

SENATE AMENDMENTS

2nd Printing

By: Harper-Brown

H.B. No. 3648

A BILL TO BE ENTITLED

AN ACT

relating to the awarding of governmental 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 CONTRACT SOLICITATION TERMS. (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 evaluating responses to the solicitation, including terms regarding cost of materials or labor, duration, price, schedule, and scope.

(b) After the evaluation of responses to a solicitation is completed but before 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 any proposed material change to a term described by Subsection (a) before the agency approves the change. For purposes of this section, a material change includes any change to a term described by Subsection (a) that has the effect of:

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

(2) increasing the total consideration to be paid

1 under the contract by at least 10 percent, including by
2 substituting certain goods, materials, products, or services.

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

5 Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A
6 governmental entity may not award a governmental contract to a
7 nonresident bidder unless the nonresident underbids the lowest bid
8 submitted by a responsible resident bidder by an amount that is not
9 less than the amount by which a resident bidder would be required to
10 underbid the nonresident bidder to obtain a comparable contract in:

11 (1) the state in which the nonresident's principal
12 place of business is located; or

13 (2) a state in which the nonresident is a resident
14 manufacturer.

15 SECTION 3. Section 2155.088, Government Code, as added by
16 this Act, applies only to a contract for which a state agency first
17 advertises or otherwise solicits bids, proposals, offers, or
18 qualifications or makes a similar solicitation on or after the
19 effective date of this Act.

20 SECTION 4. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2013.

ADOPTED

MAY 21 2013

Atty Gen
Secretary of the Senate

By: Harper-Brown/Parkton

H.B. No. 3048

Substitute the following for H.B. No. 3048:

By: C. [Signature]

C.S.H.B. No. 3045

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the award and performance of certain state contracts.

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

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

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

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

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

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

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

23 SECTION 2. Section 2252.002, Government Code, is amended to
24 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. (a) Section 2155.088, Government Code, as added
15 by this Act, applies only to a contract for goods or services
16 awarded under Chapter 2155, Government Code, on or after the
17 effective date of this Act.

18 (b) Section 2252.002, Government Code, as amended by this
19 Act, applies only to the award of a governmental contract to a
20 nonresident bidder on or after the effective date of this Act. The
21 award of a governmental contract to a nonresident bidder made
22 before the effective date of this Act is governed by the law in
23 effect at the time the contract was awarded, and the former law is
24 continued in effect for that purpose.

25 SECTION 4. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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

ADOPTED

Wendy R Davis

FLOOR AMENDMENT NO. 1

MAY 21 2013

BY: _____

Letty Spaw
Secretary of the Senate

1 Amend C.S.H.B. No. 3046 by adding the following
2 appropriately numbered SECTION and renumbering subsequent
3 SECTIONS accordingly:

4 SECTION _____. Subchapter B, Chapter 223, Transportation
5 Code, is amended by adding Section 223.050 to read as follows:

6 Sec. 223.050. PREFERENCE FOR CERTAIN PROVIDERS. (a) Except
7 as provided by Subsection (d), in awarding a contract to a
8 private sector provider, the department shall give preference to
9 a private sector provider if:

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

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

14 (A) state funds;

15 (B) local funds; or

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

17 (3) the amount of the bid or proposal of the provider
18 does not exceed an amount equal to 105 percent of the lowest bid
19 or proposal received by the department for the transportation
20 project.

21 (b) The department, in determining whether the preference
22 under Subsection (a) serves to create a positive economic impact
23 on job growth and job retention in this state, may consider a
24 private sector provider's employment presence and business
25 establishments in this state.

26 (c) This section does not apply to the procurement of
27 professional services under Subchapter A, Chapter 2254,
28 Government Code.

29 (d) The department must give equal preference to a private

1 sector provider under Subsection (a) and a private sector
2 provider whose principal place of business is located in a state
3 that:

4 (1) borders this state; and

5 (2) does not award preferential treatment to private
6 sector providers in a manner similar to this section.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 22, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3648 by Harper-Brown (Relating to the award and performance of certain state contracts.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code, Chapter 2155 to require the performance of a contract for goods or services awarded under this chapter to substantially comply with the terms in the written solicitation for the contract and the terms considered in awarding the contract. The bill would also require the governing body of a state agency to hold a meeting after awarding a contract to consider a material change to the contract and why that change is necessary if applicable. The bill would amend the Government Code, Chapter 2252 relating to a governmental entity awarding a contract to a non-resident bidder. The bill would also amend the Transportation Code, Chapter 223 by identifying the terms in which a private sector provider is given preference in awarding a contract.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, it takes effect September 1, 2013.

The Texas Parks and Wildlife Department and the Texas Department of Transportation anticipate that there may be a cost associated with implementing provisions of the bill. It is assumed that the costs could be absorbed within current agency resources. The Comptroller of Public Accounts, the Office of the Attorney General, the Health and Human Services Commission, the Texas Education Agency, and the Texas Department of Insurance anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission, 601 Department of Transportation, 701 Central Education Agency, 802 Parks and Wildlife Department

LBB Staff: UP, KJo, JI, JJO, KKR, SD, TG, LCO, TB, ER

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 17, 2013

TO: Honorable Judith Zaffirini, Chair, Senate Committee on Government Organization

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3648 by Harper-Brown (Relating to the award and performance of certain state contracts.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Government Code, Chapter 2155 to require the performance of a contract for goods or services awarded under this chapter to substantially comply with the terms in the written solicitation for the contract and the terms considered in awarding the contract. The bill would also require the governing body of a state agency to hold a meeting after awarding a contract to consider a material change to the contract and why that change is necessary if applicable. The bill would also amend the Government Code, Chapter 2252 relating to a governmental entity awarding a contract to a non-resident bidder.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, it takes effect September 1, 2013.

The Texas Parks and Wildlife Department and the Texas Department of Transportation anticipate that there may be a cost associated with implementing provisions of the bill. It is assumed that the costs could be absorbed within current agency resources. The Comptroller of Public Accounts, the Office of the Attorney General, the Health and Human Services Commission, the Texas Education Agency, and the Texas Department of Insurance anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission, 601 Department of Transportation, 701 Central Education Agency, 802 Parks and Wildlife Department

LBB Staff: UP, KJo, JI, JJO, KKR, SD, TG, LCO, TB, ER

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 14, 2013

TO: Honorable Judith Zaffirini, Chair, Senate Committee on Government Organization

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3648 by Harper-Brown (Relating to the awarding of governmental contracts.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code, Chapter 2155 to require that the performance of a contract for goods or services awarded under this chapter substantially comply with the terms in the written solicitation for the contract and the terms considered in evaluating solicitation responses. The bill would also require that a state agency hold a meeting before awarding a contract if it involves a material change to the terms of the proposed contract. The bill would also amend the Government Code, Chapter 2252 relating to a governmental entity awarding a contract to a non-resident bidder.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, it takes effect September 1, 2013.

The Texas Parks and Wildlife Department and the Texas Department of Transportation anticipate that there may be a cost associated with implementing provisions of the bill. It is assumed that the costs could be absorbed within current agency resources. The Comptroller of Public Accounts, the Office of the Attorney General, the Health and Human Services Commission, the Texas Education Agency, and the Texas Department of Insurance anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission, 601 Department of Transportation, 701 Central Education Agency, 802 Parks and Wildlife Department

LBB Staff: UP, KJo, JI, JJO, KKR, SD, TG, LCO, TB, ER

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION
Revision 1

April 29, 2013

TO: Honorable Linda Harper-Brown, Chair, House Committee on Government Efficiency & Reform

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3648 by Harper-Brown (Relating to compliance with certain terms in the performance of state purchasing contracts.), **Committee Report 1st House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Government Code, Chapter 2155 to require that the performance of a contract for goods or services awarded under this chapter substantially comply with the terms in the written solicitation for the contract and the terms considered in evaluating solicitation responses. The bill would also require that a state agency hold a meeting before awarding a contract or amending a contract if it involves a material change to the terms of the proposed or existing contract.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, it takes effect September 1, 2013.

The Texas Parks and Wildlife Department and the Texas Department of Transportation anticipate that there may be a cost associated with implementing provisions of the bill. It is assumed that the costs could be absorbed within current agency resources. The Comptroller of Public Accounts, the Office of the Attorney General, the Health and Human Services Commission, the Texas Education Agency, and the Texas Department of Insurance anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission, 601 Department of Transportation, 701 Central Education Agency, 802 Parks and Wildlife Department

LBB Staff: UP, KJo, JI, JJO, SD, TG, LCO, TB, ER

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 24, 2013

TO: Honorable Linda Harper-Brown, Chair, House Committee on Government Efficiency & Reform

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3648 by Harper-Brown (Relating to compliance with certain terms in the performance of state purchasing contracts.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3648, Committee Report 1st House, Substituted: a negative impact of (\$828,000) through the biennium ending August 31, 2015.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2014	(\$414,000)
2015	(\$414,000)
2016	(\$414,000)
2017	(\$414,000)
2018	(\$414,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2013
2014	(\$414,000)	5.0
2015	(\$414,000)	5.0
2016	(\$414,000)	5.0
2017	(\$414,000)	5.0
2018	(\$414,000)	5.0

Fiscal Analysis

The bill would amend the Government Code, Chapter 2155 to require that the performance of a

contract for goods or services awarded under this chapter substantially comply with the terms in the written solicitation for the contract and the terms considered in evaluating solicitation responses. The bill would also require that a state agency hold a public hearing before awarding a contract or amending a contract if it involves a material change to the terms of the proposed or existing contract.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, it takes effect September 1, 2013.

Methodology

The Comptroller of Public Accounts (CPA) estimates a cost of \$414,000 in each fiscal year and an increase of 5.0 full-time equivalent positions to conduct public hearings for both statewide term contracts awarded by the Procurement and Support Services division and contracts for services to CPA. The agency indicates the requirements of the bill would apply to hundreds of contracts in any given year and would significantly impact the workload required to execute a contract.

The Texas Parks and Wildlife Department and the Texas Department of Transportation anticipate that there may be a cost associated with implementing provisions of the bill. It is assumed that the costs could be absorbed within current agency resources.

The Office of the Attorney General, the Health and Human Services Commission, the Texas Education Agency, and the Texas Department of Insurance anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission, 601 Department of Transportation, 701 Central Education Agency, 802 Parks and Wildlife Department

LBB Staff: UP, KJo, JI, JJO, TG, LCO, TB, ER

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 14, 2013

TO: Honorable Linda Harper-Brown, Chair, House Committee on Government Efficiency & Reform

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3648 by Harper-Brown (Relating to the performance of certain state purchasing contracts.), **As Introduced**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Government Code, Chapter 2155 to require that the performance of a contract for goods or services awarded under this chapter substantially comply with the terms in the written solicitation for the contract and the terms considered in awarding the contract. The bill would also require that a state agency hold a public hearing before approving a material change to a contract.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, it takes effect September 1, 2013.

The Health and Human Services Commission, the Texas Parks and Wildlife Department, the Texas Department of Insurance, the Texas Department of Transportation, and the Office of the Attorney General anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

The Comptroller of Public Accounts and the Texas Education Agency estimate that there would be a cost associated with implementing provisions of the bill. It is anticipated that the costs could be absorbed within current agency resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission, 601 Department of Transportation, 701 Central Education Agency, 802 Parks and Wildlife Department

LBB Staff: UP, KJo, JI, JJO, TG, LCO, TB, ER