

By: Raymond

H.B. No. 3329

A BILL TO BE ENTITLED

AN ACT

relating to the procurement process of state agencies, including the evaluation of and communication with vendors.

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

SECTION 1. Section 2155.090, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) State agency personnel, contractors, and vendors may share information and knowledge to achieve best value in procurements for the state.

SECTION 2. Section 2155.144, Government Code, is amended by amending Subsection (c) and adding Subsections (j-1), (j-2), (j-3), and (j-4) to read as follows:

(c) An agency to which this section applies shall acquire goods or services by any procurement method approved by the Health and Human Services Commission that provides the best value to the agency. The agency shall document that it considered all relevant factors under Subsection (d) in making the acquisition. For each solicitation, an agency shall document the evaluation questions and measures the agency uses to score the vendor's response to the solicitation on each factor listed in Subsection (d). If a question or measure is used to score more than one factor listed in Subsection (d), the agency shall designate each factor the question or measure is used to score.

(j-1) The contract management handbook published under

1 Subsection (j) must include:

2 (1) instructions for ensuring that:

3 (A) appropriate health and human services agency
4 employees answer questions from vendors in a timely manner; and

5 (B) vendors that participate or are interested in
6 participating in a procurement by an agency have access to at least
7 two agency employees who serve as contacts for the agency;

8 (2) a model communications procedure for vendors and
9 agency employees, developed in collaboration with representatives
10 from vendors and state agencies, to be included in the agency's
11 solicitations;

12 (3) procedures for:

13 (A) notifying other responsive vendors if an
14 agency employee or another vendor violates the communications
15 requirements for a solicitation;

16 (B) determining when an agency employee or vendor
17 has failed to comply with the communication provisions of a
18 solicitation; and

19 (C) ensuring an appropriate number of interested
20 vendors are granted access to a pre-bid, pre-offer, or pre-proposal
21 conference; and

22 (4) instructions for ensuring that agency personnel
23 who are involved in implementing a specific procurement are also
24 involved in evaluating and scoring the responses submitted to the
25 solicitation for the procurement.

26 (j-2) For a procurement in an amount that exceeds \$20
27 million, the contract management handbook published under

1 Subsection (j) must require a health and human services agency to:

2 (1) notify interested parties at least two months
3 before the date the agency issues the solicitation for the
4 procurement;

5 (2) continually and timely post solicitations on the
6 agency's Internet website; and

7 (3) establish guidelines for considering public
8 comment on solicitations, including guidelines allowing public
9 comment for at least 45 days after the date the agency issues the
10 solicitation.

11 (j-3) A health and human services agency's solicitation
12 posted under Subsection (j-2)(2) must be substantially similar to
13 the final solicitation issued by the agency for the procurement. A
14 health and human services agency that receives comments during the
15 public comment process under Subsection (j-2)(3) that result in a
16 final solicitation that substantially differs from the initial
17 solicitation posted under Subsection (j-2)(2) must post on the
18 agency's Internet website a statement of the differences between
19 the initial and final solicitations with the corresponding comments
20 that led to the modifications.

21 (j-4) A vendor may notify the state auditor of agency
22 noncompliance with Subsection (c) or (j-3) or an instruction,
23 procedure, or requirement in the contract management handbook
24 published under Subsection (j) for the purpose of audit or
25 investigation.

26 SECTION 3. Section 2262.051, Government Code, is amended by
27 adding Subsections (i), (j), (k), and (l) to read as follows:

1 (i) The guide must include:

2 (1) instructions for ensuring that:

3 (A) appropriate state agency employees answer
4 questions from vendors in a timely manner; and

5 (B) vendors that participate or are interested in
6 participating in a procurement by a state agency have access to at
7 least two agency employees who serve as contacts for the agency;

8 (2) a model communications procedure for vendors and
9 agency employees, developed in collaboration with representatives
10 from vendors and state agencies, to be included in the agency's
11 solicitations; and

12 (3) procedures for:

13 (A) notifying other responsive vendors if an
14 agency employee or another vendor violates the communication
15 requirements for the solicitation;

16 (B) determining when an agency employee or vendor
17 has failed to comply with the communication provisions of a
18 solicitation;

19 (C) ensuring an appropriate number of interested
20 vendors are granted access to a pre-bid, pre-offer, or pre-proposal
21 conference; and

22 (D) establishing a question and answer process
23 involving vendors and agency employees for a solicitation.

24 (j) For a procurement in an amount that exceeds \$20 million,
25 the guide must require a state agency to:

26 (1) notify interested parties at least two months
27 before the date the agency issues the solicitation for the

1 procurement;

2 (2) continually and timely post solicitations on the
3 agency's Internet website; and

4 (3) establish guidelines for considering public
5 comment on solicitations, including guidelines allowing public
6 comment for at least 45 days after the date the agency issues the
7 solicitation.

8 (k) A state agency's solicitation posted under Subsection
9 (j)(2) must be substantially similar to the final solicitation
10 issued by the agency for the procurement. A state agency that
11 receives comments during the public comment process under
12 Subsection (j)(3) that result in a final solicitation that
13 substantially differs from the initial solicitation posted under
14 Subsection (j)(2) must post on the agency's Internet website a
15 statement of the differences between the initial and final
16 solicitations with the corresponding comments that led to the
17 modifications.

18 (l) A vendor may notify the state auditor of agency
19 noncompliance with Subsection (k) or an instruction, procedure, or
20 requirement in the guide for the purpose of audit or investigation.

21 SECTION 4. As soon as practicable after the effective date
22 of this Act, the comptroller of public accounts shall adopt the
23 rules and update the contract management handbook and contract
24 management guide as necessary to implement the changes in law made
25 by this Act.

26 SECTION 5. The changes in law made by this Act apply only to
27 a contract for which a state agency first advertises or otherwise

1 solicits offers, bids, proposals, qualifications, or other
2 applicable expressions of interest on or after the effective date
3 of this Act. A contract for which a state agency first advertises
4 or otherwise solicits offers, bids, proposals, qualifications, or
5 other applicable expressions of interest before the effective date
6 of this Act is governed by the law as it existed immediately before
7 the effective date of this Act, and that law is continued in effect
8 for that purpose.

9 SECTION 6. This Act takes effect September 1, 2021.