

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1109
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State Affairs
3/28/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2007, the legislature transferred the procurement function of the former Texas Building and Procurement Commission to the comptroller of public accounts (comptroller). This achieved increased efficiency of these central governmental operations and improved quality of services and goods to all state agencies, which in turn enhanced the quality of services and goods delivered to taxpayers of this state. This also centralized and increased the accuracy and availability of detailed financial information on the state's purchasing expenditures for the providers and users of those goods and services. With this information in hand, the state can plan and implement future innovations to reduce costs and improve quality.

The proposed legislation strengthens the state's procurement practices by requiring the comptroller to leverage state spending in the most efficient manner and establishing sourcing standards and best practices that state agencies and higher education must follow to procure goods and services. The bill requires state agencies, upon request by the comptroller, to cooperate in establishing, maintaining, and revising uniform standards and specifications. This bill requires the comptroller to consider one or more services for development into a statewide contract and determine if the service may be leveraged for multiple state agencies at a cost savings and other industry standard practices.

C.S.S.B. 1109 amends current law relating to state agency procurement and the comptroller's procurement powers and duties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Facilities Commission (TFC) is transferred to the comptroller of public accounts (comptroller) and modified in SECTION 4 (Section 2155.068, Government Code), SECTION 8 (Section 2155.078, Government Code), and SECTION 14 (Section 2155.132, Government Code) of this bill.

Rulemaking authority is expressly granted to the comptroller in SECTION 12 (Section 2155.088, Government Code), SECTION 13 (Section 2155.131, Government Code), and SECTION 15 (Section 2155.1325, Government Code) of this bill.

Rulemaking authority previously granted to TFC is rescinded in SECTION 14 (Section 2155.132, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2155.001, Government Code, by amending Subdivision (2) and adding Subdivision (3), to, respectively, redefine "service" and define "state agency."

SECTION 2. Amends Section 2155.002, Government Code, as follows:

Sec. 2155.002. New heading: **COMPTROLLER FOCUS ON LARGE EXPENDITURES**. Requires the comptroller of public accounts (comptroller), to the extent possible, to focus on purchases and contracts that involve relatively large amounts of money or that leverage state spending in the most efficient manner, rather than requiring the Texas Facilities Commission (TFC) to focus its efforts under this chapter

and Chapters 2156 (Purchasing Methods), 2157 (Purchasing: Purchase of Automated Information Systems), and 2158 (Purchasing: Miscellaneous Provisions for Purchase of Certain Goods and Services) on purchases and contracts that involve relatively large amounts of money.

SECTION 3. Amends Section 2155.064, Government Code, as follows:

Sec. 2155.064. New heading: **LEVERAGED PURCHASING**. Requires the comptroller, to the greatest extent possible, to pursue statewide contracts and attempt to leverage state spending to achieve cost savings for this state. Deletes existing text authorizing TFC to combine orders in a system of schedule purchasing and requiring TFC to benefit from bulk purchasing.

SECTION 4. Amends Section 2155.068, Government Code, as follows:

Sec. 2155.068. **UNIFORM STANDARDS AND SPECIFICATIONS**. (a) Authorizes the comptroller to coordinate uniform standards and specifications for goods purchased by this state, rather than authorizing TFC to coordinate uniform standards and specifications for goods purchased by TFC. Authorizes the comptroller, rather than TFC, by rule to adopt appropriate standards developed by a nationally recognized standards-making association as part of its specifications and standards program.

(b) Requires a state agency, on request of the comptroller, to cooperate with the comptroller in the establishment, maintenance, and revision of uniform standards and specifications, rather than requiring TFC to enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications.

(c) Requires the comptroller to review contracts administered by the comptroller to ensure that all goods and services meet contract specifications, rather than requiring TFC to review contracts administered by TFC to ensure that all goods and services meet contract specifications.

(d) Makes a conforming change.

SECTION 5. Amends Section 2155.070, Government Code, as follows:

Sec. 2155.070. **FAILURE TO MEET SPECIFICATIONS**. (a) Requires a state agency that determines that goods or services received under a contract administered by the comptroller, rather than administered by TFC, do not meet specifications to promptly notify the comptroller, rather than TFC, in writing of the reasons for the determination. Requires the comptroller, as soon as possible, to determine whether the goods and services meet specifications, rather than requiring TFC to immediately make its own determination of whether the goods and services meet specifications.

(b) Authorizes the comptroller, for purchases exempt from the comptroller's purchasing authority, to determine whether the purchased goods and services meet or fail to meet specifications, rather than providing that TFC or a state agency, including an institution of higher education, has the authority to determine that goods and services exempted from TFC's purchasing authority meet or fail to meet specifications. Authorizes a state agency to also determine whether the good and services meet or fail to meet specifications.

(c) Makes a conforming change.

(d) Makes conforming changes.

SECTION 6. AMENDS Section 2155.072, Government Code, as follows:

Sec. 2155.072. New heading: STATEWIDE OR REGIONAL SERVICES CONTRACTS; COMPTROLLER STUDIES. Deletes existing Subsection (a) designation. Requires the comptroller, each state fiscal year, to consider one or more services purchased by one or more state agencies for development into statewide contracts. Requires the comptroller to determine if a particular service may be leveraged for multiple state agencies at a cost savings to this state compared to the cost to this state of purchasing the service under individual state agency contracts. Deletes existing text requiring TFC to annually select for study at least one service that is purchased by one or more state agencies. Requires the comptroller to consider awarding statewide contracts by region. Deletes existing text requiring TFC to study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. Deletes existing text requiring TFC to give priority to studying services for which TFC has delegated the purchasing function to many state agencies.

Deletes existing Subsection (b) providing that TFC is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract.

SECTION 7. Amends Section 2155.074, Government Code, as follows:

Sec. 2155.074. New heading: PROCUREMENT MANUAL; BEST VALUE AND SOURCING STANDARDS FOR PURCHASE OF GOODS OR SERVICES. (a) Requires the comptroller to publish and maintain a procurement manual for state agencies to follow that incorporates the sourcing standards of this section and the best practices for procurement. Requires that the procurement manual, before publication, be reviewed by the contract advisory team established under Chapter 2262 (Statewide Contract Management). Requires each state agency to comply with the procurement manual in its procurement activities.

(b) Creates Subsection (b) from existing text. Requires each state agency, including the comptroller, rather than TFC, for a purchase of goods and services under this chapter, to purchase goods and services that provide the best value for the state.

(c) Redesignates existing Subsection (b) as Subsection (c) and makes conforming changes.

(d) Redesignates existing Subsection (c) as Subsection (d) and makes a conforming change.

(e) Requires the comptroller to identify commercially available goods and services needed or used by state agencies, and analyze and determine whether the goods and services are better provided through a statewide contract.

(f) Requires the comptroller, if the comptroller determines that a good or service identified under Subsection (e) is better provided through a statewide contract, to require state agencies to engage in any process, including competitive bidding, developed by the comptroller to develop and award one or more statewide contracts for the good or service.

(g) Authorizes the comptroller, in performing the comptroller's duties under this chapter, to:

(1) require a state agency to conduct a hearing, study, review, or cost estimate, including an agency in-house cost estimate or a management study, concerning any aspect of a good or service identified under Subsection (e);

- (2) develop and require state agencies to use methods that accurately and fairly estimate and account for the cost of obtaining the identified good or service;
- (3) require that the identified good or service be submitted to competitive bidding or another process that creates competition;
- (4) prescribe, after consulting affected state agencies, the specifications and conditions of the purchase and the procedures that must be followed for the procurement of the identified good or service; and
- (5) determine the terms of a contract for the identified good or service.

SECTION 8. Amends Section 2155.078(a), Government Code, as follows:

(a) Requires the comptroller, rather than TFC, to establish and administer a system of training, continuing education, and certification for state agency purchasing personnel. Authorizes the comptroller to establish and offer appropriate training to vendors on a cost recovery basis. Authorizes the comptroller to adopt rules to administer this section, including rules related to:

- (1) monitoring a certified purchaser's compliance with the continuing education requirements of this section; and
- (2) suspending or revoking a purchaser's certification for failure to comply with this chapter or comptroller rules.

Makes conforming changes.

SECTION 9. Amends Section 2155.082, Government Code, as follows:

Sec. 2155.082. New heading: PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) Authorizes the comptroller, rather than TFC, to provide open market purchasing services on a fee-for-service basis for state agency purchases that are delegated to an agency under Section 2155.131 (Delegation of Authority to State Agencies), 2155.132 (Purchases Less than Specified Monetary Amount), or 2157.121 (Acquisition Through Competitive Sealed Proposals), rather than Section 2155.131, 2155.132, 2155.133, or 2157.121, or that are exempted from the purchasing authority of the comptroller. Requires the comptroller to set the fees in an amount that recovers the comptroller's costs in providing those services. Makes conforming changes.

- (b) Makes conforming and nonsubstantive changes.
- (c) Authorizes the comptroller to engage a consultant to assist with a particular procurement on behalf of a state agency and pay the consultant from the cost savings realized by the state agency.

SECTION 10. Amends Section 2155.083(n), Government Code, as follows:

(n) Provides that, notwithstanding any other provision of this section, a state agency that conducts covert law enforcement operations is not required to post the specifications for covert equipment in the state business daily. Deletes existing text providing that this section does not apply to a state agency to which Section 51.9335 (Acquisition of Goods and Services) or Section 73.115 (Acquisition of Goods and Services), Education Code, applies.

SECTION 11. Amends Section 2155.085, Government Code, as follows:

Sec. 2155.085. REVERSE AUCTION PROCEDURE. Deletes existing Subsection (a) designation. Authorizes the comptroller, rather than requiring TFC, to:

- (1) purchase goods or services using the reverse auction procedure whenever the procedure provides the best value to the state, or all purchasing methods provide equal value to the state;
- (2) offer historically underutilized businesses assistance and training relating to the reverse auction procedure; and
- (3) advise historically underutilized businesses on contracts available using the reverse auction procedure.

Deletes existing Subsection (b) requiring TFC to set a goal of purchasing at least 20 percent of the dollar value of goods or services purchased by TFC using the reverse auction procedure.

SECTION 12. Amends Subchapter B, Chapter 2155, Government Code, by adding Section 2155.088, as follows:

Sec. 2155.088. PROCUREMENT PLANS FOR GOODS AND SERVICES. (a) Requires each state agency, not later than June 1 of each odd-numbered year, to provide a procurement plan to the comptroller that identifies the major goods and services the agency plans to purchase during the next fiscal biennium.

- (b) Requires the comptroller to use the procurement plans to schedule solicitations for proposals for goods and services used by multiple state agencies.
- (c) Requires a state agency that makes a substantive change to its procurement plan to submit a revised copy of the plan to the comptroller not later than the 30th day after the date of the change.
- (d) Authorizes the comptroller to adopt rules to administer this section.

SECTION 13. Amends Section 2155.131, Government Code, as follows:

Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES. (a) Creates Subsection (a) from existing text. Authorizes the comptroller, rather than TFC, to delegate purchasing functions to a state agency.

- (b) Requires the comptroller, in delegating purchasing authority under this section or Section 2155.132, to consider factors relevant to a state agency's ability to perform purchasing functions, including:
 - (1) the purchasing capabilities of the agency's purchasing personnel and the existence of automated purchasing tools at the agency;
 - (2) the certification levels held by the agency's purchasing personnel;
 - (3) the results of the comptroller's procurement review audits of an agency's purchasing practices; and
 - (4) whether the agency has adopted and published as part of its purchasing rules protest procedures consistent with the comptroller's protest procedures.
- (c) Requires the comptroller to monitor the purchasing practices of each state agency that the comptroller delegates purchasing authority to under Subsection (b) or Section 2155.132 to ensure that the certification levels of the agency's purchasing personnel and the quality of the agency's purchasing practices

continue to warrant the delegated purchasing authority. Authorizes the comptroller to be revoked for any cause, including the agency's failure to comply with Section 2155.074, all or part of the delegated purchasing authority. Requires the comptroller to adopt rules to administer this subsection.

(d) Requires the comptroller by rule to prescribe the procedures a state agency must follow in making a delegated purchase, and the procedures by which a state agency may use the comptroller's services for delegated purchases under Section 2155.082.

SECTION 14. Amends Section 2155.132, Government Code, as follows:

Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT. (a) Provides that a state agency is delegated the authority to purchase goods and services if the purchase does not exceed \$15,000. Requires the comptroller, rather than TFC, if the comptroller determines that a state agency has not followed the comptroller's rules or the laws related to the delegated purchases, to report the comptroller's determination to the members of the state agency's governing body and to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board (LBB). Makes conforming and nonsubstantive changes.

(b) Requires the comptroller, rather than TFC, by rule to delegate to a state agency the authority to purchase goods and services if the purchase exceeds \$15,000. Deletes existing text requiring TFC, in delegating purchasing authority under this subsection or Section 2155.131, to consider factors relevant to a state agency's ability to perform certain purchasing functions. Makes a conforming change.

(c) Redesignates existing Subsection (e) as Subsection (c). Provides that competitive bidding, whether formal or informal, is required for a purchase by a state agency if the purchase exceeds \$5,000, and is made under a written contract. Deletes existing Subsection (c) requiring TFC to monitor the purchasing practices of state agencies that are making delegated purchases under Subsection (b) or Section 2155.131 to ensure that the certification levels of the agency's purchasing practices continue to warrant the amount of delegated authority provided by TFC. Provides that competitive bidding, whether formal or informal, is required for a purchase by a state agency if the purchase exceeds \$5,000 and is made under a written contract.

(d) Redesignates existing Subsection (f) as Subsection (d). Prohibits goods purchased under this section from including:

(1) an item for which a statewide contract has been awarded by the comptroller unless the quantity purchased is less than any minimum quantity specified in the contract, rather than an item for which a contract awarded under the purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;

(2) an item required by statute to be purchased from a particular source, including through the program administered under Chapter 122 (Texas Council on Purchasing from People with Disabilities), Human Resources Code, or from the Texas Correctional Industries under Chapter 497 (Industry and Agriculture; Labor of Inmates); or

(3) a scheduled item that has been designated for purchase by the comptroller.

Deletes existing Subsection (d) requiring TFC by rule to prescribe procedures for a delegated purchase, and to prescribe procedures by which agencies may use TFC's services for delegated purchases.

(e) Redesignates existing Subsection (g) as Subsection (e). Prohibits a large purchase from being divided into small lot purchases to circumvent the dollar limits prescribed by this section, rather than prohibiting a large purchase from being divided into small lot purchases to meet the dollar limits prescribed by this section. Prohibits the comptroller from requiring that unrelated purchases be combined into one purchase order to exceed the dollar limits prescribed by this section. Makes a conforming change.

(f) Redesignates existing Subsection (h) as Subsection (f). Requires a state agency making a purchase under this section for which competitive bidding is required to:

(1) obtain at least three competitive bids, rather than attempt to obtain at least three competitive bids, from sources listed on the master bidders list that normally offer for sale the goods being purchased, or if three vendors are not available on the master bidders list, vendors in the applicable industry; and

(2) comply with Subchapter E.

Makes nonsubstantive changes.

SECTION 15. Amends Subchapter C, Chapter 2155, Government Code, by adding Section 2155.1325, as follows:

Sec. 2155.1325. STANDARDS FOR DELEGATED PURCHASES. (a) Requires a state agency that is preparing a solicitation for proposals for a purchase of goods or services with a purchase price that exceeds \$100,000 that is delegated under this chapter or other law to submit to the comptroller a copy of the draft solicitation with a statement of the procurement strategy for the purchase.

(b) Authorizes the comptroller to review the draft solicitation and procurement strategy to determine whether the state agency is following the best value and sourcing standards of Section 2155.074 to the greatest extent possible. Authorizes the comptroller to:

(1) recommend changes to the draft solicitation or procurement strategy, provided the written recommended changes are submitted to the state agency not later than the 30th day after the date the comptroller receives the draft solicitation and procurement strategy from the state agency;

(2) partner with the state agency to ensure the standards of this chapter are followed;

(3) partner with the state agency to award a statewide contract that results from the solicitation; or

(4) require the state agency to engage a consultant to assist with the solicitation to be paid from the cost savings realized under the contract, as authorized by Section 2155.082.

(c) Requires a state agency that receives the comptroller's recommended changes under Subsection (b)(1) to accept the recommended changes, or submit alternative suggestions to the comptroller for review in accordance with this section.

(d) Authorizes the comptroller to adopt rules to administer this section.

SECTION 16. Amends Subchapter D, Chapter 2155, Government Code, by adding Section 2155.205, as follows:

Sec. 2155.205. ACCESS BY OTHER GOVERNMENTAL ENTITIES. Authorizes the comptroller to allow a governmental entity of another state to access the comptroller's statewide contracts.

SECTION 17. Amends Section 2155.385(a), Government Code, as follows:

(a) Authorizes the comptroller to contract with one or more credit card issuers for state agencies to use credit cards to pay for purchases, rather than authorizing TFC, if authorized by rule adopted by the comptroller under Section 403.023 (Credit, Charge, and Credit Cards), to contract with one or more credit card issuers for state agencies to use credit cards to pay for purchases. Deletes existing text prohibiting TFC from entering into a contract that conflicts with the comptroller's rules.

SECTION 18. Amends Section 2054.158, Government Code, as follows:

Sec. 2054.158. QUALITY ASSURANCE TEAM. Requires the state auditor, the comptroller, the LBB, and the Texas Department of Information Resources (DIR), to:

- (1) create a quality assurance team to perform the duties specified in this chapter and other law; and
- (2) specify in writing the responsibilities of the state auditor, the comptroller, the LBB, and DIR in performing the duties.

SECTION 19. Amends Section 2151.0041(c), Government Code, as follows:

(c) Provides that, unless otherwise provided by the legislature by law, on September 1, 2013:

- (1) the powers and duties transferred to the comptroller under Section 2151.004(d) and under H.B. 3560, Acts of the 80th Legislature, Regular Session, 2007, are transferred to TFC;
- (2) a reference in law to the comptroller relating to a power or duty transferred under this subsection means TFC;
- (3) a rule or form adopted by the comptroller relating to a power or duty transferred under this subsection is a rule or form of TFC and remains in effect until altered by TFC;
- (4) all obligations, contracts, proceedings, cases, negotiations, funds, and employees of the comptroller relating to a power or duty transferred under this subsection are transferred to TFC;
- (5) all property and records in the custody of the comptroller relating to a power or duty transferred under this subsection and all funds appropriated by the legislature for purposes related to a power or duty transferred under this subsection are transferred to the TFC; and
- (6) Section 122.0011 (Transfer of Duties; Reference), Human Resources Code, and the following provisions of the Government Code expire:
 - (A) Sections 2151.004(c) (providing that TFC retains the powers and duties of the former Texas Building and Procurement Commission relating to certain charges and duties) and (d) (transferring all other powers and duties of the Texas Building and Procurement Commission to the comptroller);

- (B) Section 2155.0011 (Transfer of Duties; Reference), rather than Section 2155.086 (Procedures for Awarding Certain Contracts);
- (C) Section 2156.0011 (Transfer of Duties; Reference), rather than Section 2155.087 (Statewide Procurement Advisory Council);
- (D) Section 2157.0011 (Transfer of Duties; Reference);
- (E) Section 2158.0011 (Transfer of Duties; Reference);
- (F) Section 2161.0011 (Transfer of Duties; Reference);
- (G) Section 2163.0011 (Transfer of Duties; Reference);
- (H) Section 2170.0011 (Transfer of Duties; Reference);
- (I) Section 2171.0011 (Transfer of Duties; Reference);
- (J) Section 2172.0011 (Transfer of Duties; Reference);
- (K) Section 2176.0011 (Transfer of Duties; Reference); and
- (L) Section 2262.0011 (Transfer of Duties; Reference).

Makes nonsubstantive changes.

SECTION 20. Amends Section 2166.406(i) (relating to energy savings performance contracts), Government Code, to delete existing text requiring that notice of the request for qualifications be given in the manner provided by Section 2156.002 (Solicitation of Bids Through Public Notice).

SECTION 21. Amends Section 51.927(i) (relating to energy savings performance contracts), Education Code, to delete existing text requiring that notice of the request for qualifications be given in the manner provided by Section 2156.002, Government Code.

SECTION 22. Repealers: Sections 2155.086 (Procedures for Awarding Certain Contracts), 2155.087 (Statewide Procurement Advisory Council), 2155.138 (Exemption of Goods or Services of Blind or Visually Impaired Persons), 2155.141 (Purchases for Auxiliary Enterprise not Within Commission's Purchasing Authority), and 2156.002, Government Code.

SECTION 23. Effective date: upon passage or September 1, 2011.