

SUBJECT: Requiring competitive bidding for small purchases with written contracts

COMMITTEE: Government Reform —favorable, without amendment

VOTE: 5 ayes — Callegari, Pitts, Leibowitz, Miles, W. Smith

0 nays

2 absent — Berman, Rodriguez

WITNESSES: None

BACKGROUND: In 2001, the 77th Legislature enacted SB 311 by Zaffirini, which abolished the General Services Commission and replaced it with the Texas Building and Procurement Commission (TBPC) to oversee acquisition and maintenance of state buildings and purchasing of goods and services for state agencies.

Government Code, sec. 2155.132(a) delegates authority from TBPC to state agencies to make purchases that do not exceed \$15,000, and Government Code, sec. 2155.132(e) does not require competitive bidding if the purchase does not exceed \$2,000 or a greater amount set by TBPC rule. TBPC has set the purchase amount limit to forego competitive bidding at \$5,000 or less.

In 2003, the 78th Legislature enacted HB 3042 by R. Cook, which revised several statutory provisions related to TBPC. HB 3042 amended Government Code, sec. 2157.0611 to require review of at least three catalog offers when making catalog purchases or leases that exceed \$2,000.

As part of SB 1 by Ogden, the general appropriations act for fiscal 2006-07, the 79th Legislature in 2005 added Rider 3 to the appropriation for the State Board of Dental Examiners in Article 8. The rider prohibits the agency from using appropriated funds “for entering into a contract or agreement ... unless the vendor is selected following competitive bidding procedures.” The rider language goes on to say that “It is the intent of the Legislature that this rider apply to all contracts and agreements ... and for

direct payment to a vendor for goods and services ... without regard to amount.”

On June 20, 2005, the State Board of Dental Examiners requested an attorney general opinion on whether Rider 3 conflicted with Government Code, sec. 2155.132(e) and TBPC rule that sets the \$5,000 limit on exemptions from competitive bids.

On November 28, 2005, Atty. Gen. Greg Abbott, in Opinion GA-0378, held that Rider 3 attempted to amend Government Code, sec. 2155.132(e) and, therefore, was invalid because of the longstanding interpretation of Texas Constitution, Art. 3, sec. 35(a), which prohibits enactment of general legislation in an appropriations bill.

**DIGEST:**

HB 119 would amend Government Code, sec. 2155.132(e) to require competitive bidding on purchases less than \$2,000 if a written contract was involved. TBPC no longer could set by rule a higher amount for purchases allowed without competitive bidding. The bill also would amend Government Code, sec. 2157.0611 to require evaluation of three catalog offers if a proposed purchase or lease involved a written contract.

The bill would take effect September 1, 2007, and apply to contracts made on or after the effective date.

**SUPPORTERS  
SAY:**

HB 119 would close the loophole through which a vendor can essentially “buy” a contract by submitting a proposal that falls below the \$2,000 limit for competitive bidding but recommends the subsequent purchase of more expensive services without seeking either a competitive bid or asking for requests for proposals. For example, the State Board of Dental Examiners recently contracted with Thomas Prometric to make an evaluation of the testing of dentists and dental assistants. This no-bid proposal costing less than \$2,000 turned into a \$6.5 million contract for a testing program. HB 119 would stop any state agency from doing this again.

Enactment of HB 119 as separate legislation would remedy the constitutional problems identified in the attorney general’s opinion and clarify the Legislature’s intent on this matter. Just because the State Board of Dental Examiners’ decision on the Prometric contract was legal at the time does not make it right for the dentists or other citizens of Texas.

Changes in the process for making smaller purchases and for purchasing through catalogs would promote a more competitive and accountable bidding process. Making these revisions also could help historically underutilized businesses qualify for the state procurement process.

**OPPONENTS  
SAY:**

HB 119 would address a problem that already has been solved. The State Board of Dental Examiners terminated the Prometric contract on October 31, 2006, largely because of dissatisfaction expressed by dentists and dental assistants. A local vendor, which went through a competitive bidding process, now holds the contract.

**OTHER  
OPPONENTS  
SAY:**

The bill should be amended to raise the limit for requiring competitive bidding to purchases of more than \$5,000. This would make the statute consistent with existing Texas Building and Procurement Commission rules.

**NOTES:**

The author is expected to offer a floor amendment to raise the purchase limit to more than \$5,000 before a competitive bid would be required.