

SUBJECT: Changing state purchasing and procurement procedures

COMMITTEE: State Affairs— favorable, with amendment

VOTE: 9 ayes — Wolens, S. Turner, Carter, Counts, Danburg, Hilbert, Hunter, Longoria, McCall

0 nays

6 absent — Alvarado, Brimer, Craddick, D. Jones, Ramsay, Stiles

SENATE VOTE: On final passage, April 24 — voice vote

WITNESSES: None

DIGEST: SB 1752, as amended, would make a number of changes to the state procurement system, requiring certain goods and services to be tested before delivery by certain state agencies, allowing agencies to use evaluation criteria other than price to determine best value for purchasing, and requiring state purchasers to meet certain training requirements. The bill would raise the delegated commodities and services purchasing limit for state agencies from \$5,000 to \$15,000 and the competitive bid threshold from \$1,000 to \$2,000. The bill would also require state agencies to adhere to comply with many of the same purchasing requirements as the General Services Commission (GSC).

Training and certification of state agency purchasing personnel. GSC would be required to establish and administer a system of training, continuing education, and certification for all state agency purchasing personnel, including those exempted from GSC's purchasing authority. GSC would set and collect a fee from state agencies that employ purchasing personnel to recover the GSC's costs for the program

The GSC would adopt rules to administer a training and certification program, and agency personnel required to receive training could not make purchases until receiving GSC or equivalent training. Training could also be provided to purchasing personnel employed by a political subdivision. GSC would establish at least three levels of training and would require 24

hours of continuing education to maintain a certification level. Certain medical and dental facilities and medical research institutions would be exempted from training requirements.

Best value purchasing. The bill would require all state agencies including institutions of higher education, to purchase goods and services that would provide the best value for the state. The two most important factors in determining best value would be price and whether the goods and services met specifications. The bill would also allow other relevant factors to be taken into account, including installation costs and the past performance of the vendor. If an agency procured a good or service with a value over \$100,000 through a competitive bid process, it would be required to receive approval from GSC before considering factors other than price.

Delegated purchases under certain amounts. State agencies would be delegated increased purchasing authority for goods and services for purchases that did not exceed \$15,000, rather than \$5,000 as current law requires. GSC would be required to report to the governor, the lieutenant governor, the speaker, and the Legislative Budget Board if it determined that a state agency had not followed GSC's rules related to delegated purchases. When delegating purchasing authority to a state agency the GSC would consider various factors, including audits of an agency's purchasing practices.

GSC would monitor the purchasing practices of state agencies making delegated purchases to ensure that certification levels of personnel and the quality of purchases and purchasing practices continued to warrant the amount of delegated authority provided by the commission to the agency. The GSC could revoke, for cause, all or part of the agency's delegated purchasing authority. GSC would adopt rules concerning delegated purchases.

Goods and services provided by the blind, disabled and mentally retarded. The bill would require that, to be exempted from competitive bidding requirements, goods and services provided by the blind, mentally retarded and physically disabled would have to meet state specifications for delivery and life cycle costs. The Texas Council on Purchasing from People with Disabilities would be required to test goods and services provided by

the blind and ensure their quality. Products provided by persons with mental retardation and physical disabilities would be tested by workshops, organizations, and corporations whose primary purpose was training and employment of the mentally retarded and physically disabled.

Testing and inspection of goods and services. Both the GSC and other state agencies could test and inspect goods and services before they were purchased, and the GSC could inform agencies about available private testing facilities. A state agency, including an institution of higher learning, would have the authority to determine that goods and services exempted from the GSC's purchasing authority met or failed to meet specifications.

The Texas Department of Criminal Justice (TDCJ) would be required to test the goods and services it sells to other agencies before delivery to ensure the quality of those products, and the bill would authorize TDCJ to enter into a contract with a private or public entity to assist with the testing.

Barring vendors from participation in state contracts. Upon receiving repeated complaints from a vendor, the GSC could remove a vendor's goods and services — as well as the vendor's name as allowed by current law — from the GSC's bidders list for no longer than one year. If complaints resumed after the vendor was reinstated on the list, the GSC could bar the vendor from participating in state contracts.

A vendor could be barred from participation in state contracts under certain conditions specified in the bill, and the GSC would, by rule, establish the general reasons for which a vendor could be barred and the procedures under which the commission would determine whether and how long a vendor could be barred.

Competitive bidding requirements. If the GSC or an agency were making a purchase through competitive bidding, they would have to specify in the request the factors other than price that would be taken into consideration when deciding what bid offered the most value.

The bill would increase the threshold for requiring competitive bids from \$1,000 to \$2,000, and would require a state agency making a purchase for

which competitive bidding was required to obtain at least three bids from sources listed on the master bidders list.

Sealed bid requirements. The bill would remove current provisions requiring that competitive sealed proposals only be for those goods costing \$1 million or more or services costing \$100,000 or more, and specifying that only the commission could use competitive sealed proposals to acquire goods and services.

The bill would allow state agencies to use competitive sealed proposals and would require such agencies to send their proposal specifications and criteria to GSC for approval or request the GSC to develop the proposal specification and criteria.

State auditor requirements and the Advisory Committee on Procurement. The state auditor would be required to audit state agencies that make purchases that are exempted from the purchasing authority of the GSC or make purchases under delegated purchasing. The state auditor would be required to notify the lieutenant governor and the speaker, along with the governor, the Legislative Budget Board, and the state comptroller, as under current law, if a state agency were not in compliance.

The GSC would establish an advisory committee on procurement to represent the state agency purchasing community as well as political subdivisions that use the commission's purchasing services. The committee would be composed of employees from the commission, state agencies, institutions of higher education, and political subdivisions who were invited by GSC to serve on the committee, who would serve staggered terms set by GSC. The commission would recommend improvements in GSC or state agency purchasing practices to GSC.

The state auditor and the advisory committee on procurement would be required to study how classification levels of state agency purchasing personnel should be revised to reflect increased levels of responsibility and accountability they would be granted under SB 1752 and would consider how to provide them with a pay scale and career ladder commensurate with the purchaser's knowledge, authority and responsibility. The state audit and

the committee would present their recommendations to the Legislature no later than January 1, 1999.

Vendor Advisory Committee. The GSC would establish a vendor advisory committee to represent the vendor community before the commission and to provide information to vendors and obtain vendor input on state procurement practices. The vendor advisory community would be made up of GSC employees and vendors who had done business with the state and were invited by GSC to serve on the committee. The GSC would be required to invite both large and small business and vendors to serve on the committee and would set staggered terms for committee members.

Miscellaneous

- The GSC and each state agency would be required, by rule, to develop and adopt protect procedures for resolving vendor protests relating to purchasing issues.
- The bill would repeal a section of the Government Code concerning proprietary purchases, which requires the GSC to purchase goods or services that an agency claimed were proprietary to one vendor even if GSC does not agree that the product is a proprietary purchase.
- GSC would be required to adopt rules specifying under what circumstances it would be advantageous for the state to allow a state agency to purchase goods or services under a contract made by another state agency other than the GSC.
- GSC would provide open market purchasing services on a fee-for-service basis for certain state agency purchases exempted from the purchasing authority of the GSC. The GSC would set fees to recover its costs in providing open market services and would publish a schedule of its fees.
- GSC would allow institutions of higher education or state agencies to make purchases through group purchasing programs except when GSC determined within a reasonable time after receiving notice of a particular

purchase, that cost more than \$100,000 that a better value would be available through the GSC.

- The current master bidders list would be called the *centralized* master bidders list and would be used for all available procurement processes. It would also be used, to the fullest extent possible, by state agencies that make purchases exempt from the GSC's purchasing authority. The state agency could purchase goods and services from a vendor who was not on the bidder's list if the purchase price did not exceed \$5,000.
- Sealed bids could be submitted to state agencies that are making a purchase as well as the GSC and those agencies would be required to adopt the GSC's rules related to bid opening and tabulation.
- A catalogue purchase or lease would, when possible, be based on an evaluation of at least three catalogue proposals. If three catalogue proposals were not evaluated by the GSC prior to purchase or lease, the GSC or other agency would be required to document the reasons for the fact before making the purchase or lease.
- The GSC, by rule could adopt nationally recognized standards as part of its specifications and standards program.

The bill would take effect September 1, 1997, except for provisions concerning the vendor advisory committee and the training and certification of state agency personnel, which would be implemented no later than September 1, 1998.

NOTES:

The committee amendment would, among other changes, include a vendor's demonstrated capability among the factors used for best value purchasing.