

BILL ANALYSIS

Senate Research Center

S.B. 799
By: Nelson
Finance
6/2/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the past three legislative sessions, the legislature has passed major reforms to the procurement processes used by state agencies. S.B. 799 standardizes procurement thresholds to improve training and compliance, provides greater group purchasing power to agencies, clarifies project oversight responsibilities, increases our state hospital's ability to contract with medical providers in limited circumstances, and makes improvements to guidance and training in the procurement and contract management guide.

(Original Author's / Sponsor's Statement of Intent)

S.B. 799 amends current law relating to contracting procedures and requirements for governmental entities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Comptroller of Public Accounts of the State of Texas is modified in SECTION 8 (Section 2155.132, Government Code) of this bill.

Rulemaking authority is expressly granted to the Department of Information Resources in SECTION 20 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 531.102, Government Code, by adding Subsections (m-1) and (m-2), as follows:

(m-1) Authorizes the Health and Human Services Commission (HHSC), if HHSC does not receive any responsive bids under Chapter 2155 (Purchasing: General Rules and Procedures) on a competitive solicitation for the services of a qualified expert to review investigative findings under Subsection (l) or (m) (relating to requiring the HHSC's office of inspector general (office) to employ a medical director and a dental director) and the number of contracts to be awarded under this subsection is not otherwise limited, to negotiate with and award a contract for the services to a qualified expert on the basis of:

(1) the contractor's agreement to a set fee, either as a range or lump-sum amount;
and

(2) the contractor's affirmation and the office's verification that the contractor possesses the necessary occupational licenses and experience.

(m-2) Provides that notwithstanding Sections 2155.083 (State Business Daily; Notice Regarding Procurements Exceeding \$25,000) and 2261.051 (Competitive Contractor Selection Procedures), a contract awarded under Subsection (m-1) is not subject to competitive advertising and proposal evaluation requirements.

SECTION 2. Amends Section 2054.003(10), Government Code, as follows:

(10) Redefines "major information resources project" for purposes of Chapter 2054 (Information Resources) to mean:

(A) and (B) makes nonsubstantive changes to these paragraphs; and

(C) any information resources technology project of a state agency designated for additional monitoring under Section 2261.258(a)(1) (relating to an additional monitoring warranted rating assigned by the state auditor as part of the annual assessment of certain state agencies) if the development costs for the project exceed \$5 million.

SECTION 3. Amends Section 2054.008(b), Government Code, to require that the notice of a contract for a major information system be on a form prescribed by the Legislative Budget Board (LBB) and filed not later than the 30th day, rather than the 10th day, after the date the agency enters into the contract.

SECTION 4. Amends Section 2054.1181(a), Government Code, as follows:

(a) Requires the Texas Department of Information Resources (DIR) to provide additional oversight services, including risk management, quality assurance services, independent project monitoring, and project management, for major information resources projects described by Section 2054.003(10)(C) and for other major information resources projects selected for oversight by the governor, lieutenant governor, or speaker of the Texas House of Representatives (house). Makes conforming changes.

SECTION 5. Amends Section 2155.074, Government Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that, in determining the best value for the state, the purchase price and whether the goods or services meet specifications are principal considerations that are required to be balanced with other relevant factors, rather than that the purchase price and whether the goods or services meet specifications are the most important considerations.

(b-1) Creates this subsection from existing text. Authorizes the Comptroller of Public Accounts of the State of Texas (comptroller) or other state agency, subject to Subsection (c) (relating to requiring a state agency to consult with and receive approval from the comptroller before considering factors other than price and meeting specifications when procuring certain goods or services through competitive bidding) and Section 2155.075 (Requirement to Specify Value Factors in Request for Bids or Proposals), to consider certain relevant factors under Subsection (b), including the impact of a purchase on the agency's administrative resources. Makes nonsubstantive changes.

SECTION 6. Amends Section 2155.075(a), Government Code, to require the comptroller or other state agency making the purchase, for a purchase made through competitive bidding, to specify in the request for bids certain information, including the proposal criteria the comptroller or agency will use when considering factors other than price. Makes nonsubstantive changes.

SECTION 7. Amends Section 2155.089(c), Government Code, to provide that Section 2155.089 (Reporting Vendor Performance) does not apply to certain contracts, including a contract entered into by a university system or an institution of higher education, as those terms are defined by Section 61.003 (Definitions), Education Code. Makes nonsubstantive changes.

SECTION 8. Amends Sections 2155.132(a), (b), and (e), Government Code, as follows:

(a) Provides that a state agency is delegated the authority to purchase goods and services if the purchase does not exceed \$50,000, rather than \$15,000.

(b) Authorizes the comptroller by rule to delegate to a state agency the authority to purchase goods and services if the purchase exceeds \$50,000, rather than \$15,000.

(e) Provides that competitive bidding, whether formal or informal, is required for a purchase by a state agency if the purchase meets certain criteria, including if the purchase exceeds \$10,000, rather than \$5,000.

SECTION 9. Amends Section 2155.144, Government Code, by adding Subsection (o), as follows:

(o) Authorizes HHSC, if HHSC does not receive any responsive bids on a competitive solicitation for goods or services for a state hospital operated by a health and human services agency or a state supported living center as defined by Section 531.002 (Definitions), Health and Safety Code, and after making a written determination that competition is not available, to negotiate with and award the contract to any qualified vendor who meets the requirements of the original solicitation:

(1) at a price consistent with the current market value of the goods or services; and

(2) for a term not to exceed five years.

SECTION 10. Amends Section 2155.264, Government Code, as follows:

Sec. 2155.264. New heading: AGENCY SOLICITATION OF BIDS OR PROPOSALS FOR ACQUISITION OVER \$25,000. Requires a state agency that proposes to make a purchase or other acquisition that will cost more than \$25,000, rather than \$15,000, to solicit bids or proposals from each eligible vendor on the master bidders list that serves the agency's geographic region.

SECTION 11. Amends Section 2157.068, Government Code, by amending Subsections (e-1) and (e-2) and adding Subsection (e-4), as follows:

(e-1) Requires a state agency contracting to purchase a commodity item, except as provided by Subsection (e-4), to use the list maintained as required by Subsection (e) (relating to a list of certain commodity items available for purchase through DIR) in certain manners, including, for a contract with a value of more than \$1 million but not more than \$10 million, rather than \$5 million, requiring the agency to submit a request for pricing to certain vendors. Makes a nonsubstantive change.

(e-2) Prohibits a state agency from entering into a contract to purchase a commodity item if the value of the contract exceeds \$10 million, rather than \$5 million.

(e-4) Authorizes a state agency, for a contract with a value of more than \$5 million but not more than \$10 million, to purchase a commodity item using a purchasing method designated by the comptroller under Section 2157.006(a)(2) (relating to a purchasing method for an automated information system designated by the comptroller to obtain the best value for the state).

SECTION 12. Amends Section 2166.2551, Government Code, as follows:

Sec. 2166.2551. CONTRACT NOTIFICATION. Requires HHSC or an agency whose project is exempted from all or part of Chapter 2166 (Building Construction and Acquisition and Disposition of Real Property) under Section 2166.003 (Exceptions) to provide written notice to the LBB of a contract for a construction project if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000, rather than \$14,000. Requires that the notice be on a form prescribed by the LBB and filed not later than the 30th day, rather than the 10th day, after the date the agency enters into the contract.

SECTION 13. Amends Section 2254.006, Government Code, as follows:

Sec. 2254.006. CONTRACT NOTIFICATION. Requires a state agency, including an institution of higher education as defined by Section 61.003, Education Code, to provide written notice to the LBB of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000, rather than \$14,000. Requires that the notice be on a form prescribed by the LBB and filed not later than the 30th day, rather than the 10th day, after the date the agency enters into the contract.

SECTION 14. Amends Subchapter A, Chapter 2254, Government Code, by adding Section 2254.008, as follows:

Sec. 2254.008. CONTRACT FOR PROFESSIONAL SERVICES OF PHYSICIANS, OPTOMETRISTS, AND REGISTERED NURSES. (a) Authorizes a governmental entity, notwithstanding Section 2254.003 (Selection of Provider; Fees), if the governmental entity is procuring services provided in connection with the professional employment or practice of a professional described by Section 2254.002(2)(B)(v), (vi), or (ix) (relating to services provided in connection with a physician, surgeon, optometrist, or registered nurse) and the number of contracts to be awarded under this section is not otherwise limited, to make the selection and award on the basis of:

(1) the provider's agreement to payment of a set fee, as a range or lump sum amount; and

(2) the provider's affirmation and the governmental entity's verification that the provider has the necessary occupational licenses and experience.

(b) Provides that, notwithstanding Sections 2155.083 and 2261.051, a contract awarded under this section is not subject to competitive advertising and proposal evaluation requirements.

SECTION 15. Amends Section 2254.0301(a), Government Code, as follows:

(a) Requires a state agency to provide written notice to the LBB of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000, rather than \$14,000. Requires that the notice be on a form prescribed by the LBB and filed not later than the 30th day, rather than the 10th day, after the date the entity enters into the contract.

SECTION 16. Amends Section 2262.051, Government Code, by adding Subsections (i) and (j), as follows:

(i) Requires that the comptroller's contract management guide include:

(1) instructions to assist a state agency in identifying the agency procurements that require an additional or secondary agency employee to serve as a contact for the procurement and establishing procedures for notifying vendors when to contact the additional or secondary agency employee;

(2) a general outline for the training a state agency is required to provide to the agency's procurement evaluators related to the goods and services the evaluator reviews for purchase by the agency, including training on the implementation of best value standards under Section 2155.074 (Best Value Standard for Purchase of Goods or Services);

(3) for a procurement in an amount that exceeds \$20 million, the information a state agency is required to include in a contract file on the evaluator for that procurement, including the reasons the person was selected and the person's relevant qualifications; and

(4) a model communications procedure for vendors and agency employees, developed in collaboration with representatives from vendors and state agencies.

(j) Requires that the guide, for a procurement in an amount that exceeds \$20 million other than a contract entered into by the comptroller under Section 2155.061 (Comptroller Purchasing System), require a state agency to notify interested parties at least two months before the date the agency issues the solicitation for the procurement.

SECTION 17. Amends Section 264.603(a), Family Code, to delete existing text requiring HHSC to contract with one statewide organization that is designated as a supporting organization under Section 509(a)(3), Internal Revenue Code of 1986, to provide training, technical assistance, and evaluation services for the benefit of local volunteer advocate programs.

SECTION 18. Amends Section 44.0331(a), Education Code, to require a school district that enters into a certain purchasing contract or under any other cooperative purchasing program authorized for school districts by law to document certain matters, including a contract-related fee, including a management fee, paid by or to the district.

SECTION 19. Makes application of this Act prospective.

SECTION 20. Requires DIR, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 21. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 22. Effective date: September 1, 2021.