

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2499
By: Cook (Nichols)
Government Organization
5/10/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of the bill is to enact the recommendations of the Sunset Advisory Commission on the Department of Information Resources (DIR). DIR is the state's information technology and telecommunications agency. DIR coordinates and supports several critical functions for state agencies and local governments including data center services consolidation; cooperative contracts for information and communications technology services and commodities; the state's telecommunication network (TEX-AN); the Capitol Complex Telephone System; and the state's official website (Texas.gov).

DIR is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission found that Texas continues to need an agency such as DIR to provide these critical services, but identified serious concerns with DIR's management of its internal operations and a lack of much needed oversight. The Sunset Advisory Commission's recommendations aim to limit DIR's focus and increase attention and oversight of the agency by DIR's board and the legislature.

DIR is governed by Chapter 2054 (Information Resources), Government Code, and its statewide purchasing program for information and communications technology commodities is governed by Chapter 2157 (Purchasing: Purchase of Automated Information Systems), Government Code.

C.S.H.B. 2499 amends current law by transferring the statewide program for purchasing information and communications technology services and products from DIR to the comptroller of public account's office; requiring the appointment of a new DIR board with members who have specific expertise in business or financial management, information technology, or telecommunications; requiring the DIR board to appoint an internal auditor and establish a board audit subcommittee to provide additional oversight of DIR; requiring DIR to establish clear procedures for setting, adjusting, and approving the administrative fees it charges its customers; establishing certain DIR accounts in statute and clarifies their intended purposes; requiring DIR to develop clear criteria for the appropriate use of contractors and consultants to augment its staff; requiring DIR to establish clear contract management policies, procedures and training, and establish stricter conflict of interest provisions for DIR employees; requiring the board to approve all major contracts, such as the data center services contract, exempting the Department of Agriculture from the data center services consolidation program, and establishing subcommittees to monitor these contracts; requiring customer involvement in decision making for DIR's major contracts; and continuing DIR for six years to provide the legislative oversight necessary to ensure identified problems are corrected.

C.S.H.B. 2499 amends current law relating to the continuation and functions of the Department of Information Resources and the transfer of certain department functions to the comptroller of public accounts.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the governing board of directors of the Department of Information Resources (DIR) in SECTION 21 (Sections 2054.501, 2054.532, 2054.533, and 2054.535, Government Code) of this bill.

Rulemaking authority previously granted to DIR is rescinded in SECTION 23 (Section 2155.503, Government Code) of this bill.

Rulemaking authority previously granted to DIR is transferred to the comptroller of public accounts in SECTION 25 (Section 2157.068, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 572.054, Government Code, by adding Subsection (g-1), to provide that for purposes of this section, the Department of Information Resources (DIR) is a regulatory agency.

SECTION 2. Amends Section 2054.005, Government Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), DIR is abolished and this chapter expires September 1, 2017, rather than September 1, 2011.

SECTION 3. Amends Sections 2054.021(a), (c), (g), and (h), Government Code, as follows:

(a) Provides that DIR is governed by the governing board of directors of DIR (board) composed of seven voting members appointed by the governor with the advice and consent of the senate. Requires each member to have expertise in at least one of certain areas, including business or financial management, information technology, telecommunications, or any other area necessary for policymaking and oversight of DIR.

(c) Provides that three, rather than two, groups each composed of three ex officio members serve on the board on a rotating basis. Provides that the first group is composed of the commissioner of insurance, the executive commissioner of the Health and Human Services Commission (HHSC), and the executive director of a small state agency, rather than the executive director of the Texas Department of Transportation (TxDOT). Provides that the second group is composed of the executive director of TxDOT, the commissioner of education, and the executive director of a small state agency. Provides that the third group is composed of the executive director of the Texas Department of Criminal Justice, the executive director of the Parks and Wildlife Department, and the executive director of a small state agency. Provides that members of a group serve on the board for two-year terms that begin February 1 of odd-numbered years and expire on February 1 of the next odd-numbered year. Provides that only one group serves at a time. Requires the governor to appoint the small state agency representative for each group. Defines, in this subsection, "small state agency." Deletes existing text providing that members of the first group serve for two-year terms that begin February 1 of every other odd-numbered year and that expire on February 1 of the next odd-numbered year; and members of the second group for two-year terms that begin February 1 of the odd-numbered years in which the terms of members of the first group expire and that expire on February 1 of the next odd-numbered year. Makes nonsubstantive and conforming changes.

(g) Requires that the training program provide certain information to the person regarding certain topics, including this chapter and the board, rather than information regarding the enabling legislation that created DIR and its policymaking body, to which the person is appoint to serve; and contract management training. Makes a nonsubstantive change.

(h) Entitles a person appointed to the board under Subsection (a) to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the board

SECTION 4. Amends Section 2054.022(c), Government Code, to delete existing text prohibiting an employee of DIR, other than the executive director, from participating in DIR's bidding process, including the proposal development related to a contract and the negotiation of a contract if the employee receives more than five percent of the employee's income from any likely bidder on the contract, or the employee's spouse is employed by any likely bidder. Makes nonsubstantive changes.

SECTION 5. Amends Section 2054.0285(b), Government Code, as follows:

(b) Provides that the executive director has authority for certain, rather than all, aspects of information technology for state agencies, including the use of technology to support state goals; functional support to state agencies; deployment of new technology; delivery of technology services; and provision of leadership on technology issues. Deletes existing text relating to the executive director having authority over technology purchases. Makes nonsubstantive changes.

SECTION 6. Amends Subchapter B, Chapter 2054, Government Code, by adding Section 2054.0331, as follows:

Sec. 2054.0331. CUSTOMER ADVISORY COMMITTEE. (a) Requires the board to appoint a customer advisory committee under Section 2054.033 (Advisory Committees).

(b) Provides that the advisory committee is composed of customers who receive services from each of DIR's key programs and of members of the public, including at least:

(1) one member representing a state agency with fewer than 100 employees;

(2) one member appointed by the Information Technology Council for Higher Education; and

(3) one public member.

(c) Requires the advisory committee to report to and advise the board on the status of DIR's delivery of critical statewide services.

SECTION 7. Amends Subchapter B, Chapter 2054, Government Code, by adding Sections 2054.0345 and 2054.0346, as follows:

Sec. 2054.0345. DETERMINATION OF ADMINISTRATIVE FEES. (a) Requires DIR to adopt a process to determine the amount of the administrative fee DIR charges to administer any of its programs, including fees charged for programs under Sections 2054.380 (Fees) and 2170.057 (Payment for Services).

(b) Requires that the process require that the amount of a fee directly relate to the amount necessary for DIR to recover the cost of its operations, as determined by DIR's annual budget process.

(c) Requires DIR to develop clear procedures directing staff for each DIR program and DIR's financial staff to work together to determine the amount of administrative fees. Requires that the procedures require review and approval of all administrative fees by the board, the executive director, and DIR's chief financial officer.

Sec. 2054.0346. REPORTING OF ADMINISTRATIVE FEES. (a) Requires DIR to report to the Legislative Budget Board (LBB) all administrative fees that DIR sets under Section 2054.0345 each fiscal year. Requires that the report include the underlying analysis and methodology used to determine the fee amounts, and the cost allocation charged to customers.

(b) Requires DIR to post on DIR's website information about each administrative fee DIR charges, including a description of how the fee is determined. Requires DIR to update this information when a contract amendment or other action results in a major change to the costs incurred or the price paid by DIR or a customer of DIR.

SECTION 8. Amends Subchapter B, Chapter 2054, by adding Section 2054.037, as follows:

Sec. 2054.037. **NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION.** (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of DIR rules, and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under DIR's jurisdiction.

(b) Requires DIR's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires DIR to coordinate the implementation of policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

SECTION 9. Amends Subchapter B, Chapter 2054, Government Code, by adding Sections 2054.038, 2054.039, and 2054.040, as follows:

Sec. 2054.038. **INTERNAL AUDITOR; POWERS AND DUTIES.** (a) Requires the board to appoint an internal auditor who reports directly to the board and serves at the will of the board, and provide staff and other resources to the internal auditor as appropriate.

(b) Requires the internal auditor to prepare an annual audit plan using risk assessment techniques to rank high-risk functions in DIR. Requires the internal auditor to submit the annual audit plan to the board for consideration and approval. Authorizes the board to change the plan as necessary or advisable.

(c) Authorizes the internal auditor to bring before the board an issue outside of the annual audit plan that requires the immediate attention of the board.

(d) Prohibits the internal auditor from being assigned any operational or management responsibilities that impair the ability of the internal auditor to make an independent examination of DIR's operations. Authorizes the internal auditor to provide guidance or other advice before an operational or management decision is made but prohibits the internal auditor from making the decision, approving the decision, or otherwise violating this subsection.

(e) Requires DIR to give the internal auditor unrestricted access to the activities and records of DIR unless restricted by other law.

Sec. 2054.039. **OPEN MEETINGS EXCEPTION FOR INTERNAL AUDITOR.** Provides that a meeting between the board and DIR's internal auditor to discuss issues related to fraud, waste, or abuse is not required to be an open meeting under Chapter 551 (Open Meetings).

Sec. 2054.040. **AUDIT SUBCOMMITTEE.** (a) Requires the board to maintain an audit subcommittee of the board. Requires the subcommittee to oversee DIR's internal auditor and any audit issues the board considers appropriate.

(b) Requires the subcommittee to evaluate whether the internal auditor has sufficient resources to perform the auditor's duties and ensure that sufficient resources are available.

SECTION 10. Amends Subchapter B, Chapter 2054, Government Code, by adding Section 2054.041, as follows:

Sec. 2054.041. ADDITIONAL BOARD OVERSIGHT. (a) Requires the board to adopt a policy describing the board's role in setting a strategic direction for DIR. Requires that the policy address the board's role in developing new initiatives for and service offerings by DIR, including requiring the board to evaluate and approve new initiatives for, or categories of, services offered by DIR under DIR's various programs.

(b) Requires the board to regularly evaluate the extent to which DIR fulfills DIR's information resources technology mission by providing cost-effective services and meeting customer needs.

(c) Requires the board to regularly evaluate DIR operations, including an evaluation of analytical data an information regarding trends in DIR revenue and expenses, as well as performance information.

SECTION 11. Amends Subchapter C, Chapter 2054, Government Code, by adding Section 2054.0525, as follows:

Sec. 2054.0525. ASSISTANCE TO STATE AGENCIES. Requires DIR, on request, to advise and provide technical assistance to a state agency to determine the agency's information resources technology needs and to solve the agency's information resource technology problems.

SECTION 12. Amends Section 2054.0565(a), Government Code, to authorize the comptroller of public accounts (comptroller), rather than DIR, to include terms in a procurement contract entered into by the comptroller, rather than DIR, including a contract entered into under Section 2157.068 (Purchase of Information Technology Commodity Items), that allow the contract to be used by another state agency, a political subdivision of this state, a governmental entity of another state, or an assistance organization defined by Section 2175.001 (Definitions).

SECTION 13. Amends Section 2054.057, Government Code, as follows:

Sec. 2054.057. TRAINING IN CONTRACT NEGOTIATION. (a) Requires the comptroller and other state agencies, rather than DIR, with the cooperation of the comptroller and other state agencies, to develop and implement a program to train state agency personnel in effectively negotiating contracts for the purchase of information resources technologies. Makes a nonsubstantive change.

(b)-(d) Makes conforming changes.

SECTION 14. Amends Subchapter C, Chapter 2054, Government Code, by adding Section 2054.061, as follows:

Sec. 2054.061. USE OF CONSULTANTS AND OUTSIDE STAFF. (a) Requires DIR to develop clear criteria for the appropriate use of consultants and outside staff by DIR to temporarily augment DIR's existing staff.

(b) Requires DIR to annually analyze:

(1) DIR's staffing needs;

(2) the need for and cost-effectiveness of contracting for consultants and outside staff;

(3) whether DIR could use DIR staff to accomplish tasks proposed for the consultants and outside staff; and

(4) whether and what type of training or additional resources are necessary for DIR to use DIR's own staff to accomplish tasks proposed for the consultants or outside staff.

(c) Requires DIR, in conjunction with the budget process, to provide the analysis to the board for approval. Prohibits DIR from hiring or training any consultants or outside staff unless it has been approved during this budget process.

SECTION 15. Amends Subchapter G, Chapter 2054, Government Code, by adding Section 2054.062, as follows:

Sec. 2054.062. INFORMATION RESOURCES TECHNOLOGIES CONSOLIDATION.

(a) Requires DIR to develop a consistent and clear method of measuring the costs and progress of an information resources technology consolidation initiative, including a consolidation under Subchapter L (Statewide Technology Centers).

(b) Requires DIR to work with any entity involved in an information resources technology consolidation to develop an agreed on methodology for collecting and validating data to determine a baseline assessment of costs. Requires DIR to use the data both in DIR's initial cost projections and in any later cost comparison. Requires DIR to coordinate with the internal auditor for guidance, subject to Section 2054.038(d), on developing a methodology that provides an objective assessment of costs and project status.

(c) Requires DIR, using the methodology agreed upon under Subsection (b), to evaluate actual costs and cost savings related to the consolidation. Requires DIR to also evaluate the progress of DIR's information resources consolidation projects compared to the initially projected timelines for implementation. Provides that the evaluation results break out the information on both statewide and individual entity levels.

(d) Requires DIR to annually report the evaluation results to the board, the LBB, and customers involved in the consolidation.

(e) Requires DIR to post on DIR's website the report required by this section.

SECTION 16. Amends Sections 2054.1015(b)-(e), Government Code, as follows:

(b) Authorizes the comptroller to require a state agency to provide, rather than authorizes DIR to require a state agency to provide to DIR, a planned procurement schedule for commodity items if the comptroller determines that the information in the schedule can be used to provide a benefit to the state. Requires a state agency, if required by the comptroller to provide a planned procurement schedule for commodity items to the comptroller and DIR before the agency's operating plans may be approved under Section 2054.102. Makes conforming changes.

(c)-(e) Makes conforming changes.

SECTION 17. Amends Section 2054.122, Government Code, as follows:

Sec. 2054.122. COORDINATED TECHNOLOGY TRAINING. Requires a state agency each calendar quarter to coordinate agency training for the use of information resources technologies with training offered or coordinated by DIR or the comptroller. Requires the agency to use training offered or coordinated by DIR or the comptroller if it meets agency requirements and is cost-competitive.

SECTION 18. Amends Section 2054.124, Government Code, as follows:

Sec. 2054.124. POWER MANAGEMENT SOFTWARE. (a) Makes a conforming change.

(b) Redesignates existing Subsection (c) as Subsection (b). Requires the comptroller, rather than DIR, in making a determination under this subsection, to perform the analysis described by Section 2054.121(c) (relating to requiring DIR to prepare an analysis of the rule on institutions of higher education) in the same manner as DIR under that subsection. Makes a conforming change.

SECTION 19. Amends Section 2054.376(b), Government Code, to provide that this subchapter does not apply to certain networks or databases of governmental entities, including a database or network managed by the Department of Agriculture.

SECTION 20. Amends Subchapter L, Chapter 2054, Government Code, by adding Section 2054.392, as follows:

Sec. 2054.392. STATEWIDE TECHNOLOGY ACCOUNT. Requires the comptroller to establish in the state treasury the statewide technology account. Provides that the account is a revolving fund account for the administration of this subchapter. Provides that the account is the depository for all money received from entities served under this subchapter. Authorizes that money in the account be used only for the operation and management of a statewide technology center or for any other purpose specified by the legislature.

SECTION 21. Amends Chapter 2054, Government Code, by adding Subchapters N and O as follows:

SUBCHAPTER N. MAJOR OUTSOURCED CONTRACTS

Sec. 2054.501. MAJOR OUTSOURCED CONTRACT DEFINED; RULE. Requires the board by rule to define what constitutes a major outsourced contract with regard to contracts DIR executes with entities other than this state or a political subdivision of this state. Requires that the definition include as a major outsourced contract:

(1) outsourced contracts entered into under Subchapter I (Texasonline Project) and Subchapter L of this chapter or Chapter 2170 (Telecommunications Services); and

(2) contracts that exceed a monetary threshold, other than those described by Subdivision (1).

Sec. 2054.502. BOARD APPROVAL AND OVERSIGHT OF MAJOR OUTSOURCED CONTRACTS. (a) Requires DIR to receive approval from the board before entering into a major outsourced contract, or amending any major outsourced contract, if the amendment has significant statewide impact.

(b) Requires the board to establish one or more subcommittees to monitor DIR's major outsourced contracts.

Sec. 2054.503. MANAGEMENT PLANS FOR MAJOR OUTSOURCED CONTRACTS. (a) Requires DIR to specify procedures for administering, monitoring, and overseeing each major outsourced contract by creating a management plan for each contract. Requires DIR, in each management plan, to specify DIR's approach to managing and mitigating the risks inherent in each contract.

(b) Requires DIR staff who perform contract administration and program duties to jointly develop the management plans with input from executive management and the board. Requires that each management plan be approved by the executive director of TxDOT.

(c) Requires that each management plan establish clear lines of accountability and coordination of contract activities. Requires that the plan provide details about

implementing the program that is the subject of the contract as well as procedures for monitoring contractor performance, identifying and mitigating risks related to the contract, and involving and communicating with customers who will be served by any programs implemented through the contract. Requires that the plan, as appropriate, define an approach for transitioning from one major outsourced contract to another major outsourced contract.

(d) Requires DIR to revise each management plan as necessary to keep current during the contracting process, and when DIR renews, amends, or resolicits a major outsourced contract to ensure the plan remains updated and incorporates any changes resulting from a new contract.

Sec. 2054.504. CUSTOMER INVOLVEMENT IN MAJOR OUTSOURCED CONTRACTS. Requires DIR to establish formal procedures to ensure customer involvement in the decision making regarding each of DIR's major outsourced contracts, including initial analysis, solicitation development, and contract award and implementation, that affect those customers.

SUBCHAPTER O. ADDITIONAL PROVISIONS ON CONTRACTING

Sec. 2054.531. DEFINITION. Defines, in this subchapter, "contract management guide."

Sec. 2054.532. RULES. Requires the board, in addition to the rules adopted under Subchapter N for major outsourced contracts, by rule to establish approval requirements for all other contracts, including a monetary threshold above which board approval is required before the contract may be executed.

Sec. 2054.533. CONFLICT OF INTEREST IN CONTRACTING. (a) Prohibits a DIR employee from:

(1) having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by DIR; or

(2) in any manner, including by rebate or gift, directly or indirectly accepting or receiving from a person to whom a contract may be awarded anything of value or a promise, obligation, or contract for future reward or compensation.

(b) Provides that a DIR employee who violates Subsection (a)(2) is subject to dismissal.

(c) Requires the board to adopt rules to implement this section.

(d) Requires DIR to train staff in the requirements of this section and Section 572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense), and incorporate the requirements into the contract management guide and DIR's internal policies, including employee manuals.

Sec. 2054.534. CONTRACT MANAGEMENT TRAINING POLICY. (a) Requires DIR to develop a policy for training DIR staff in contract management.

(b) Requires that the policy establish contract management training requirements for all staff involved in contract management, including contract managers, program staff, and executive management.

(c) Requires that the policy specify DIR's overall approach to procuring and managing contracts, as well as contract-specific procedures developed in the contract management guide and under Subchapter N.

Sec. 2054.535. CONTRACT MANAGEMENT GUIDE; RULES. (a) Requires DIR to develop and periodically update a contract management guide to provide an overall, consistent approach on procurement and management of major outsourced contracts under Subchapter N and other contracts. Requires DIR, in updating the guide, to make changes based on contract experiences and account for changing conditions to guide the updates.

(b) Requires DIR to coordinate with DIR's internal auditor, subject to Section 2054.038(d), as needed for assistance and guidance in developing procedures in the contract management guide for monitoring contracts and individual contractors.

(c) Authorizes the board to adopt rules necessary to develop or update the contract management guide.

(d) Requires that the contract management guide provide information regarding DIR's:

(1) general approach to business case analysis, procurement planning, contract solicitation, contract execution, and contract monitoring and oversight;

(2) ethics standards and policies, including those required by Section 2054.533; and

(3) approach to changing a program's internal structure or model for delivering services to customers.

(e) Requires that the contract management guide:

(1) establish clear lines of accountability, staff roles and responsibilities, and decision-making authority for program staff, contract management staff, executive management, customers, and the board;

(2) include the procedures established under Section 2504.504 regarding customer involvement; and

(3) establish DIR's process for evaluating and managing risk during each stage of contract procurement, implementation, and management.

(f) Requires that the contract management guide describe the expectations and standards for obtaining and using customer input during all contract management phases.

SECTION 22. Amends Sections 2155.502(a)-(c), Government Code, as follows:

(a) Requires the comptroller to develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government, including the federal General Services Administration, or any other governmental entity in any state. Makes a nonsubstantive change.

(b) Requires the comptroller, rather than the comptroller or DIR, as appropriate, in developing a schedule under Subsection (a), rather than under Subsection (a) or (e), to modify any contractual terms, with the agreement of the parties to the contract, as necessary to comply with any federal or state requirements, including rules adopted under this subchapter.

(c) Prohibits the comptroller from listing a multiple award contract on a schedule developed under Subsection (a) if the goods or services provided by that contract are available from only one vendor or are telecommunications services, facilities, or

equipment. Makes a nonsubstantive change. Deletes existing text relating to goods or services that are commodity items as defined by Section 2157.068(a).

SECTION 23. Amends Section 2155.503, Government Code, as follows:

Sec. 2155.503. RULES. (a) Requires the comptroller, rather than the comptroller and DIR, to adopt rules to implement this subchapter.

(b) Makes a conforming change.

SECTION 24. Amends Section 2157.004, Government Code, to require a state agency that acquires a telecommunications device, system, or service or an automated information system by interagency transfer, contract, or loan, or by public loan, to comply with the requirements that apply to that acquisition under Chapter 2054 and this chapter. Makes a nonsubstantive change.

SECTION 25. Amends Section 2157.068, Government Code, as follows:

Sec. 2157.068. PURCHASE OF INFORMATION TECHNOLOGY COMMODITY ITEMS. (a) Redefines, in this section, "commodity items."

(b)-(c) Makes conforming changes.

(d) Requires the comptroller to develop a clear procedure for calculating the fee under this subsection, including procedures for review and approval of the fee. Makes conforming changes.

(e) Requires the comptroller, rather than DIR, to compile and maintain a list of commodity items available for purchase through the comptroller, rather than DIR, that have a lower price than the prices for commodity items otherwise available to state agencies under this chapter. Requires the comptroller to make the list available on the comptroller's website. Deletes existing text requiring DIR to make the list available on the world wide web or on a suitable successor to the world wide web if the technological developments involving the Internet make it advisable to do so.

(f) Authorizes the comptroller, rather than DIR, to adopt rules regulating a purchase by a state agency of a commodity item under this section, including the requirement that, notwithstanding other provisions of this chapter, the agency is required to make the purchase in accordance with a contract developed by the comptroller, rather than DIR, unless the agency obtains an exemption from the comptroller, rather than DIR, or express prior approval from the LBB for the expenditure necessary for the purchase.

(g)-(h) Makes conforming changes.

(i) Requires a state agency, unless the agency has express statutory authority to employ a best value purchasing method other than a purchasing method designated by the comptroller under Section 2157.006(a)(2), to use a purchasing method provided by Section 2157.006(a) when purchasing a commodity item under certain conditions. Makes a conforming and a nonsubstantive change.

SECTION 26. Amends Subchapter B, Chapter 2157, Government Code, by adding Section 2157.0685, as follows:

Sec. 2157.0685. REPORTING OF ADMINISTRATIVE FEES FOR COMMODITY ITEMS. (a) Requires the comptroller to report to the LBB any administrative fee the comptroller sets under Section 2157.068 for each fiscal year. Requires that the report include the underlying analysis and methodology used to determine the fee amounts.

(b) Requires the comptroller to post on the comptroller's website information about the fee, including a description of how the fee is determined. Requires the comptroller to update this information when a contract amendment or other action results in a major change to the costs incurred or the price paid by the comptroller or a customer of the comptroller.

SECTION 27. Amends Subchapter B, Chapter 2157, Government Code, by adding Section 2157.069, as follows:

Sec. 2157.069. CLEARING FUND ACCOUNT. Requires the comptroller to establish in the state treasury the clearing fund account. Provides that the account is a revolving fund account for the administration of Section 2157.068. Provides that the account is the depository for all money received from entities served under that section. Authorizes that money in the account be used only to administer that section or for any other purpose specified by the legislature.

SECTION 28. Amends Section 2157.121, Government Code, as follows:

Sec. 2157.121. ACQUISITION THROUGH COMPETITIVE SEALED PROPOSAL. (a) Authorizes the comptroller or other state agency to acquire a telecommunications device, system, or service, or an automated information system by using competitive sealed proposals if the comptroller determines that competitive sealed bidding and informal competitive bidding are not practical or are disadvantageous to the state. Makes nonsubstantive changes.

(b) Requires a state agency, other than DIR under Subsection (c), to send its proposal specifications and criteria to the comptroller for approval or request the comptroller to develop the proposal specifications and criteria. Makes nonsubstantive changes.

(c) Authorizes DIR to acquire a telecommunications device, or system, or service by using competitive sealed proposals without regard to whether the comptroller makes the determination required under Subsection (a) for other state agencies. Provides that this subsection applies only to an acquisition under Subchapter H, Chapter 2054, or under Chapter 2170. Deletes existing text authorizing DIR to acquire an automated information system. Makes a nonsubstantive change.

SECTION 29. Amends Section 2157.181(a), Government Code, to authorize the comptroller, rather than the comptroller, with the concurrence of DIR, to negotiate with vendors preapproved terms and conditions to be included in contracts relating to the purchase or lease of an automated information system awarded to a vendor by a state agency, rather than the purchase or lease of a telecommunication device, system or service or an automated information system awarded to a vendor by a state agency. Makes a nonsubstantive change.

SECTION 30. Amends Section 2157.182, Government Code, as follows:

Sec. 2157.182. VALIDITY OF PREAPPROVED TERMS AND CONDITIONS; RENEGOTIATION. (a) Provides that preapproved terms and conditions to which a vender and the comptroller, rather than a vender, the comptroller, and DIR, agree are valid for two years after the date of the agreement and are required to provide that the terms and conditions be renegotiated before the end of the two years. Makes a nonsubstantive change.

(b) Requires the comptroller, rather than the comptroller and DIR jointly, to establish procedures to ensure that terms and conditions are renegotiated before they expire in a contract between the vendor and a state agency. Makes a nonsubstantive change.

SECTION 31. Amends Section 2157.184, Government Code, to require the comptroller, rather than the comptroller and DIR jointly, to establish procedures to notify state agencies and

potential vendors of the provisions of this subchapter regarding preapproved terms and conditions. Makes a nonsubstantive change.

SECTION 32. Repealers: Sections 2054.024(c) (relating to requiring the appropriate individual to submit a list to replace a board member), 2155.501(1) (defining "department"), 2155.502(e) (relating to authorizing DIR to develop a schedule of contracts for commodity items), 2157.0611 (Requirement to Evaluate Three Offers When Possible), and 2157.181(b) (relating to requiring the comptroller and DIR to agree to the wording of preapproved terms), Government Code.

SECTION 33. (a) Requires the governor, not later than September 1, 2011, to appoint the initial members of the governing board of DIR under Section 2054.021, Government Code, as amended by this Act. Requires the governor to appoint:

- (1) two members whose terms expire February 1, 2013;
- (2) two members whose terms expire February 1, 2015; and
- (3) three members whose terms expire February 1, 2017.

(b) Provides that the terms of the current members of the board expire September 1, 2011.

SECTION 34. (a) Requires the first group of ex officio members, not later than September 1, 2011, to begin serving or be appointed under Section 2054.021(c), Government Code, as amended by this Act.

(b) Requires the governor to appoint to the first group an officio member from a state agency with fewer than 100 employees under Section 2054.021(c), Government Code, as amended by this Act. Provides that when that member is appointed, the term of the executive director of TxDOT expires.

(c) Requires the commissioner of insurance and the executive commissioner of HHSC to continue to serve in the first group under Section 2054.021(c), Government Code, as amended by this Act, until February 1, 2013.

SECTION 35. (a) Defines, in this section, "department."

(b) Provides that on the effective date of this Act, the powers and duties of DIR under Section 2157.068, Government Code, or other law relating to information and communications technology cooperative contracts are transferred to the comptroller.

(c) Requires DIR to work in cooperation with and at the direction of the comptroller to facilitate the transfer described by this section.

(d) Provides that a rule, form, policy, procedure, or decision of DIR that is related to a power or duty transferred under Subsection (b) of this section continues in effect as a rule, form, policy, procedure, or decision of the comptroller until superseded by an act of the comptroller.

(e) Provides that a court case, administrative proceeding, contract negotiation, or other proceeding involving DIR that is related to a power or duty transferred under Subsection (b) of this section is transferred without change in status to the comptroller, and the comptroller assumes, without a change in status, the position of DIR in a negotiation or proceeding relating to a power or duty transferred under Subsection (b) of this section to which DIR is a party.

(f) Transfers all DIR employees who primarily perform duties related to a power or duty transferred under Subsection (b) of this section, including employees who provide administrative support for those powers or duties, to the office of the comptroller. Provides that a management employee of DIR who is transferred to the office of the

comptroller under this section does not automatically continue to hold the person's management position. Requires the person, to hold the management position on other than an interim basis, to apply for the position with the comptroller.

(g) Provides that all personal property, including records, in the custody of DIR related to a power or duty transferred under Subsection (b) of this section is transferred to and becomes the property of the comptroller.

(h) Transfers all contracts, memoranda of understanding, leases, and rights of DIR related to a power or duty transferred under Subsection (b) of this section to the comptroller.

(i) Transfers all money appropriated by the legislature to DIR related to a power or duty transferred under Subsection (b) of this section, including money for providing administrative support, to the comptroller.

SECTION 36. Prohibits the comptroller from canceling a contract transferred under Section 35 of this Act except as provided by the terms of the contract.

SECTION 37. Makes application of Sections 2054.502 and 2054.533, Government Code, as added by this Act, prospective to September 1, 2011.

SECTION 38. Effective date: September 1, 2011.