87R3371 MWC-D

By:  Reynolds H.B. No. 923

A BILL TO BE ENTITLED

AN ACT

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

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 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;

(7)  the effect of a purchase on agency productivity;

(8)  the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; [~~and~~]

(9)  whether the vendor is a historically underutilized business as defined by Section 2161.001; and

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

SECTION 2.  Sections 2155.444(a), (b), (c), and (e), Government Code, are amended to read as follows:

(a)  The comptroller and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows:

(1)  goods produced or offered by a Texas bidder that is a historically underutilized business [~~owned by a service-disabled veteran who is a Texas resident~~] shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal; and

(2)  agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(b)  If goods, including agricultural products, produced or grown in this state or offered by Texas bidders exceed 105 percent of the cost of other goods or are not equal in [~~cost and~~] quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c)  In this section:

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

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

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

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

(A)  incorporated in this state;

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

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

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

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

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

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

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

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

(i)  Black Americans;

(ii) Hispanic Americans;

(iii) women;

(iv) Asian Pacific Americans;

(v) Native Americans; and

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

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

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

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

(f)  A state agency may use the directory to create a mailing list for soliciting bids from historically underutilized businesses. A state agency that determines the size of the acquisition justifies rotation may rotate the businesses included on the mailing list by using different portions of the directory for separate acquisitions of goods or services. A state agency rotating the businesses included on a solicitation mailing list shall solicit bids from:

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

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

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

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

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

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

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

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

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

(A)  established to engage in a single business activity;

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

(C)  limited in scope and duration.

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

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

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

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

(3)  be executed before a notary public;

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

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

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

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

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

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

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

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

(3)  cancellation of the eligible purchase; and

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

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

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

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

(2)  "Professional services" means services:

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

(i)  accounting;

(ii)  architecture;

(iii)  landscape architecture;

(iv)  land surveying;

(v)  medicine;

(vi)  optometry;

(vii)  professional engineering;

(viii)  real estate appraising; or

(ix)  professional nursing;

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

(i)  a certified public accountant;

(ii)  an architect;

(iii)  a landscape architect;

(iv)  a land surveyor;

(v)  a physician, including a surgeon;

(vi)  an optometrist;

(vii)  a professional engineer;

(viii)  a state certified or state licensed real estate appraiser; [~~or~~]

(ix)  a registered nurse; or

(x)  an attorney; or

(C)  provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053, Occupations Code.

SECTION 8.  Section 2254.154, Government Code, is repealed.

SECTION 9.  (a) Not later than December 1, 2021, the comptroller of public accounts shall adopt the rules required to implement the changes in law made by this Act.

(b)  Chapters 2155 and 2161, Government Code, as amended by this Act, apply only to a purchase of goods or services or a contract entered into on or after January 1, 2022.

SECTION 10.  This Act takes effect September 1, 2021.