

BILL ANALYSIS

Senate Research Center

S.B. 1793
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Reciprocity: When an agency has tied bids for a contract with the state, preferences are used to break the tie. One of these preferences, reciprocity, is used when a nonresident bidder is being evaluated for the potential award of a state agency's contract. The reciprocity preference requires a state agency to apply the same preference to Texas bidders as the nonresident bidder's state. There are two conflicting sections in Government Code, Section 2252.002, related to reciprocity. This bill strikes one section in favor of the other because it adds more detailed guidance to state agencies.

TXMAS Rebates: The Statewide Procurement Division (SPD) at the comptroller of public accounts of the State of Texas (comptroller) is able to collect a rebate on Texas Multiple Award Schedule contracts (TXMAS) contracts. TXMAS contracts use existing contracts (such as those set up by the federal government) and affixes Texas terms and conditions to those agreements. If an agency uses federal funds to make a TXMAS purchase, statute requires SPD to ensure that the portion of that rebate that includes federal funds is reported to the purchasing agency as necessary. SPD does not know the funding source each agency has to make TXMAS purchases. This bill codifies agency practice of providing agencies the rate at which the rebate is assessed.

Nepotism Disclosure: Statute requires state agency purchasing personnel to sign a nepotism disclosure to participate in the development, award, or management of a contract in excess of \$25,000. For attorneys, the nepotism disclosure requirement is duplicative because they already make these disclosures in compliance with Texas State Bar's Rules of Professional Conduct (Rule 1.06(b) and (c), and comments 4, 5, 7, and 8). This bill would exempt attorneys from the nepotism disclosure requirement in Government Code, Section 2262.004 to increase efficiency in an already slow and complex system.

Travel Services: SPD develops travel services contracts for state agencies as well as manages the cooperative purchasing program. While members of the cooperative purchasing program (TX SmartBuy members) are able to purchase from a wide variety of state contracts, it is not clear in statute that these same members can purchase from SPD's travel services contracts. The authority for the development and use of statewide travel service contracts exists in another chapter of the statute from the one that authorizes other statewide contracts. This proposal would clarify in statute that TX SmartBuy members, including local governments and workforce development boards, can purchase from the statewide travel services contracts. (Original Author's/Sponsor's Statement of Intent)

S.B. 1793 amends current law relating to purchasing and contracting by governmental entities and authorizes fees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2155.510, Government Code, as follows:

Sec. 2155.510. REBATES. (a) Authorizes the comptroller of public accounts of the State of Texas (comptroller), rather than the Texas Facilities Commission (TFC), to collect a rebate from a vendor under a contract listed on a schedule developed under this subchapter (Multiple Award Contract Schedule).

(b) Requires the comptroller to notify a state agency purchasing a good or service through a contract listed on a schedule developed under this subchapter of the percentage used to calculate the rebate authorized under Subsection (a). Deletes existing text requiring TFC, if a purchase resulting in a rebate under this section is made in whole or in part with federal funds, to ensure that, to the extent the purchase was made with federal funds, the appropriate portion of the rebate is reported to the purchasing agency for reporting and reconciliation purposes with the appropriate federal funding agency.

SECTION 2. Amends Section 2171.055, Government Code, by adding Subsections (k) and (l), as follows:

(k) Authorizes an officer or employee of a local workforce development board who is engaged in official board business to participate in the comptroller's contract for travel services. Authorizes the comptroller to charge a participating board a fee not to exceed the costs incurred by the comptroller in providing services under this subsection. Requires the comptroller to periodically review the fees and adjust the fees as necessary to ensure recovery of costs incurred in providing services to a local workforce development board under this subsection. Defines "local workforce development board" for purposes of this subsection.

(l) Authorizes an officer or employee of a governmental entity who is engaged in official business of the governmental entity to participate in the comptroller's contract for travel services. Authorizes the comptroller to charge a participating governmental entity a fee not to exceed the costs incurred by the comptroller in providing services under this subsection. Requires the comptroller to periodically review the fees and adjust the fees as necessary to ensure recovery of costs incurred in providing services to governmental entities under this subsection. Provides that this subsection applies only to a governmental entity that is a party to a compact, interagency agreement, or cooperative purchasing agreement under Section 2156.181 (Interstate Compacts and Cooperative Agreements For Procurements).

SECTION 3. Reenacts Section 2252.002, Government Code, as amended by Chapters 1127 (H.B. 1050) and 1404 (H.B. 3648), Acts of the 83rd Legislature, Regular Session, 2013, and makes no further changes.

SECTION 4. Amends Section 2262.004, Government Code, by adding Subsection (e), as follows:

(e) Provides that this section (Required Nepotism Disclosure) does not apply to an attorney who:

(1) holds a license to practice law in this state; and

(2) has not been disciplined by the State Bar of Texas for a violation of the Texas Disciplinary Rules of Professional Conduct.

SECTION 5. Amends Section 44.0331(a), Education Code, to require a school district that enters into a purchasing contract valued at \$25,000 or more under Section 44.031(a)(5) (relating to all school district contracts for construction services valued at \$50,000 or more in the aggregate for each 12-month period to be made by a certain method), under Subchapter F (Cooperative Purchasing Program), Chapter 271, Local Government Code, or under any other cooperative purchasing program authorized for school districts by law to document any contract-related fee, including any management fee, paid by the district and the purpose of each fee under the

contract, rather than including any management fee, and the purpose of each fee under the contract.

SECTION 6. Effective date: September 1, 2019.