

**House Bill 3648**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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 under the 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:

Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a

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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:

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responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in:

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

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

No equivalent provision.

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responsible resident bidder by an amount that is not less than the greater of the following:

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

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

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

Sec. 223.050. PREFERENCE FOR CERTAIN PROVIDERS.

(a) Except as provided by Subsection (d), in awarding a contract to a private sector provider, the department shall give preference to a private sector provider if:

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

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

(A) state funds;

(B) local funds; or

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

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

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project.

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

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

(d) The department must give equal preference to a private sector provider under Subsection (a) and a private sector provider whose principal place of business is located in a state that:

(1) borders this state; and

(2) does not award preferential treatment to private sector providers in a manner similar to this section. [FA1]

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

SECTION 3. (a) Section 2155.088, Government Code, as added by this Act, applies only to a contract for goods or services awarded under Chapter 2155, Government Code, on or after the effective date of this Act.

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

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SECTION 4. This Act 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 this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

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SECTION 4. Same as House version.

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