1325. STANDARDS FOR DELEGATED PURCHASES. (a) A
17 state agency that is preparing a solicitation for proposals for a
18 purchase of goods or services with a purchase price that exceeds
19 \$100,000 that is delegated under this chapter or other law shall
20 submit to the comptroller a copy of the draft solicitation with a
21 statement of the procurement strategy for the purchase.

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

26 (1) recommend changes to the draft solicitation or
27 procurement strategy, provided the written recommended changes are

1 submitted to the state agency not later than the 30th day after the
2 date the comptroller receives the draft solicitation and
3 procurement strategy from the state agency;

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

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

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

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

13 (1) accept the recommended changes; or

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

16 (d) The comptroller may adopt rules to administer this
17 section.

18 SECTION 10. The following sections of the Government Code
19 are repealed:

20 (1) Section 2155.086;

21 (2) Section 2155.087;

22 (3) Section 2155.138;

23 (4) Section 2155.141; and

24 (5) Section 2156.002.

25 SECTION 11. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

S.B. No. 1679

1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2013.