

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 25, 2013
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3648 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Ken Paxton

Paxton

W. Campbell

Campbell

Wendy Davis

Davis

Schwertner

On the part of the Senate

Taylor

J. H. Brown

Haper-Brown

Allen Fletcher

Fletcher

Julie Laubenberg

Laubenberg

George Lavender

Lavender

Longoria

On the part of the House

Longoria

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3648

A BILL TO BE ENTITLED

AN ACT

relating to the award and performance of certain state contracts.

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

SECTION 1. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.088 to read as follows:

Sec. 2155.088. MATERIAL CHANGES TO CONTRACTS. (a)

Notwithstanding any other law, the performance of a contract for goods or services awarded under this chapter must substantially comply with the terms contained in the written solicitation for the contract and the terms considered in awarding the contract, including terms regarding cost of materials or labor, duration, price, schedule, and scope.

(b) After a contract for goods or services is awarded under this chapter, the governing body of a state agency, if applicable, must hold a meeting to consider a material change to the contract and why that change is necessary. For purposes of this section, a material change includes:

(1) extending the length of or postponing the completion of a contract for six months or more; or

(2) increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services.

SECTION 2. Section 2252.002, Government Code, is amended to read as follows:

1 Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A
2 governmental entity may not award a governmental contract to a
3 nonresident bidder unless the nonresident underbids the lowest bid
4 submitted by a responsible resident bidder by an amount that is not
5 less than the greater of the following:

6 (1) the amount by which a resident bidder would be
7 required to underbid the nonresident bidder to obtain a comparable
8 contract in the state in which the nonresident's principal place of
9 business is located; or

10 (2) the amount by which a resident bidder would be
11 required to underbid the nonresident bidder to obtain a comparable
12 contract in the state in which a majority of the manufacturing
13 relating to the contract will be performed.

14 SECTION 3. Subchapter B, Chapter 223, Transportation Code,
15 is amended by adding Section 223.050 to read as follows:

16 Sec. 223.050. PREFERENCE FOR CERTAIN PROVIDERS. (a)
17 Except as provided by Subsection (d), in awarding a contract to a
18 private sector provider, the department shall give preference to a
19 private sector provider if:

20 (1) the preference serves to create a positive
21 economic impact on job growth and job retention in this state;

22 (2) the transportation project for which the contract
23 is being awarded is funded entirely from:

24 (A) state funds;

25 (B) local funds; or

26 (C) a combination of state and local funds; and

27 (3) the amount of the bid or proposal of the provider

1 does not exceed an amount equal to 105 percent of the lowest bid or
2 proposal received by the department for the transportation project.

3 (b) The department, in determining whether the preference
4 under Subsection (a) serves to create a positive economic impact on
5 job growth and job retention in this state, may consider a private
6 sector provider's employment presence and business establishments
7 in this state.

8 (c) This section does not apply to the procurement of
9 professional services under Subchapter A, Chapter 2254, Government
10 Code.

11 (d) The department may not give a preference under this
12 section if:

13 (1) as a result of the preference, a private sector
14 provider would not be awarded a contract; and

15 (2) the principal place of business of the private
16 sector provider described by Subdivision (1) is located in a state
17 that:

18 (A) borders this state; and

19 (B) does not give a preference to private sector
20 providers in a manner similar to this section.

21 SECTION 4. (a) Section 2155.088, Government Code, as added
22 by this Act, applies only to a contract for goods or services
23 awarded under Chapter 2155, Government Code, on or after the
24 effective date of this Act.

25 (b) Section 2252.002, Government Code, as amended by this
26 Act, applies only to the award of a governmental contract to a
27 nonresident bidder on or after the effective date of this Act. The

1 award of a governmental contract to a nonresident bidder made
2 before the effective date of this Act is governed by the law in
3 effect at the time the contract was awarded, and the former law is
4 continued in effect for that purpose.

5 SECTION 5. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2013.

House Bill 3648
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.088 to read as follows:

Sec. 2155.088. MATERIAL CHANGES TO **CONTRACT SOLICITATION TERMS.** (a) Notwithstanding any other law, the performance of a contract for goods or services awarded under this chapter must substantially comply with the terms contained in the written solicitation for the contract and the terms considered in evaluating responses to the solicitation, including terms regarding cost of materials or labor, duration, price, schedule, and scope.

(b) After the evaluation of responses to a solicitation is completed but before a contract for goods or services is awarded under this chapter, the governing body of a state agency, if applicable, must hold a meeting to consider any proposed material change to a term described by Subsection (a) before the agency approves the change. For purposes of this section, a material change includes any change to a term described by Subsection (a) that has the effect of:

- (1) extending the length of or postponing the completion of the contract for six months or more; or
- (2) increasing the total consideration to be paid under the contract by at least 10 percent, including by substituting certain goods, materials, products, or services.

SECTION 2. Section 2252.002, Government Code, is amended to read as follows:

Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a

SENATE VERSION (IE)

SECTION 1. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.088 to read as follows:

Sec. 2155.088. MATERIAL CHANGES TO **CONTRACTS.** (a) Notwithstanding any other law, the performance of a contract for goods or services awarded under this chapter must substantially comply with the terms contained in the written solicitation for the contract and the terms considered in awarding the contract, including terms regarding cost of materials or labor, duration, price, schedule, and scope.

(b) After a contract for goods or services is awarded under this chapter, the governing body of a state agency, if applicable, must hold a meeting to consider a material change to the contract and why that change is necessary. For purposes of this section, a material change includes:

- (1) extending the length of or postponing the completion of a contract for six months or more; or
- (2) increasing the total consideration to be paid under a contract by at least 10 percent, including by substituting certain goods, materials, products, or services.

SECTION 2. Section 2252.002, Government Code, is amended to read as follows:

Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a

CONFERENCE

SECTION 1. Same as Senate version.

SECTION 2. Same as Senate version.

House Bill 3648
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in:

- (1) the state in which the nonresident's principal place of business is located; or
- (2) a state in which the nonresident is a resident manufacturer.

No equivalent provision.

SENATE VERSION (IE)

responsible resident bidder by an amount that is not less than the greater of the following:

- (1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located; or
- (2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.

SECTION __. Subchapter B, Chapter 223, Transportation Code, is amended by adding Section 223.050 to read as follows:

Sec. 223.050. PREFERENCE FOR CERTAIN PROVIDERS.

(a) Except as provided by Subsection (d), in awarding a contract to a private sector provider, the department shall give preference to a private sector provider if:

- (1) the preference serves to create a positive economic impact on job growth and job retention in this state;
- (2) the transportation project for which the contract is being awarded is funded entirely from:
 - (A) state funds;
 - (B) local funds; or
 - (C) a combination of state and local funds; and
- (3) the amount of the bid or proposal of the provider does not exceed an amount equal to 105 percent of the lowest bid or proposal received by the department for the transportation

CONFERENCE

SECTION __. Subchapter B, Chapter 223, Transportation Code, is amended by adding Section 223.050. Same as Senate version except for subsection (d).

House Bill 3648
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

project.

(b) The department, in determining whether the preference under Subsection (a) serves to create a positive economic impact on job growth and job retention in this state, may consider a private sector provider's employment presence and business establishments in this state.

(c) This section does not apply to the procurement of professional services under Subchapter A, Chapter 2254, Government Code.

(d) The department must give equal preference to a private sector provider under Subsection (a) and a private sector provider whose principal place of business is located in a state that:

(1) borders this state; and

(2) does not award preferential treatment to private sector providers in a manner similar to this section. [FA1]

(d) The department may not give a preference under this section if:

(1) as a result of the preference, a private sector provider would not be awarded a contract; and

(2) the principal place of business of the private sector provider described by Subdivision (1) is located in a state that:

(A) borders this state; and

(B) does not give a preference to private sector providers in a manner similar to this section.

SECTION 3. Section 2155.088, Government Code, as added by this Act, applies only to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications or makes a similar solicitation on or after the effective date of this Act.

SECTION 3. (a) Section 2155.088, Government Code, as added by this Act, applies only to a contract for goods or services awarded under Chapter 2155, Government Code, on or after the effective date of this Act.

(b) Section 2252.002, Government Code, as amended by this Act, applies only to the award of a governmental contract to a nonresident bidder on or after the effective date of this Act. The award of a governmental contract to a nonresident bidder made before the effective date of this Act is governed by the law in effect at the time the contract was awarded, and the former law is continued in effect for that purpose.

SECTION 3. Same as Senate version.

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Senate Amendments
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HOUSE VERSION

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SENATE VERSION (IE)

SECTION 4. Same as House version.

CONFERENCE

SECTION 4. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 25, 2013

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3648 by Harper-Brown (Relating to the award and performance of certain state contracts.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code, Chapter 2155 to require the performance of a contract for goods or services awarded under this chapter to substantially comply with the terms in the written solicitation for the contract and the terms considered in awarding the contract. The bill would also require the governing body of a state agency to hold a meeting after awarding a contract to consider a material change to the contract and why that change is necessary if applicable. The bill would amend the Government Code, Chapter 2252 relating to a governmental entity awarding a contract to a non-resident bidder. The bill would also amend the Transportation Code, Chapter 223 by identifying the terms in which a private sector provider is given preference in awarding a contract.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If the bill does not receive the vote necessary for immediate effect, it takes effect September 1, 2013.

The Texas Parks and Wildlife Department and the Texas Department of Transportation anticipate that there may be a cost associated with implementing provisions of the bill. It is assumed that the costs could be absorbed within current agency resources. The Comptroller of Public Accounts, the Office of the Attorney General, the Health and Human Services Commission, the Texas Education Agency, and the Texas Department of Insurance anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 529 Health and Human Services Commission, 601 Department of Transportation, 701 Central Education Agency, 802 Parks and Wildlife Department

LBB Staff: UP, KJo, JI, JJO, KKR, SD, TG, LCO, TB, ER

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3648 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5-25-13
(date)