

1-1 By: Zaffirini S.B. No. 1679
1-2 (In the Senate - Filed March 8, 2013; March 25, 2013, read
1-3 first time and referred to Committee on Government Organization;
1-4 April 8, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 8, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Zaffirini</u>	X		
1-10	<u>Schwertner</u>	X		
1-11	<u>Birdwell</u>	X		
1-12	<u>Garcia</u>	X		
1-13	<u>Paxton</u>	X		
1-14	<u>Rodriguez</u>	X		
1-15	<u>Taylor</u>	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1679 By: Garcia

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to state agency procurement.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. Section 2155.002, Government Code, is amended to
1-22 read as follows:
1-23 Sec. 2155.002. COMPTROLLER [~~COMMISSION~~] FOCUS ON LARGE
1-24 EXPENDITURES. To the extent possible, the comptroller [~~commission~~]
1-25 shall focus [its efforts under this chapter and Chapters 2156,
1-26 2157, and 2158] on purchases and contracts that involve relatively
1-27 large amounts of money or that leverage state spending in the most
1-28 efficient manner.
1-29 SECTION 2. Section 2155.064, Government Code, is amended to
1-30 read as follows:
1-31 Sec. 2155.064. LEVERAGED [~~SCHEDULE AND BULK~~] PURCHASING.
1-32 To the greatest extent possible, the comptroller shall pursue
1-33 statewide contracts and attempt to leverage state spending to
1-34 achieve cost savings for this state. [The commission may combine
1-35 orders in a system of schedule purchasing and shall attempt to
1-36 benefit from bulk purchasing.]
1-37 SECTION 3. Section 2155.072, Government Code, is amended to
1-38 read as follows:
1-39 Sec. 2155.072. STATEWIDE OR REGIONAL GOODS OR SERVICES
1-40 CONTRACTS; COMPTROLLER [~~COMMISSION~~] STUDIES. Each state fiscal
1-41 year, the comptroller [(a) The commission annually] shall consider
1-42 one or more goods or services purchased by one or more state
1-43 agencies for development into statewide contracts. The comptroller
1-44 shall determine if a particular good or service may be leveraged for
1-45 multiple state agencies at a cost savings to this state compared to
1-46 the cost to this state of purchasing the good or service under
1-47 individual state agency contracts [select for study at least one
1-48 service that is purchased by one or more state agencies]. The
1-49 comptroller [commission] shall consider awarding statewide
1-50 contracts by region [study a selected service to determine whether
1-51 the state would benefit if the service were provided to appropriate
1-52 state agencies under a regional or statewide contract. The
1-53 commission shall give priority to studying services for which the
1-54 commission has delegated the purchasing function to many state
1-55 agencies].
1-56 [(b) The commission is not required to enter into a
1-57 statewide or regional contract for the provision of a service to
1-58 state agencies if more than five bidders are willing to provide the
1-59 service to the state under a statewide or regional contract.]
1-60 SECTION 4. Section 2155.074, Government Code, is amended to

2-1 read as follows:

2-2 Sec. 2155.074. PROCUREMENT MANUAL; BEST VALUE AND SOURCING
 2-3 STANDARDS [~~STANDARD~~] FOR PURCHASE OF GOODS OR SERVICES. (a) The
 2-4 comptroller shall publish and maintain a procurement manual for
 2-5 state agencies to follow that incorporates the sourcing standards
 2-6 of this section and the best practices for procurement. Before
 2-7 publication, the procurement manual must be reviewed by the
 2-8 Contract Advisory Team established under Chapter 2262. Each state
 2-9 agency shall comply with the procurement manual in its procurement
 2-10 activities.

2-11 (b) For a purchase of goods and services under this chapter,
 2-12 each state agency, including the comptroller [~~commission~~], shall
 2-13 purchase goods and services that provide the best value for the
 2-14 state.

2-15 (c) [~~(b)~~] In determining the best value for the state, the
 2-16 purchase price and whether the goods or services meet
 2-17 specifications are the most important considerations. However, the
 2-18 comptroller [~~commission~~] or other state agency may, subject to
 2-19 Subsection (d) [~~(c)~~] and Section 2155.075, consider other relevant
 2-20 factors, including:

2-21 (1) installation costs;
 2-22 (2) life cycle costs;
 2-23 (3) the quality and reliability of the goods and
 2-24 services;

2-25 (4) the delivery terms;
 2-26 (5) indicators of probable vendor performance under
 2-27 the contract such as past vendor performance, the vendor's
 2-28 financial resources and ability to perform, the vendor's experience
 2-29 or demonstrated capability and responsibility, and the vendor's
 2-30 ability to provide reliable maintenance agreements and support;

2-31 (6) the cost of any employee training associated with
 2-32 a purchase;

2-33 (7) the effect of a purchase on agency productivity;
 2-34 (8) the vendor's anticipated economic impact to the
 2-35 state or a subdivision of the state, including potential tax
 2-36 revenue and employment; and

2-37 (9) other factors relevant to determining the best
 2-38 value for the state in the context of a particular purchase.

2-39 (d) [~~(c)~~] A state agency shall:

2-40 (1) consult with and receive approval from the
 2-41 comptroller [~~commission~~] before considering factors other than
 2-42 price and meeting specifications when the agency procures through
 2-43 competitive bidding goods or services with a value that exceeds
 2-44 \$100,000; and

2-45 (2) maintain in its records a written explanation of
 2-46 the reasons other factors are more important than price and meeting
 2-47 specifications in the procurement of the goods or services.

2-48 (e) The comptroller shall:

2-49 (1) identify commercially available goods and
 2-50 services needed or used by state agencies; and

2-51 (2) analyze and determine whether the goods and
 2-52 services are better provided through a statewide contract.

2-53 (f) If the comptroller determines that a good or service
 2-54 identified under Subsection (e) is better provided through a
 2-55 statewide contract, the comptroller may partner with state agencies
 2-56 to implement any process, including competitive bidding, developed
 2-57 by the comptroller to award one or more statewide contracts for the
 2-58 good or service.

2-59 SECTION 5. Subsection (n), Section 2155.083, Government
 2-60 Code, is amended to read as follows:

2-61 (n) Notwithstanding any other provision of this section, a
 2-62 state agency that conducts covert law enforcement operations is not
 2-63 required to post the specifications for covert equipment in the
 2-64 state business daily. [~~This section does not apply to a state agency~~
 2-65 ~~to which Section 51.9335 or 73.115, Education Code, applies.]~~

2-66 SECTION 6. Subchapter B, Chapter 2155, Government Code, is
 2-67 amended by adding Section 2155.088 to read as follows:

2-68 Sec. 2155.088. PROCUREMENT PLANS FOR GOODS AND SERVICES.
 2-69 The comptroller shall partner with each state agency to facilitate

3-1 efficient communications between the agency and the comptroller on
3-2 the agency's procurement plans, including identifying the major
3-3 purchases of goods or services the agency has planned for each
3-4 fiscal biennium.

3-5 SECTION 7. Section 2155.131, Government Code, is amended to
3-6 read as follows:

3-7 Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES.
3-8 (a) The comptroller [~~commission~~] may delegate purchasing
3-9 functions to a state agency.

3-10 (b) In delegating purchasing authority under this section
3-11 or Section 2155.132, the comptroller shall consider factors
3-12 relevant to a state agency's ability to perform purchasing
3-13 functions, including:

3-14 (1) the purchasing capabilities of the agency's
3-15 purchasing personnel and the existence of automated purchasing
3-16 tools at the agency;

3-17 (2) the certification levels held by the agency's
3-18 purchasing personnel;

3-19 (3) the results of the comptroller's procurement
3-20 review audits of an agency's purchasing practices; and

3-21 (4) whether the agency has adopted and published as
3-22 part of its purchasing rules protest procedures consistent with the
3-23 comptroller's protest procedures.

3-24 (c) The comptroller shall monitor the purchasing practices
3-25 of each state agency that the comptroller delegates purchasing
3-26 authority to under Subsection (b) or Section 2155.132 to ensure
3-27 that the certification levels of the agency's purchasing personnel
3-28 and the quality of the agency's purchasing practices continue to
3-29 warrant the delegated purchasing authority. The comptroller may
3-30 revoke for any cause, including the agency's failure to comply with
3-31 Section 2155.074, all or part of the delegated purchasing
3-32 authority. The comptroller shall adopt rules to administer this
3-33 subsection.

3-34 (d) The comptroller by rule shall develop best practices
3-35 for:

3-36 (1) the procedures a state agency must follow in
3-37 making a delegated purchase; and

3-38 (2) the procedures by which a state agency may use the
3-39 comptroller's services for delegated purchases under Section
3-40 2155.082.

3-41 (e) The comptroller on request of a state agency shall
3-42 provide assistance to the agency for a delegated purchase.

3-43 SECTION 8. Section 2155.132, Government Code, is amended to
3-44 read as follows:

3-45 Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY
3-46 AMOUNT. (a) A state agency is delegated the authority to purchase
3-47 goods and services if the purchase does not exceed \$15,000. If the
3-48 comptroller [~~commission~~] determines that a state agency has not
3-49 followed the comptroller's [~~commission's~~] rules or the laws related
3-50 to the delegated purchases, the comptroller [~~commission~~] shall
3-51 report the comptroller's [~~its~~] determination to the members of the
3-52 state agency's governing body and to the governor, lieutenant
3-53 governor, speaker of the house of representatives, and Legislative
3-54 Budget Board.

3-55 (b) The comptroller [~~commission~~] by rule may delegate to a
3-56 state agency the authority to purchase goods and services if the
3-57 purchase exceeds \$15,000. [~~In delegating purchasing authority~~
3-58 ~~under this subsection or Section 2155.131, the commission shall~~
3-59 ~~consider factors relevant to a state agency's ability to perform~~
3-60 ~~purchasing functions, including:~~

3-61 ~~[(1) the capabilities of the agency's purchasing staff~~
3-62 ~~and the existence of automated purchasing tools at the agency;~~

3-63 ~~[(2) the certification levels held by the agency's~~
3-64 ~~purchasing personnel;~~

3-65 ~~[(3) the results of the commission's procurement~~
3-66 ~~review audits of an agency's purchasing practices; and~~

3-67 ~~[(4) whether the agency has adopted and published~~
3-68 ~~protest procedures consistent with those of the commission as part~~
3-69 ~~of its purchasing rules.]~~

4-1 (c) ~~[The commission shall monitor the purchasing practices~~
4-2 ~~of state agencies that are making delegated purchases under~~
4-3 ~~Subsection (b) or Section 2155.131 to ensure that the certification~~
4-4 ~~levels of the agency's purchasing personnel and the quality of the~~
4-5 ~~agency's purchasing practices continue to warrant the amount of~~
4-6 ~~delegated authority provided by the commission to the agency. The~~
4-7 ~~commission may revoke for cause all or part of the purchasing~~
4-8 ~~authority that the commission delegated to a state agency. The~~
4-9 ~~commission shall adopt rules to administer this subsection.~~

4-10 ~~[(d) The commission by rule:~~

4-11 ~~[(1) shall prescribe procedures for a delegated~~
4-12 ~~purchase; and~~

4-13 ~~[(2) shall prescribe procedures by which agencies may~~
4-14 ~~use the commission's services for delegated purchases, in~~
4-15 ~~accordance with Section 2155.082.~~

4-16 ~~[(e)]~~ Competitive bidding, whether formal or informal, is
4-17 required for a purchase by a state agency if the purchase:

4-18 (1) exceeds \$5,000; and

4-19 (2) is made under a written contract.

4-20 ~~[(f)]~~ (d) Goods purchased under this section may not
4-21 include:

4-22 (1) an item for which a statewide contract has been
4-23 awarded by the comptroller ~~[under the contract purchase procedure]~~,
4-24 unless the quantity purchased is less than any ~~[the]~~ minimum
4-25 quantity specified in the contract;

4-26 (2) an item required by statute to be purchased from a
4-27 particular source, including through the program administered
4-28 under Chapter 122, Human Resources Code, or from the Texas
4-29 Correctional Industries under Chapter 497; or

4-30 (3) a scheduled item that has been designated for
4-31 purchase by the comptroller ~~[commission]~~.

4-32 ~~[(g)]~~ (e) A large purchase may not be divided into small lot
4-33 purchases to circumvent ~~[meet]~~ the dollar limits prescribed by this
4-34 section. The comptroller ~~[commission]~~ may not require that
4-35 unrelated purchases be combined into one purchase order to exceed
4-36 the dollar limits prescribed by this section.

4-37 ~~[(h)]~~ (f) A state agency making a purchase under this
4-38 section for which competitive bidding is required shall ~~[must]~~:

4-39 (1) attempt to obtain at least three competitive bids
4-40 from:

4-41 (A) sources listed on the master bidders list
4-42 that normally offer for sale the goods being purchased; or

4-43 (B) if three vendors are not available on the
4-44 master bidders list, vendors in the applicable industry; and

4-45 (2) comply with Subchapter E.

4-46 SECTION 9. Subchapter C, Chapter 2155, Government Code, is
4-47 amended by adding Section 2155.1325 to read as follows:

4-48 Sec. 2155.1325. STANDARDS FOR DELEGATED PURCHASES. (a) A
4-49 state agency that is preparing a solicitation for proposals for a
4-50 purchase of goods or services with a purchase price that exceeds
4-51 \$100,000 that is delegated under this chapter or other law shall
4-52 submit to the comptroller a copy of the draft solicitation with a
4-53 statement of the procurement strategy for the purchase.

4-54 (b) The comptroller may review the draft solicitation and
4-55 procurement strategy to determine whether the state agency is
4-56 following the best value and sourcing standards of Section 2155.074
4-57 to the greatest extent possible. The comptroller may:

4-58 (1) recommend changes to the draft solicitation or
4-59 procurement strategy, provided the written recommended changes are
4-60 submitted to the state agency not later than the fifth day after the
4-61 date the comptroller receives the draft solicitation and
4-62 procurement strategy from the state agency;

4-63 (2) partner with the state agency to ensure the
4-64 standards of this chapter are followed;

4-65 (3) partner with the state agency to award a statewide
4-66 contract that results from the solicitation; or

4-67 (4) assist the state agency in engaging professional
4-68 services or a consultant, as authorized by Section 2155.082, to
4-69 assist with the solicitation and to be paid from the cost savings

5-1 realized under the contract.

5-2 (c) A state agency that receives the comptroller's
5-3 recommended changes under Subsection (b)(1) shall:

5-4 (1) accept the recommended changes; or

5-5 (2) submit alternative suggestions to the comptroller
5-6 for review in accordance with this section.

5-7 (d) The comptroller may adopt rules to administer this
5-8 section.

5-9 SECTION 10. The following sections of the Government Code
5-10 are repealed:

5-11 (1) Section 2155.086;

5-12 (2) Section 2155.087;

5-13 (3) Section 2155.141; and

5-14 (4) Section 2156.002.

5-15 SECTION 11. This Act takes effect immediately if it
5-16 receives a vote of two-thirds of all the members elected to each
5-17 house, as provided by Section 39, Article III, Texas Constitution.
5-18 If this Act does not receive the vote necessary for immediate
5-19 effect, this Act takes effect September 1, 2013.

5-20 * * * * *