

By: Reynolds

H.B. No. 134

A BILL TO BE ENTITLED

AN ACT

relating to historically underutilized businesses and to goods and services purchased by governmental entities; providing penalties.

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

SECTION 1. Section 2155.074(b), Government Code, is amended to read as follows:

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

- (1) installation costs;
- (2) life cycle costs;
- (3) the quality and reliability of the goods and services;
- (4) the delivery terms;
- (5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
- (6) the cost of any employee training associated with a purchase;

- 1           (7) the effect of a purchase on agency productivity;
- 2           (8) the vendor's anticipated economic impact to the
- 3 state or a subdivision of the state, including potential tax
- 4 revenue and employment; ~~and~~
- 5           (9) whether the vendor is a historically underutilized
- 6 business as defined by Section 2161.001; and
- 7           (10) other factors relevant to determining the best
- 8 value for the state in the context of a particular purchase.

9           SECTION 2. Sections 2155.444(a), (b), (c), and (e),

10 Government Code, are amended to read as follows:

11           (a) The comptroller ~~[commission]~~ and all state agencies

12 making purchases of goods, including agricultural products, shall

13 give preference to those produced or grown in this state or offered

14 by Texas bidders as follows:

15           (1) goods produced or offered by a Texas bidder that is

16 a historically underutilized business ~~[owned by a service-disabled~~

17 ~~veteran who is a Texas resident]~~ shall be given a first preference

18 and goods produced in this state or offered by other Texas bidders

19 shall be given second preference, if the cost to the state and

20 quality are equal; and

21           (2) agricultural products grown in this state shall be

22 given first preference and agricultural products offered by Texas

23 bidders shall be given second preference, if the cost to the state

24 and quality are equal.

25           (b) If goods, including agricultural products, produced or

26 grown in this state or offered by Texas bidders exceed 105 percent

27 of the cost of other goods or are not equal in ~~[cost and]~~ quality to

1 other products, then goods, including agricultural products,  
2 produced or grown in other states of the United States shall be  
3 given preference over foreign products if the cost to the state and  
4 quality are equal.

5 (c) In this section:

6 (1) "Agricultural products" includes textiles and  
7 other similar products.

8 (2) "Historically underutilized business" has the  
9 meaning assigned by Section 2161.001.

10 [~~(1-a) "Service-disabled veteran" means a person who~~  
11 ~~is a veteran as defined by 38 U.S.C. Section 101(2) and who has a~~  
12 ~~service-connected disability as defined by 38 U.S.C. Section~~  
13 ~~101(16).]~~

14 (3) [(2)] "Texas bidder" means a business:

15 (A) incorporated in this state;

16 (B) that has its principal place of business in  
17 this state; or

18 (C) that has an established physical presence in  
19 this state.

20 (e) The comptroller [~~commission~~] and all state agencies  
21 procuring services shall give first preference to services offered  
22 by a Texas bidder that is a historically underutilized business  
23 [~~owned by a service-disabled veteran who is a Texas resident~~] and  
24 shall give second preference to services offered by other Texas  
25 bidders if:

26 (1) the services meet state requirements regarding the  
27 service to be performed and expected quality; and

1           (2) the cost of the service does not exceed the cost of  
2 other similar services of similar expected quality that are offered  
3 by a bidder that is not entitled to a preference under this  
4 subsection.

5           SECTION 3. Section 2161.001, Government Code, is amended by  
6 amending Subdivision (3) and adding Subdivision (5) to read as  
7 follows:

8           (3) "Economically disadvantaged person" means a  
9 person who:

10           (A) is economically disadvantaged because of the  
11 person's identification as a member of a certain group, including:

- 12                   (i) Black Americans;
- 13                   (ii) Hispanic Americans;
- 14                   (iii) women;
- 15                   (iv) Asian Pacific Americans;
- 16                   (v) Native Americans; and
- 17                   (vi) veterans as defined by 38 U.S.C.

18 Section 101(2) who have ~~[suffered at least]~~ a ~~[20 percent]~~  
19 service-connected disability as defined by 38 U.S.C. Section  
20 101(16); and

21           (B) has suffered the effects of discriminatory  
22 practices or other similar insidious circumstances over which the  
23 person has no control.

24           (5) "Professional services" has the meaning assigned  
25 by Section 2254.002.

26           SECTION 4. Section 2161.064, Government Code, is amended by  
27 adding Subsection (f) to read as follows:

1       (f) A state agency may use the directory compiled under this  
2 section to create a mailing list for soliciting bids from  
3 historically underutilized businesses. A state agency that  
4 determines the size of the acquisition justifies rotation may  
5 rotate the businesses included on the mailing list by using  
6 different portions of the directory for separate acquisitions of  
7 goods or services. A state agency rotating the businesses included  
8 on a solicitation mailing list must solicit bids from:

9               (1) a bidder who was previously awarded the bid for the  
10 goods or services;

11               (2) each business added to the directory since the  
12 last solicitation; and

13               (3) each business included in the portion of the  
14 directory selected for the solicitation mailing list.

15       SECTION 5. Subchapter B, Chapter 2161, Government Code, is  
16 amended by adding Section 2161.067 to read as follows:

17       Sec. 2161.067. JOINT VENTURES. (a) In this section:

18               (1) "Eligible purchase" means a purchase of goods or  
19 services that:

20                       (A) a state agency determines is eligible for a  
21 joint venture based on work and market availability; and

22                       (B) exceeds the minimum dollar value provided by  
23 comptroller rule.

24               (2) "Joint venture" means an association of two or  
25 more individuals or businesses, at least one of which is a  
26 historically underutilized business, that is:

27                       (A) established to carry on a single business

1 activity;

2 (B) certified as a joint venture by the  
3 comptroller; and

4 (C) limited in scope and duration.

5 (b) Each state agency shall determine whether a purchase of  
6 goods or services is an eligible purchase for which the agency is  
7 required to make a good faith effort to award the contract to a  
8 joint venture. The agency may not accept a contract bid submitted  
9 by any bidder other than a joint venture unless the agency  
10 determines, based on the relevant facts, documents, and  
11 circumstances, that the agency made a good faith effort to award the  
12 contract to a joint venture.

13 (c) A contract for a joint venture must be in writing and:

14 (1) be based on shared economic interests in the  
15 venture, including proportionate control over management, interest  
16 in capital acquired by the joint venture, and interest in earnings;

17 (2) be completed by all parties to the joint venture;

18 (3) be executed before a notary public;

19 (4) clearly delineate the rights and responsibilities  
20 of each party;

21 (5) comply with any requirements of the comptroller as  
22 provided in bid documents or otherwise; and

23 (6) provide that the joint venture continue for at  
24 least the duration of the eligible purchase.

25 (d) The comptroller using available resources shall select  
26 for review a random sampling of state agency joint venture  
27 determinations made under Subsection (b).

1       (e) A state agency selected by the comptroller under  
2 Subsection (d), the joint venture, and each party to the joint  
3 venture shall provide the comptroller access to all records  
4 pertaining to joint venture agreements before and after the  
5 agency's award of a contract to the joint venture to reasonably  
6 assess compliance with this section.

7       (f) A party to a joint venture who fails to comply with this  
8 section, and whose failure to comply continues for at least 30 days  
9 after receiving written notice of the noncompliance from the  
10 comptroller, is subject to any or all of the following penalties:

11           (1) withholding of 10 percent of all future payments  
12 for the eligible purchase until the comptroller determines the  
13 party is in compliance with this section;

14           (2) withholding of all future payments under the  
15 eligible purchase until the comptroller determines the party is in  
16 compliance with this section;

17           (3) cancellation of the eligible purchase; and

18           (4) ineligibility for future contracts or  
19 subcontracts with this state for one to five years from the date on  
20 which the penalty is imposed.

21       SECTION 6. Section [2161.252](#), Government Code, is amended by  
22 adding Subsection (c) to read as follows:

23       (c) A subcontracting plan must require the contractor to  
24 accept bids, proposals, offers, or other applicable expressions  
25 from historically underutilized businesses for not less than 10  
26 working days after the date the contractor notifies the business of  
27 the subcontracting opportunity. This subsection does not apply to

1 a professional services contract.

2 SECTION 7. Section 2254.002(2), Government Code, is amended  
3 to read as follows:

4 (2) "Professional services" means services:

5 (A) within the scope of the practice, as defined  
6 by state law, of:

7 (i) accounting;

8 (ii) architecture;

9 (iii) landscape architecture;

10 (iv) land surveying;

11 (v) medicine;

12 (vi) optometry;

13 (vii) professional engineering;

14 (viii) real estate appraising; or

15 (ix) professional nursing; or

16 (B) provided in connection with the professional  
17 employment or practice of a person who is licensed or registered as:

18 (i) a certified public accountant;

19 (ii) an architect;

20 (iii) a landscape architect;

21 (iv) a land surveyor;

22 (v) a physician, including a surgeon;

23 (vi) an optometrist;

24 (vii) a professional engineer;

25 (viii) a state certified or state licensed  
26 real estate appraiser; ~~or~~

27 (ix) a registered nurse; or



1                                    (x) an attorney.

2            SECTION 8. (a)        Not later than March 1, 2018, the  
3    comptroller of public accounts shall adopt the rules required to  
4    implement the changes in law made by this Act.

5            (b)    Chapters 2155 and 2161, Government Code, as amended by  
6    this Act, apply only to a purchase of goods or services or a  
7    contract entered into on or after April 1, 2018.

8            SECTION 9.    This Act takes effect December 1, 2017.