

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1752  
By: Armbrister  
State Affairs  
4-16-97  
Committee Report (Substituted)

### **DIGEST**

Currently, the state law regulates the purchase of goods by state agencies. This bill will provide additional regulations regarding the purchase of goods and services by the state and the purchase of services provided by the state to local government.

### **PURPOSE**

As proposed, C.S.S.B. 1752 provides additional regulations regarding the purchase of goods and services by the state and the purchase of services provided by the state to local government.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the General Services Commission in SECTIONS 1, 3, 6, and 7 (Sections 2152.003, 2155.068(a), 2155.076(a), 2155.078(j), 2155.079(a), and 2155.132(d), Government Code), state agencies in SECTION 6 (Section 2155.076(a), Government Code), the advisory committee on procurement in SECTION 6 (Section 2155.080(c), Government Code), and the vendor advisory committee in SECTION 6 (Section 2155.081(c), Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 2152A, Government Code, by adding Section 2152.003, as follows:

Sec. 2152.003. **AUTHORITY TO ADOPT RULES.** Authorizes the General Services Commission (GSC) to adopt rules to efficiently and effectively administer this subtitle.

SECTION 2. Amends Section 2155.065, Government Code, to require the Texas Department of Criminal Justice (TDCJ) to test goods and services it sells under this section before delivery to the extent necessary to ensure quality. Authorizes TDCJ to enter into a contract with a private or public entity to assist with testing. Requires GSC to make awards under this section based on proposed goods and services meeting formal state specifications developed by GSC or meeting commercial specifications approved by GSC.

SECTION 3. Amends Section 2155.068, Government Code, to authorize GSC, by rule, to adopt appropriate standards developed by a nationally recognized standards-making association as part of its specifications and standards program. Requires the GSC to review contracts administered by GSC to ensure that all goods and services meet contract specifications. Deletes existing text regarding the efficient purchase of goods. Makes nonsubstantive changes.

SECTION 4. Amends Section 2155.069, Government Code, to authorize GSC to test and inspect goods and services purchased under a contract administered by GSC to ensure compliance with specifications. Authorizes GSC, on request, to test and inspect goods and services purchased by other state governmental entities on a cost recovery basis. Authorizes GSC to test and inspect goods and services before they are purchased. Authorizes other state agencies to test and inspect goods and services before purchase under standard industry testing methods, or authorizes the agency to contract for testing. Authorizes GSC to inform agencies about available private testing facilities. Deletes existing text regarding testing and inspections.

SECTION 5. Amends Sections 2155.070(a), (b), and (d), Government Code, to require a state

agency that determines that goods or services received under a contract administered by GSC do not meet specifications to promptly notify GSC. Provides that GSC, a state agency, including an institution of higher education, has the authority to determine that goods and services exempted from GSC's purchasing authority meet or fail to meet specifications. Requires GSC to remove a vendor's goods and services from GSC's bidders list for not longer than one year if GSC receives repeated complaints against the vendor. Authorizes GSC, if complaints resume after the vendor is reinstated on the bidders list, to bar the vendor from participating in state contracts for a period under Section 2155.077.

SECTION 6. Amends Chapter 2155B, Government Code, by adding Sections 2155.074-2155.082, as follows:

Sec. 2155.074. **BEST VALUE STANDARD FOR PURCHASE OF GOODS AND SERVICES.** Requires each state agency, including GSC, to purchase goods and services that provide the best value for the state. Sets forth criteria for determining whether goods and services are the best value for the state.

Sec. 2155.075. **REQUIREMENT TO SPECIFY VALUE FACTORS IN REQUEST FOR BIDS OR PROPOSALS.** Sets forth regulations regarding the requirement to specify in the request for bids the factors other than price that GSC or the agency will consider in determining which bid offers the best value.

Sec. 2155.076. **PROTEST PROCEDURES.** Requires GSC and each state agency, by rule, to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. Sets forth regulations regarding development and adoption of the rules.

Sec. 2155.077. **BARRING VENDOR FROM PARTICIPATION IN STATE CONTRACTS.** Sets forth regulations for barring a vendor from participating in state contracts that are subject to this subtitle.

Sec. 2155.078. **TRAINING AND CERTIFICATION OF STATE AGENCY PURCHASING PERSONNEL.** Sets forth regulations regarding the training, continuing education, and certification for state agency purchasing personnel. Provides that this section does not apply to a medical and dental unit to which Section 51.933, Education Code, applies or to an institution to which Section 73.115, Education Code, applies.

Sec. 2155.079. **BUYING UNDER CONTRACT ESTABLISHED BY AGENCY OTHER THAN COMMISSION.** Requires GSC to adopt rules specifying the circumstances under which it is advantageous for the state to allow a state agency to purchase goods or services under a contract made by another state agency other than GSC. Sets forth regulations regarding buying under a contract established by an agency other than GSC.

Sec. 2155.080. **ADVISORY COMMITTEE ON PROCUREMENT.** Authorizes GSC to establish an advisory committee on procurement. Sets forth the purpose, composition, and duties of the advisory committee on procurement. Authorizes the advisory committee on procurement to establish its own rules of operation.

Sec. 2155.081. **VENDOR ADVISORY COMMITTEE.** Authorizes GSC to establish a vendor advisory committee. Sets forth the purpose and composition of the committee. Authorizes the vendor advisory committee to establish its own rules of operation, but requires the vendor advisory committee to post notice of and hold its meeting in accordance with the open meetings law, Chapter 551.

Sec. 2155.082. **PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS.** Sets forth regulations by which GSC is authorized to provide open market purchasing services on a fee-for-service basis.

SECTION 7. Amends Section 2155.132, Government Code, to provide that a state agency is delegated the authority to purchase goods and services if the purchase does not exceed \$15,000,

rather than \$5,000. Requires GSC, if GSC determines that a state agency has not followed GSC's rules or the laws related to delegated purchases, to report its determination to certain persons. Authorizes GSC, by rule, to delegate to a state agency the authority to purchase goods and services if the purchase exceeds \$15,000, rather than \$5,000. Sets forth regulations regarding the delegation of purchasing authority. Requires GSC, by rule, to prescribe procedures by which agencies are authorized to use GSC's services for delegated purchases, in accordance with Section 2155.082. Provides that competitive bidding is not required for a purchase by a state agency if the purchase does not exceed \$2,000, rather than \$1,000. Requires a state agency making a purchase under this section for which competitive bidding is required to 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. Deletes existing text regarding auditing of purchases. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Section 2155.134(b), Government Code, to require GSC to adopt rules that allow institutions of higher education or state agencies to make purchases through group purchasing programs except when GSC determines within a reasonable time after receiving notice of a particular purchase that costs more than \$100,000 that a better value is available through GSC. Makes conforming changes.

SECTION 9. Amends Section 2155.138, Government Code, to provide that the competitive bidding provisions of this chapter do not apply to a state purchase of goods or services that are offered for sale to a state agency through efforts made under law by the Texas Council on Purchasing from People with Disabilities (council), rather than the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons, and meet state specifications for delivery and life cycle costs. Requires the council to test the goods and services to the extent necessary to ensure quality. Authorizes the council to enter into a contract with a private or public entity to assist with testing. Requires GSC to make awards under this section based on proposed goods and services meeting formal state specifications developed by GSC or meeting commercial specifications approved by GSC.

SECTION 10. Amends Section 2155.263, Government Code, as follows:

Sec. 2155.263. New heading: COMMISSION TO MAINTAIN CENTRALIZED MASTER BIDDERS LIST. Requires GSC to maintain a centralized master bidders list. Requires the centralized master bidders list to be used for all available procurement processes authorized by this subtitle and to also be used to the fullest extent possible by state agencies that make purchases exempt from GSC's purchasing authority.

SECTION 11. Amends Section 2155.268, Government Code, by adding Subsection (d), to authorize a state agency to purchase goods and services from a vendor who is not on the bidders list if the purchase price does not exceed \$5,000.

SECTION 12. Amends Section 2155.441, Government Code, to make conforming changes.

SECTION 13. Amends Section 2156.005, Government Code, to require GSC to keep a tabulation of all bids received by GSC available for public inspection under rules adopted by GSC. Requires state agencies making purchases to adopt GSC's rules related to bid opening and tabulation. Makes conforming changes.

SECTION 14. Amends Sections 2156.007-2156.010, Government Code, to make conforming and nonsubstantive changes.

SECTION 15. Amends Sections 2156.062 and 2156.063, Government Code, to make conforming changes.

SECTION 16. Amends Sections 2156.065 and 2156.066, Government Code, to make conforming changes.

SECTION 17. Amends Chapter 2156C, Government Code, as follows:

SUBCHAPTER C. New heading: COMPETITIVE SEALED PROPOSALS FOR  
ACQUISITION OF CERTAIN GOODS AND SERVICES

Sec. 2156.121. New heading: USE OF COMPETITIVE SEALED PROPOSALS. Authorizes GSC or other state agency to follow a procedure using competitive sealed proposals to acquire goods or services if GSC determines that competitive sealed bidding and informal competitive bidding for the purchase or type of purchase are not practical or are disadvantageous to the state. Requires a state agency to send its proposal specifications and criteria to GSC for approval or request GSC to develop the proposal specifications and criteria. Deletes existing text regarding acquisitions and competitive bidding. Deletes existing Section 2156.122.

Sec. 2156.122. SOLICITATION OF PROPOSALS. Deletes existing Section 2156.125. Makes a conforming change.

Sec. 2156.123. OPENING AND FILING OF PROPOSALS; PUBLIC INSPECTIONS. Makes conforming changes.

Sec. 2156.124. DISCUSSION AND REVISION OF PROPOSALS. Requires GSC, when managing the request for proposals process, to invite a requisitioning agency to participate in discussions conducted under this section. Makes conforming changes.

Sec. 2156.125. CONTRACT AWARD. Makes conforming changes.

Sec. 2156.126. ADOPTION OF RULES; STATE AGENCY ASSISTANCE. Makes a conforming change.

Sec. 2156.127. COMPETITIVE SEALED PROPOSALS FOR TELECOMMUNICATIONS AND AUTOMATED INFORMATION SYSTEMS NOT AFFECTED. Makes a conforming change.

SECTION 18. Amends Section 2157.003, Government Code, as follows:

Sec. 2157.003. New heading: DETERMINING BEST VALUE FOR PURCHASES OF AUTOMATED INFORMATION SYSTEMS. Makes conforming changes.

SECTION 19. Amends Chapter 2157B, Government Code, by adding Section 2157.0611, as follows:

Sec. 2157.0611. REQUIREMENT TO EVALUATE THREE PROPOSALS WHEN POSSIBLE. Requires a catalogue purchase or lease, when possible, to be based on an evaluation of at least three catalogue proposals made to GSC or other state agency by qualified information systems vendors. Requires GSC or the other state agency, if at least three catalogue proposals are not evaluated before the purchase or lease is made, to document the reasons for that fact before making the purchase or lease under Section 2175.063.

SECTION 20. Amends Sections 2157.121-2157.125, Government Code, to make conforming changes.

SECTION 21. Amends Section 2101.038, Government Code, to require the state auditor to also audit state agencies that make purchases that are exempted from the purchasing authority of GSC or that make purchases under delegated purchasing authority for compliance with applicable provisions of Subtitle D, except that this section does not require the state auditor to audit purchases made under certain sections. Requires the state auditor to notify the lieutenant governor and the speaker of the house of representatives as soon as practicable when a state agency is not in compliance.

SECTION 22. Amends Section 496.051(a), Government Code, to make conforming changes.

SECTION 23. Amends Section 122.007, Human Resources Code, to make conforming changes.

SECTION 24. Requires the state auditor and the advisory committee on procurement established by this Act to study how classification levels of state agency purchasing personnel should be revised to reflect the increased levels of responsibility and accountability given to state agency purchasing personnel under the changes in law made in this Act. Sets forth items to be considered by the state auditor and the advisory committee on procurement. Requires the state auditor and the advisory committee on procurement to present their written recommendations and the results of their study to the legislature not later than January 1, 1999.

SECTION 25. Repealer: Section 2155.067(e), Government Code (Proprietary Purchases).

SECTION 26. Requires the changes in law made by Sections 2155.078-2155.081, Government Code, as added by this Act, relating to training and certification of existing state agency purchasing personnel, to be implemented not later than September 1, 1998.

SECTION 27. Effective date: September 1, 1997, except as provided by SECTION 26 of this Act.

SECTION 28. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

#### SECTION 2.

Amends Section 2155.065, Government Code, to delete proposed text which applied the best value standard to contracts with TDCJ. Sets forth regulations regarding TDCJ contracts and award by GSC.

#### SECTION 4.

Amends Section 2155.069, Government Code, to make a nonsubstantive change.

#### SECTION 5.

Amends Section 2155.070(b), Government Code, to provide that a state agency has the authority to determine that goods and services exempted from GSC's authority meet or fail to meet specifications.

#### SECTION 6.

Amends Section 2155.074(b), Government Code, to make a nonsubstantive change.

Amends Section 2155.078(b), Government Code, to authorize equivalent training from a national association. Makes conforming changes.

Amends Section 2155.078(k), Government Code, to make conforming changes.

Adds Section 2155.078(n), Government Code, to provide that this section does not apply to certain medical and dental units.

#### SECTION 8.

Amends Section 2155.134(b), Government Code, to make a nonsubstantive change.

#### SECTION 9.

Amends Section 2155.138, Government Code, to make conforming changes.

SECTION 10.

Amends Section 2155.263(c), Government Code, to make conforming and nonsubstantive changes.

SECTION 11.

Adds Section 2155.268(d), Government Code, to authorize a state agency to purchase from a vender who is not on the bidders list if the purchase price does not exceed \$5,000. Redesignates subsequent SECTIONS.

SECTION 12.

Amends Section 2155.441, Government Code, to make a conforming change.

SECTION 21.

Amends Section 2101.038, Government Code, to provide that this section does not require the state auditor to audit purchases made under certain sections of the Education Code.

SECTION 23.

Amends Section 122.007(d), Human Resources Code, to make a conforming change.

SECTION 26.

Requires the changes in Sections 2155.078-2155.081, Government Code, to be implemented not later than September 1, 1997. Redesignates subsequent SECTIONS.