

GOVERNMENT CODE

CHAPTER 2155. PURCHASING: GENERAL RULES AND PROCEDURES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2155.001. DEFINITIONS. Except as otherwise provided by this chapter and Chapters 2156, 2157, and 2158:

- (1) "Goods" means supplies, materials, or equipment.
- (2) "Service" means the furnishing of skilled or unskilled labor or professional work, but does not include a:
 - (A) professional service subject to Subchapter A, Chapter 2254;
 - (B) service of a state agency employee;
 - (C) consulting service or service of a consultant as defined by Subchapter B, Chapter 2254; or
 - (D) service of a public utility.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 61, eff. June 19, 1997.

Sec. 2155.002. COMMISSION FOCUS ON LARGE EXPENDITURES. To the extent possible, the commission shall focus its efforts under this chapter and Chapters 2156, 2157, and 2158 on purchases and contracts that involve relatively large amounts of money.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.003. CONFLICT OF INTEREST. (a) A commission member, employee, or appointee may not:

- (1) have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state; or
- (2) in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.

(b) A commission member, employee, or appointee who violates Subsection (a)(2) is subject to dismissal.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.004. CERTAIN BIDS AND CONTRACTS PROHIBITED. (a) A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based.

(b) A bid or award subject to the requirements of this section must include the following statement:

"Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(c) If a state agency determines that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded under Subsection (a), the state agency may immediately terminate the contract without further obligation to the vendor.

(d) This section does not create a cause of action to contest a bid or award of a state contract.

(e) This section does not prohibit a bidder or contract participant from providing free technical assistance to a state agency.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1040, Sec. 62, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 56, eff. June 15, 2001.

Sec. 2155.005. COMPLIANCE WITH ANTITRUST LAWS. (a) A bidder offering to sell goods or services to the state shall certify on each bid submitted that neither the bidder, nor the person represented by the bidder, nor any person acting for the represented person has:

- (1) violated the antitrust laws codified by Chapter 15, Business & Commerce Code, or the federal antitrust laws; or
- (2) directly or indirectly communicated the bid to a competitor or other person engaged in the same line of business.

(b) The attorney general shall prepare the certification statement. The statement shall be made a part of the bid form.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. GENERAL PURCHASING REQUIREMENTS, PROCEDURES, AND PROGRAMS

Sec. 2155.061. COMMISSION PURCHASING SYSTEM. (a) The

commission shall acquire by purchase, lease, rental, or another manner all goods and services for a state agency, including a purchase that does not require a competitive bid or a spot purchase.

(b) The commission shall operate an effective and economical system for purchasing goods and services.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.062. PURCHASE METHODS. (a) In purchasing goods and services the commission may use, but is not limited to, the:

(1) contract purchase procedure;

(2) multiple award contract procedure, including under any schedules developed under Subchapter I;

(3) open market purchase procedure; or

(4) reverse auction procedure.

(b) Chapter 2156 provides additional information on purchase methods.

(c) Chapter 2157 provides additional information on purchase of automated information systems.

(d) In this subchapter, "reverse auction procedure" means:

(1) a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or

(2) a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 436, Sec. 1, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1422, Sec. 7.01, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 1013, Sec. 1, eff. Sept. 1, 2005.

Sec. 2155.063. COMPETITIVE BIDDING REQUIREMENT. Except as otherwise provided by this subtitle, a purchase of or contract for goods or services shall, whenever possible, be accomplished through competitive bidding.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.064. SCHEDULE AND BULK PURCHASING. The commission may combine orders in a system of schedule purchasing and shall attempt to benefit from bulk purchasing.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.065. CONTRACTS WITH DEPARTMENT OF CRIMINAL JUSTICE. (a) The commission is authorized to make contracts with the Texas Department of Criminal Justice for the purchase of goods and services for use by another state agency.

(b) The Texas Department of Criminal Justice shall test goods and services it sells under this section before delivery to the extent necessary to ensure quality. The department may enter into a contract with a private or public entity to assist with testing.

(c) The commission shall make awards under this section based on proposed goods and services meeting formal state specifications developed by the commission or meeting commercial specifications approved by the commission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 2, eff. Sept. 1, 1997.

Sec. 2155.066. REVIEW OF SPECIFICATIONS. The commission shall review the specifications and purchase conditions of goods or services considered for purchase.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.067. PROPRIETARY PURCHASES. (a) If, after review under Section 2155.066, the commission finds that specifications and conditions of a purchase request describe a product that is proprietary to one vendor and do not permit an equivalent product to be supplied, the commission shall require the requesting state agency to justify in writing the specifications or conditions.

(b) The agency head or the presiding officer of the agency's governing body must sign the written justification.

(c) The written justification must:

(1) explain the need for the specifications;

(2) state the reason competing products are not satisfactory; and

(3) provide other information requested by the commission.

(d) If the commission requires a resubmission with written

justification, the commission shall notify the requesting state agency of the requirement not later than the 10th day after the date of receiving the purchase request.

(e) Repealed by Acts 1997, 75th Leg., ch. 1206, Sec. 29, eff. Sept. 1, 1997.

(f) The commission shall issue an invitation to bid to vendors not later than the 20th day after the date of receiving the required written justification.

(g) Repealed by Acts 2003, 78th Leg., ch. 785, Sec. 75(2). Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 29, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 118, Sec. 1.04, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 785, Sec. 75(2), eff. Sept. 1, 2003.

Sec. 2155.068. UNIFORM STANDARDS AND SPECIFICATIONS. (a) The commission may coordinate uniform standards and specifications for goods purchased by the commission. The commission by rule may adopt appropriate standards developed by a nationally recognized standards-making association as part of its specifications and standards program.

(b) The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications.

(c) The commission shall review contracts administered by the commission to ensure that all goods and services meet contract specifications.

(d) As part of the standards and specifications program, the commission shall review contracts for opportunities to recycle waste produced at state buildings.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 3, eff. Sept. 1, 1997.

Sec. 2155.069. TESTING AND INSPECTION. (a) The commission may test and inspect goods and services purchased under a contract administered by the commission to ensure compliance with specifications.

(b) The commission may contract for testing under this section.

(c) The commission may, on request, test and inspect goods and services purchased by other state governmental entities on a cost recovery basis.

(d) The commission may also test and inspect goods and services before they are purchased. Other state agencies may test and inspect goods and services before purchase under standard industry testing methods, or they may contract for testing. The commission may inform agencies about available private testing facilities.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 4, eff. Sept. 1, 1997.

Sec. 2155.070. FAILURE TO MEET SPECIFICATIONS. (a) A state agency that determines that goods or services received under a contract administered by the commission do not meet specifications shall promptly notify the commission in writing of the reasons for the determination. The commission shall immediately make its own determination of whether the goods and services meet specifications.

(b) The commission or a state agency, including an institution of higher education, has the authority to determine that goods and services exempted from the commission's purchasing authority meet or fail to meet specifications.

(c) On determining that contract specifications or conditions have not been met, the commission shall act against the defaulting contractor, with the assistance of the attorney general as necessary.

(d) If the commission receives repeated complaints against a vendor, the commission shall remove the vendor's name and the vendor's goods and services from the commission's bidders list for not longer than one year. If complaints resume after the vendor is reinstated on the bidders list, the commission may bar the vendor from participating in state contracts for a period under Section 2155.077.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 5, eff. Sept. 1, 1997.

Sec. 2155.072. STATEWIDE OR REGIONAL SERVICES CONTRACTS;

COMMISSION STUDIES. (a) The commission annually shall select for study at least one service that is purchased by one or more state agencies. The commission shall study a selected service to determine whether the state would benefit if the service were provided to appropriate state agencies under a regional or statewide contract. The commission shall give priority to studying services for which the commission has delegated the purchasing function to many state agencies.

(b) The commission is not required to enter into a statewide or regional contract for the provision of a service to state agencies if more than five bidders are willing to provide the service to the state under a statewide or regional contract.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.073. PARTICIPATION BY SMALL BUSINESSES IN STATE PURCHASING. The commission shall foster participation of small businesses in the purchasing activities of the state by:

(1) assisting state agencies in developing procedures to ensure the inclusion of small businesses on state agency master bid lists;

(2) informing small businesses of state purchasing opportunities;

(3) assisting small businesses in complying with the procedures for bidding on state contracts;

(4) working with state and federal agencies and with private organizations in disseminating information on state purchasing procedures and the opportunities for small businesses to participate in state contracts;

(5) assisting state agencies with the development of a comprehensive list of small businesses capable of providing goods or services to the state;

(6) making recommendations to state agencies to simplify contract specifications and terms to increase the opportunities for small business participation;

(7) working with state agencies to establish a statewide policy for increasing the use of small businesses;

(8) assisting state agencies in seeking small businesses capable of supplying goods and services that the agencies require;

(9) assisting state agencies in identifying and advising small businesses on the types of goods and services needed by the agencies; and

(10) assisting state agencies in increasing the volume of business placed with small businesses.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.074. BEST VALUE STANDARD FOR PURCHASE OF GOODS OR SERVICES. (a) For a purchase of goods and services under this chapter, each state agency, including the commission, shall purchase goods and services that provide the best value for the state.

(b) In determining the best value for the state, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the commission or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including:

(1) installation costs;

(2) life cycle costs;

(3) the quality and reliability of the goods and services;

(4) the delivery terms;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;

(6) the cost of any employee training associated with a purchase;

(7) the effect of a purchase on agency productivity;

(8) the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; and

(9) other factors relevant to determining the best value for the state in the context of a particular purchase.

(c) A state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications when the agency procures through

competitive bidding goods or services with a value that exceeds \$100,000.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 14.16, eff. Sept. 1, 2001.

Sec. 2155.075. REQUIREMENT TO SPECIFY VALUE FACTORS IN REQUEST FOR BIDS OR PROPOSALS. (a) For a purchase made through competitive bidding, the commission or other state agency making the purchase must specify in the request for bids the factors other than price that the commission or agency will consider in determining which bid offers the best value for the state.

(b) For a purchase made through competitive sealed proposals, the commission or other state agency making the purchase:

(1) must specify in the request for proposals the known factors other than price that the commission or agency will consider in determining which proposal offers the best value for the state; and

(2) may concurrently inform each vendor that made a proposal on the contract of any additional factors the commission or agency will consider in determining which proposal offers the best value for the state if the commission or other agency determines after opening the proposals that additional factors not covered under Subdivision (1) are relevant in determining which proposal offers the best value for the state.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Sec. 2155.076. PROTEST PROCEDURES. (a) The commission and each state agency by rule shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the commission's rules. The rules must include standards for maintaining documentation about the purchasing process to be used in the event of a protest.

(b) A state agency that is not subject to Chapter 2001 shall provide public notice of its proposed and adopted protest rules and provide a procedure for public comment on the proposed rules.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Sec. 2155.077. BARRING VENDOR FROM PARTICIPATION IN STATE CONTRACTS. (a) The commission may bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, for:

(1) substandard performance under a contract with the state or a state agency;

(2) material misrepresentations in a bid or proposal to the state or a state agency or during the course of performing a contract with the state or a state agency;

(3) fraud; or

(4) breaching a contract with the state or a state agency.

(b) The commission shall bar a vendor from participating in state contracts under this section for a period that is commensurate with the seriousness of the vendor's action and the damage to the state's interests.

(c) The commission by rule shall:

(1) state generally the reasons for which a vendor may be barred from participating in state contracts and the periods for which the vendor may be barred; and

(2) prescribe the procedures under which the commission will determine whether and for how long a vendor will be barred.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Sec. 2155.078. TRAINING AND CERTIFICATION OF STATE AGENCY PURCHASING PERSONNEL AND VENDORS. (a) The commission shall establish and administer a system of training, continuing education, and certification for state agency purchasing personnel. The commission may establish and offer appropriate training to vendors on a cost recovery basis. The commission may adopt rules to administer this section, including rules relating to monitoring a certified purchaser's compliance with the continuing education requirements of this section.

(b) Except as provided by Subsection (n), all state agency purchasing personnel, including agencies exempted from the purchasing authority of the commission, must receive the training and continuing education to the extent required by rule of the

commission. A state agency employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the commission. The equivalent training may count, as provided by Subsection (k), toward the continuing education requirements.

(c) The commission shall set and collect a fee from state agencies that employ purchasing personnel. The commission shall set the fee in an amount that recovers the commission's costs under this section.

(d) The commission may provide training, continuing education, and certification under this section to purchasing personnel employed by a political subdivision or other public entity of the state. Political subdivision purchasing personnel may receive, but are not required to receive, the training, continuing education, or certification provided under this section. The commission shall collect the fees described by Subsection (c) for training, education, or certification under this subsection.

(e) The commission may provide training and continuing education under this section using its own personnel or through contracts with private entities. The commission may also, by agreement with a public entity, use the services of persons employed by the public entity to provide training and continuing education under this section.

(f) The commission shall provide at least three levels of training under this section.

(g) The basic training level must include an introduction to contract purchasing methods, ethical issues affecting purchasing decisions, and instruction in any other processes and issues that the commission considers appropriate for introductory purchasing training.

(h) The second training level must include advanced instruction in formal and informal bidding methods, introduction to negotiation methods, instruction in writing specifications, and instruction in any other processes and issues that the commission considers appropriate for the second level of purchasing training.

(i) The third training level must include an introduction to complex negotiations, instruction in the criteria for determining which product or service offers the best value for the state, and instruction in any other processes and issues that the commission considers appropriate for advanced purchasing training.

(j) The commission may prescribe the circumstances under which a state agency may delegate to a certified purchaser signature purchasing authority to approve purchase orders.

(k) The commission shall require a reasonable number of hours of continuing education to maintain a certification level. The commission may allow attendance at equivalent certification training recognized by the commission to count toward the required number of hours. Maintenance of the certification level may be by yearly renewal or another reasonable renewal period comparable to nationally recognized certification requirements.

(l) The commission's prerequisites for receiving a level-two purchaser certification must include completion of the basic training level, passage of a written examination, and a minimum number of years of purchasing experience prescribed by the commission.

(m) The commission's prerequisites for receiving a level-three purchaser certification must include completion of the second training level, passage of a written examination, and a minimum of three years of purchasing experience.

(n) This section does not apply to a medical and dental unit to which Section 51.9335, Education Code, applies or to an institution to which Section 73.115, Education Code, applies. Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(21), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 7.05, eff. June 18, 2003.

Sec. 2155.079. BUYING UNDER CONTRACT ESTABLISHED BY AGENCY OTHER THAN COMMISSION. (a) The commission shall 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 the commission, including as provided under Subchapter I.

(b) If commission rules allow other agencies to make

purchases under a contract entered into by an agency using delegated purchasing authority, the agency purchasing under delegated authority may offer the goods or services available under the contract to other agencies only if the agency first:

(1) establishes that the goods or services being offered under its contract are not available under a contract administered by the commission; and

(2) informs the commission of the terms of the contract and the capabilities of the vendor.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 2.02, eff. Sept. 1, 2001.

Sec. 2155.080. ADVISORY COMMITTEE ON PROCUREMENT. (a) The commission may establish an advisory committee on procurement. The purpose of the committee is to represent before the commission the state agency purchasing community and the political subdivisions that use the commission's purchasing services.

(b) The committee is composed of officers or employees from the commission, from state agencies, including institutions of higher education, and from political subdivisions who are invited by the commission to serve on the committee. The commission shall invite officers and employees who are experienced in public purchasing, in public finance, or who possess other appropriate expertise to serve on the committee. Service on the committee is an additional duty of the member's public office or employment. Article 6252-33, Revised Statutes, does not apply to the size or composition of the committee. The commission shall set staggered terms for the members of the committee.

(c) The committee may establish its own rules of operation.

(d) The committee shall recommend improvements in commission or state agency purchasing practices to the commission. The committee shall review and comment on findings and recommendations related to purchasing that are made by state agency internal auditors or by the state auditor.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Sec. 2155.081. VENDOR ADVISORY COMMITTEE. (a) The commission may establish a vendor advisory committee. The purpose of the committee is to represent before the commission the vendor community, to provide information to vendors, and to obtain vendor input on state procurement practices.

(b) The committee is composed of employees from the commission and vendors who have done business with the state who are invited by the commission to serve on the committee. The commission shall invite a cross-section of the vendor community to serve on the committee, inviting both large and small businesses and vendors who provide a variety of different goods and services to the state. Article 6252-33, Revised Statutes, does not apply to the size or composition of the committee. The commission shall set staggered terms for the members of the committee.

(c) The committee may establish its own rules of operation but shall post notice of and hold its meetings in accordance with Chapter 551.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Sec. 2155.082. PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS. (a) The commission may provide open market purchasing services on a fee-for-service basis for state agency purchases that are delegated to an agency under Section 2155.131, 2155.132, 2155.133, or 2157.121 or that are exempted from the purchasing authority of the commission. The commission shall set the fees in an amount that recovers the commission's costs in providing the services.

(b) The commission shall publish a schedule of its fees for services that are subject to this section. The schedule must include the commission's fees for:

(1) reviewing bid and contract documents for clarity, completeness, and compliance with laws and rules;

(2) developing and transmitting invitations to bid;

(3) receiving and tabulating bids;

(4) evaluating and determining which bidder offers the best value to the state;

(5) creating and transmitting purchase orders; and

(6) participating in agencies' request for proposal processes.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 6, eff. Sept. 1, 1997.

Sec. 2155.083. STATE BUSINESS DAILY; NOTICE REGARDING

PROCUREMENTS EXCEEDING \$25,000. (a) Except as provided by Subsection (n), this section applies to each state agency making a procurement that will exceed \$25,000 in value, without regard to the source of funds the agency will use for the procurement, including a procurement that:

(1) is otherwise exempt from the commission's purchasing authority or the application of this subtitle;
(2) is made under delegated purchasing authority;
(3) is related to a construction project; or
(4) is a procurement of professional or consulting services.

(b) Repealed by Acts 2001, 77th Leg., ch. 1422, Sec. 7.07, eff. September 1, 2001.

(c) The commission each business day shall produce and post a business daily in an electronic format. The commission shall post in the business daily information as prescribed by this section about each state agency procurement that will exceed \$25,000 in value. The commission shall also post in the business daily other information relating to the business activity of the state that the commission considers to be of interest to the public.

(d) The commission shall make the business daily available on the Internet. Each state agency shall cooperate with the commission in making the electronic business daily available.

(e) To accommodate businesses that do not have the technical means to access the business daily, governmental and nongovernmental entities such as public libraries, chambers of commerce, trade associations, small business development centers, economic development departments of local governments, and state agencies may provide public access to the business daily. A governmental entity may recover the direct cost of providing the public access only by charging a fee for downloading procurement notices and bid or proposal solicitation packages posted in the business daily. A nongovernmental entity may use information posted in the business daily in providing a service that is more than only the downloading of information from the business daily, including a service by which appropriate bidders or offerors are matched with information that is relevant to those bidders or offerors, and may charge a lawful fee that the entity considers appropriate for the service.

(f) The commission and other state agencies may not charge a fee designed to recover the cost of preparing and gathering the information that is published in the business daily. These costs are considered part of a procuring agency's responsibility to publicly inform potential bidders or offerors of its procurement opportunities.

(g) A state agency shall post in the business daily either the entire bid or proposal solicitation package or a notice that includes all information necessary to make a successful bid, proposal, or other applicable expression of interest for the procurement contract, including at a minimum the following information for each procurement that the state agency will make that is estimated to exceed \$25,000 in value:

(1) a brief description of the goods or services to be procured and any applicable state product or service codes for the goods and services;

(2) the last date on which bids, proposals, or other applicable expressions of interest will be accepted;

(3) the estimated quantity of goods or services to be procured;

(4) if applicable, the previous price paid by the state agency for the same or similar goods or services;

(5) the estimated date on which the goods or services to be procured will be needed; and

(6) the name, business mailing address, and business telephone number of the state agency employee a person may contact to inquire about all necessary information related to making a bid or proposal or other applicable expression of interest for the procurement contract.

(h) The state agency shall continue to either:

(1) post notice of the procurement in accordance with Subsection (g) until the latest of 21 calendar days after the date the notice is first posted; the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; or the date the state agency decides not to make the procurement; or

(2) post the entire bid or proposal solicitation package in accordance with Subsection (g) until the latest of 14 calendar days after the date the bid or proposal solicitation package is first posted; the date the state agency will no longer accept bids, proposals, or other applicable expressions of interest for the procurement; or the date the state agency decides not to make the procurement.

(i) A state agency may not award the procurement contract and shall continue to accept bids or proposals or other applicable expressions of interest for the procurement contract for at least 21 calendar days after the date the state agency first posted notice of the procurement in accordance with Subsection (g) or 14 calendar days after the date the state agency first posted the entire bid or proposal solicitation package in accordance with Subsection (g), as applicable. The minimum time for posting required by this subsection and Subsection (h) does not apply in an emergency requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.

(j) A contract or procurement award made by a state agency that violates the applicable minimum time for posting required by Subsections (h) and (i) is void.

(k) Each state agency that will award a procurement contract estimated to exceed \$25,000 in value shall send to the commission:

(1) the information the commission requires for posting in the state business daily under this section; and

(2) a notice when the procurement contract has been awarded or when the state agency has decided to not make the procurement.

(1) Repealed by Acts 2003, 78th Leg., ch. 785, Sec. 75(2).

(m) The requirements of this section are in addition to the requirements of other law relating to the solicitation of bids, proposals, or expressions of interest for a procurement by a state agency. This section does not affect whether a state agency is required to award a procurement contract through competitive bidding, competitive sealed proposals, or another method.

(n) This section does not apply to a state agency to which Section 51.9335 or 73.115, Education Code, applies.

Added by Acts 1997, 75th Leg., ch. 508, Sec. 1, eff. June 1, 1998. Renumbered from Sec. 2155.074 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(57), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 2.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1422, Sec. 7.02, 7.07, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 785, Sec. 75(2), eff. Sept. 1, 2003.

Sec. 2155.084. PURCHASES FROM FEDERAL GOVERNMENT. (a) The commission or the governing body of an institution of higher education may negotiate purchases of goods of any kind needed by a state agency or the institution of higher education with the appropriate agency of the federal government. The governing body of an institution of higher education may act under this section either directly or through the commission or another state agency.

(b) The price of goods that are purchased from the federal government may not exceed the fair market value of the goods.

(c) In negotiating purchases of goods from the federal government under this section or under Subchapter G, Chapter 2175, the commission or the governing body of the institution of higher education may waive the requirement of a bidder's bond and performance bond that otherwise would be required.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.16, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 816, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 9.020(h), eff. Sept. 1, 2003.

Sec. 2155.085. REVERSE AUCTION PROCEDURE. (a) The commission shall:

(1) purchase goods or services using the reverse auction procedure whenever:

(A) the procedure provides the best value to the state; or

(B) all purchasing methods provide equal value to the state;

(2) offer historically underutilized businesses assistance and training relating to the reverse auction procedure; and

(3) advise historically underutilized businesses on contracts available using the reverse auction procedure.

(b) The commission shall set a goal of purchasing at least 20 percent of the dollar value of goods or services purchased by the commission using the reverse auction procedure.

Text of subsec. (c) effective until September 1, 2007

(c) On or before December 1, 2006, the commission shall report to the governor, the lieutenant governor, the speaker of the house of representatives, the chair of the Senate Finance Committee, and the chair of the House Appropriations Committee on the effectiveness of using the reverse auction procedure to purchase goods and services, including any cost savings realized by the state from using the procedure. This subsection expires September 1, 2007.

Added by Acts 2005, 79th Leg., ch. 1013, Sec. 2, eff. Sept. 1, 2005.

SUBCHAPTER C. DELEGATIONS OF AND EXCLUSIONS FROM COMMISSION'S
PURCHASING AUTHORITY AND CERTAIN EXEMPTIONS FROM COMPETITIVE
BIDDING

Sec. 2155.131. DELEGATION OF AUTHORITY TO STATE AGENCIES. The commission may delegate purchasing functions to a state agency.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.132. PURCHASES LESS THAN SPECIFIED MONETARY AMOUNT. (a) A state agency is delegated the authority to purchase goods and services if the purchase does not exceed \$15,000. If the commission determines that a state agency has not followed the commission's rules or the laws related to the delegated purchases, the commission shall report its determination to the members of the state agency's governing body and to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board.

(b) The commission by rule may delegate to a state agency the authority to purchase goods and services if the purchase exceeds \$15,000. In delegating purchasing authority under this subsection or Section 2155.131, the commission shall consider factors relevant to a state agency's ability to perform purchasing functions, including:

(1) the capabilities of the agency's purchasing staff and the existence of automated purchasing tools at the agency;

(2) the certification levels held by the agency's purchasing personnel;

(3) the results of the commission's procurement review audits of an agency's purchasing practices; and

(4) whether the agency has adopted and published protest procedures consistent with those of the commission as part of its purchasing rules.

(c) The commission shall monitor the purchasing practices of state agencies that are making delegated purchases under Subsection (b) or Section 2155.131 to ensure that the certification levels of the agency's purchasing personnel and the quality of the agency's purchasing practices continue to warrant the amount of delegated authority provided by the commission to the agency. The commission may revoke for cause all or part of the purchasing authority that the commission delegated to a state agency. The commission shall adopt rules to administer this subsection.

(d) The commission by rule:

(1) shall prescribe procedures for a delegated purchase; and

(2) shall prescribe procedures by which agencies may use the commission's services for delegated purchases, in accordance with Section 2155.082.

(e) Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed \$2,000, or a greater amount prescribed by commission rule.

(f) Goods purchased under this section may not include:

(1) an item for which a contract has been awarded under the contract purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;

(2) an item required by statute to be purchased from a particular source; or

(3) a scheduled item that has been designated for purchase by the commission.

(g) A large purchase may not be divided into small lot purchases to meet the dollar limits prescribed by this section. The commission may not require that unrelated purchases be combined into one purchase order to exceed the dollar limits prescribed by this section.

(h) A state agency making a purchase under this section for which competitive bidding is required must:

(1) 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; and

(2) comply with Subchapter E.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1499, Sec. 1.17, eff. Sept. 1, 1999.

Sec. 2155.136. PURCHASE OF CERTAIN MEDICAL EQUIPMENT BY MEDICAL OR DENTAL UNIT. (a) A medical or dental unit listed under Section 61.003, Education Code, may purchase through the use of competitive sealed proposals:

(1) prototypes of medical equipment not yet available on the market;

(2) medical equipment so new to the market that its benefits are not fully known; and

(3) major medical equipment that is so technically complex that development of specifications for competitive bidding is not feasible.

(b) To make a purchase under this section, the medical or dental unit must:

(1) follow the competitive sealed proposals procedures under Subchapter C, Chapter 2157, and commission rules on the use of competitive sealed proposals; and

(2) submit to the commission a written finding that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state for the proposed acquisition.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.137. EMERGENCY PURCHASES. (a) The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of an emergency purchase.

(b) The provisions of Section 2161.181 relating to historically underutilized businesses apply to an emergency purchase made under this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.138. EXEMPTION OF GOODS OR SERVICES OF BLIND OR VISUALLY IMPAIRED PERSONS. (a) The competitive bidding provisions of this chapter do not apply to a state purchase of goods or services that:

(1) are made or provided by blind or visually impaired persons;

(2) are offered for sale to a state agency through efforts made under law by the Texas Council on Purchasing from People with Disabilities ;

(3) meet state specifications for quantity, quality, delivery, and life cycle costs; and

(4) cost not more than the fair market price of similar items.

(b) The council shall test the goods and services to the extent necessary to ensure quality. The council may enter into a contract with a private or public entity to assist with testing.

(c) The commission shall make awards under this section based on proposed goods and services meeting formal state specifications developed by the commission or meeting commercial specifications approved by the commission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 9, eff. Sept. 1, 1997.

Sec. 2155.139. EXEMPTION FOR CERTAIN LIBRARIES AND HEALTH FACILITIES. (a) Section 2155.061 does not apply to an acquisition if:

(1) the acquisition is for a:

(A) library operated as a part of a university system or institution of higher education;

(B) library or resource-sharing program operated by the Texas State Library and Archives Commission; or

(C) state-owned hospital or clinic; and

(2) the goods or services acquired are:

(A) serial and journal subscriptions, including electronic databases and information products;

(B) library materials, including books not available under a statewide contract and papers;

(C) library services, including binding services not available under a statewide contract; or

(D) library equipment and supplies.

(b) Section 2155.061 does not apply to a purchase of goods by a state-owned hospital or clinic through a group purchasing program that offers purchasing services at discount prices to two or more hospital or clinic facilities if the chief executive officer of the hospital or clinic or the officer's designee certifies that the purchase of the particular goods through the group purchasing program is the most cost-effective method of purchasing available.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 91, Sec. 2, eff. Sept. 1, 1999.

Sec. 2155.140. PURCHASE FROM GIFT OR GRANT NOT WITHIN COMMISSION'S PURCHASING AUTHORITY. The commission's authority does not apply to a purchase of goods or services from a gift or grant, including an industrial or federal grant or contract in support of research.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.141. PURCHASES FOR AUXILIARY ENTERPRISE NOT WITHIN COMMISSION'S PURCHASING AUTHORITY. The commission's authority does not extend to a purchase of goods and services for an auxiliary enterprise.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.06, eff. June 18, 2003.

Sec. 2155.143. PURCHASE OF CARE AND TREATMENT SERVICES BY TEXAS YOUTH COMMISSION. (a) The Texas Youth Commission may purchase care and treatment services, including educational services, for its wards.

(b) The Texas Youth Commission shall:

(1) negotiate purchases under this section to achieve fair and reasonable prices at rates that do not exceed any maximum provided by law; and

(2) select service providers according to each provider's qualifications and demonstrated competence.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.144. PROCUREMENTS BY HEALTH AND HUMAN SERVICES AGENCIES. (a) This section applies only to the Health and Human Services Commission and to each health and human services agency.

(b) An agency to which this section applies is delegated the authority to procure its goods and services, except as provided by this section.

(b-1) An agency to which this section applies is not delegated the authority to procure common commodities or services:

(1) including goods and services acquired for direct consumption or use by the agency in the day-to-day support of the agency's administrative operations, such as office supplies and equipment, building maintenance and cleaning services, or temporary employment services; and

(2) not including consulting services, professional services, health care services, information resources technology, goods or services acquired for the benefit or on behalf of clients of programs operated by the agency, procurements specifically authorized or delegated to the agency by statute, or the contracting out of agency purchasing functions or other administrative or program functions.

(c) An agency to which this section applies shall acquire goods or services by any procurement method approved by the Health and Human Services Commission that provides the best value to the agency. The agency shall document that it considered all relevant factors under Subsection (d) in making the acquisition.

(d) Subject to Subsection (e), the agency may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on agency productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency in the context of a particular acquisition.

(e) Repealed by Acts 2003, 78th Leg., ch. 785, Sec. 75(2).

(f) The state auditor may audit the agency's acquisitions of goods and services before or after a warrant is issued to pay for an acquisition.

(g) The agency may adopt rules and procedures for the acquisition of goods and services under this section.

(h) The Health and Human Services Commission shall adopt rules and procedures for the acquisition of goods and services under this section that apply to all health and human services agencies, including rules adopted with the commission's assistance that allow an agency to make purchases through a group purchasing program except when a better value is available through another procurement method. The rules of the health and human services agencies must be consistent with the rules of the Health and Human Services Commission.

(i) Subject to Section 531.0055(c), the Health and Human Services Commission shall develop a single statewide risk analysis procedure. Each health and human services agency shall comply with the procedure. The procedure must provide for:

(1) assessing the risk of fraud, abuse, or waste in health and human services agencies contractor selection processes, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which health and human services agencies contract;

(2) identifying contracts that require enhanced contract monitoring; and

(3) coordinating contract monitoring efforts among health and human services agencies.

(j) Subject to Section 531.0055(c), the Health and Human Services Commission shall publish a contract management handbook that establishes consistent contracting policies and practices to be followed by health and human services agencies. The handbook may include standard contract provisions and formats for health and human services agencies to incorporate as applicable in their contracts.

(k) Subject to Section 531.0055(c), the Health and Human Services Commission, in cooperation with the comptroller, shall establish a central contract management database that identifies each contract made with a health and human services agency. The commission may use the database to monitor health and human services agency contracts, and health and human services agencies may use the database in contracting. A state agency shall send to the commission in the manner prescribed by the commission the information the agency possesses that the commission requires for inclusion in the database.

(l) The Health and Human Services Commission shall coordinate the procurement practices of all health and human services agencies and encourage those agencies to use efficient procurement practices such as the use of a group purchasing program, combining maintenance contracts into one contract, and obtaining prompt payment discounts. In implementing this duty, the Health and Human Services Commission may review the procurement and rate-setting procedures of each health and human services agency to ensure that amounts paid to contractors are consistent and represent the best value for the state. The Health and Human Services Commission may disapprove a procurement and rate-setting procedure of a health and human services agency. A health and human services agency may not use a procurement or rate-setting procedure that has been disapproved by the commission. The Health and Human Services Commission may transfer the procurement functions of a health and human services agency to another appropriate state agency if it determines that transferring those functions would be

advantageous to the state. Other state agencies and institutions with experience in acquiring goods and services using the procedures allowed under Subsections (c) and (d) shall on request assist the Health and Human Services Commission to perform its functions under this section.

(m) Subject to Section 531.0055(c), the Health and Human Services Commission shall develop and implement a statewide plan to ensure that each entity that contracts with a health and human services agency and any subcontractor of the entity complies with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(n) To the extent of any conflict, this section prevails over any other state law relating to the procurement of goods and services except a law relating to contracting with historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities.

(o) The Health and Human Services Commission shall prepare an annual report that assesses the compliance of each health and human services agency with the requirements imposed under this section and that identifies any material risk to the state or to the clients of the health and human services agency that results from the agency's procurement and contracting practices. The commission may request the assistance of the state auditor in preparing the report. The state auditor shall conduct reviews as necessary to assess compliance under this subsection as determined by the Legislative Audit Committee. The commission shall file the report with the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each year.

(p) In this section, "health and human services agency" has the meaning assigned by Section 531.001.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1460, Sec. 3.11, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 7.07, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 785, Sec. 75(2), eff. Sept. 1, 2003.

Sec. 2155.1441. HEALTH CARE PURCHASING. (a) A state agency shall acquire goods and services used in support of the agency's health care programs by the method that provides the greatest volume discount for the goods or services, including group purchasing programs, state agency purchasing consortiums, or competitive sealed proposals.

(b) A state agency may contract with a medical and dental unit to have the unit perform all or part of the purchasing functions of the agency under this section or to participate in a state agency purchasing consortium or group purchasing program with the medical and dental unit.

(c) If a state agency determines that it should consider factors in addition to volume discounts in acquiring a particular good or service, the agency may acquire the good or service by the most cost-effective method of acquisition available, including group purchasing programs, state agency purchasing consortiums, or competitive sealed proposals.

(d) A state agency shall provide appropriate information to the commission concerning acquisitions made by the agency under this section, but the commission's authority under this chapter and Chapters 2156, 2157, and 2158 does not extend to the acquisition of goods and services made under this section.

(e) The central administration of The University of Texas System shall develop methods for sharing information concerning acquisitions made under this section, including methods for sharing the information electronically. Electronic sharing may include posting information on acquisitions on the comptroller's state government electronic bulletin board.

(f) A state agency shall collect and maintain information as specified by the central administration of The University of Texas System relating to the agency's acquisitions under this section. The central administration of The University of Texas System is entitled to access to all information collected and maintained under this section.

(g) In this section:

(1) "Goods" means material, supplies, equipment, or other tangible items.

(2) "Group purchasing program" means a program administered by a business entity that offers discount prices on goods and services to participants in the program.

(3) "Health care program" means a program or activity

administered or funded by a state agency to provide health care services, research, education, or goods.

(4) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.

(5) "State agency purchasing consortium" means a group of three or more state agencies acting under a written agreement to receive discount prices from vendors based on volume purchases of goods and services.

(h) This section does not apply to the state Medicaid program.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 17.01(a), eff. Sept. 1, 1997. Renumbered from Sec. 2155.144 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(58), eff. Sept. 1, 1999.

Sec. 2155.1442. FOSTER CARE RESIDENTIAL CONTRACT MANAGEMENT. (a) Subject to Subsection (e), the state auditor shall conduct a management review of the residential contract management employees of the Health and Human Services Commission and the Department of Family and Protective Services and make recommendations regarding the organization of, and skills and educational requirements for, those employees. The state auditor shall also make recommendations regarding the implementation of financial accountability provisions and processes to ensure effective and efficient expenditure of state and other contract funds. The state auditor shall report annually to the governor, the lieutenant governor, the speaker of the house of representatives, and the comptroller on the auditor's recommendations and the commission's and department's implementation of each recommendation.

(b) The Health and Human Services Commission shall contract with the state auditor to perform on-site financial audits of selected residential contractors as necessary. The state auditor, in consultation with the commission, shall select the contractors to audit based on the contract's risk assessment rating, allegations of fraud or misuse of state or other contract funds, or other appropriate audit selection criteria. The residential contractors selected to be audited must be included in the audit plan and approved by the legislative audit committee under Section 321.013.

(c) The Department of Family and Protective Services shall require that all files related to contracts for residential care of foster children:

(1) be complete and accurately reflect the contractor's actual updated contract performance; and

(2) be maintained in accordance with the department's record retention procedures and made available to the state auditor when requested.

(d) Subject to the availability of funds appropriated for the purpose, the Department of Family and Protective Services may develop an Internet-based system to enable residential contractors to review their reimbursement accounts or other pertinent financial data and reconcile their accounts.

(e) Work performed under Subsections (a) and (b) by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c). Added by Acts 2005, 79th Leg., ch. 268, Sec. 1.72(a), eff. Sept. 1, 2005.

Sec. 2155.145. CERTAIN PURCHASES BY TEXAS NATURAL RESOURCE CONSERVATION COMMISSION. The Texas Natural Resource Conservation Commission is delegated all purchasing functions relating to the administration of Subchapters F and I, Chapter 361, Health and Safety Code, subject to the rules adopted by the commission under Section 2155.132(c).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 16, eff. Sept. 1, 1997.

Sec. 2155.146. CERTAIN PURCHASES BY EMPLOYEES RETIREMENT SYSTEM OF TEXAS. (a) The Employees Retirement System of Texas is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the retirement system determines relates to the fiduciary duties of the retirement system.

(b) The Employees Retirement System of Texas shall acquire goods or services by any procurement method approved by the board of trustees of the retirement system that provides the best value to the retirement system. The retirement system shall consider the best value standards enumerated in Section 2155.074, as added by Chapter 1206, Acts of the 75th Legislature, Regular Session, 1997.

(c) The commission shall procure goods or services for the Employees Retirement System of Texas at the request of the retirement system, and the retirement system may use the services of the commission in procuring goods or services.
Added by Acts 1999, 76th Leg., ch. 1541, Sec. 55, eff. Sept. 1, 1999.

Sec. 2155.147. CERTAIN PURCHASES BY GENERAL LAND OFFICE. (a) The General Land Office is delegated all purchasing functions relating to purchases under Section 33.603, Natural Resources Code, including coastal erosion studies, demonstration studies, and response projects.

(b) The General Land Office shall acquire goods and services by any procurement method that provides the best value to the land office. The land office shall consider the best value standards provided by Section 2155.074.

(c) The commission shall procure goods and services for the General Land Office at the request of the land office, and the land office may use the services of the commission in procuring goods and services.

Added by Acts 2001, 77th Leg., ch. 1076, Sec. 1, eff. June 15, 2001.

Sec. 2155.148. CERTAIN PURCHASES FOR TEXAS STATEWIDE EMERGENCY SERVICES PERSONNEL RETIREMENT FUND. (a) The fire fighters' pension commissioner is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the state board of trustees of the Texas statewide emergency services personnel retirement fund determines relates to the fiduciary duties of the retirement fund.

(b) The fire fighters' pension commissioner shall acquire goods or services by any procurement method approved by the state board of trustees of the Texas statewide emergency services personnel retirement fund that provides the best value to the retirement fund. The fire fighters' pension commissioner shall consider the best value standards provided by Section 2155.074.

(c) The commission shall procure goods or services for the fire fighters' pension commissioner at the request of the pension commissioner, and the pension commissioner may use the services of the commission in procuring goods or services.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.08, eff. June 18, 2003.

Sec. 2155.149. CERTAIN PURCHASES BY VETERANS' LAND BOARD.

Text of section as added by Acts 2005, 79th Leg., ch. 17, Sec. 1

(a) The Veterans' Land Board is delegated all purchasing functions relating to veterans homes and veterans cemeteries.

(b) The Veterans' Land Board shall acquire goods and services under Subsection (a) by any procurement method that provides the best value to the Veterans' Land Board. The Veterans' Land Board shall consider the best value standards listed in Section 2155.074.

(c) At the request of the Veterans' Land Board, the commission shall procure goods and services described by Subsection (a) for the Veterans' Land Board. The Veterans' Land Board may use the services of the commission in procuring goods and services described by Subsection (a).

Added by Acts 2005, 79th Leg., ch. 17, Sec. 1, eff. Sept. 1, 2005.

For text of section as added by Acts 2005, 79th Leg., ch. 514, Sec. 1, see Sec. 2155.149, post.

Sec. 2155.149. CERTAIN PURCHASES BY RAILROAD COMMISSION OF TEXAS.

Text of section as added by Acts 2005, 79th Leg., ch. 514, Sec. 1

(a) The Railroad Commission of Texas is delegated all purchasing functions relating to purchases under:

(1) Chapter 89, Natural Resources Code; or

(2) Sections 91.111 and 91.112, Natural Resources Code.

(b) The Railroad Commission of Texas shall acquire goods and services, under Subsection (a), by any procurement method that provides the best value to the railroad commission. The railroad commission shall consider the best value standards listed in Section 2155.074.

(c) The commission shall procure goods and services, under Subsection (a), for the Railroad Commission of Texas at the request of the railroad commission, and the railroad commission may use the services of the commission in procuring goods and services.

Added by Acts 2005, 79th Leg., ch. 514, Sec. 1, eff. Sept. 1, 2005.

For text of section as added by Acts 2005, 79th Leg., ch. 17, Sec. 1, see Sec. 2155.149, ante.

SUBCHAPTER D. EXTENSION OF COMMISSION PURCHASING SERVICES TO OTHER ENTITIES

Sec. 2155.202. MENTAL HEALTH AND MENTAL RETARDATION COMMUNITY CENTERS; ASSISTANCE ORGANIZATIONS. A community center for mental health and mental retardation services that receives state grants-in-aid under Subchapter B, Chapter 534, Health and Safety Code, and an assistance organization as defined by Section 2175.001 that receives state funds may purchase goods and services through the commission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.203. PURCHASES BY LEGISLATURE AND LEGISLATIVE AGENCIES. A house of the legislature, or an agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the state auditor's office, and the Legislative Reference Library, may use the commission's purchasing services for purchasing goods and services, including items covered by Section 21, Article XVI, Texas Constitution.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.204. LOCAL GOVERNMENT PURCHASING PROGRAM. The commission's provision of purchasing services for local governments is governed by Subchapter D, Chapter 271, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER E. MASTER BIDDERS LIST

Sec. 2155.261. APPLICABILITY. This subchapter:

(1) applies to a purchase or other acquisition under this chapter or Chapters 2156, 2157, and 2158 for which competitive bidding or competitive sealed proposals are required;

(2) applies to a state agency that makes a purchase or other acquisition under this chapter or Chapters 2156, 2157, and 2158, including the commission and an agency that makes an acquisition under Section 2155.131 or 2155.133; and

(3) does not apply to a purchase or other acquisition made by the commission under Subchapter A, Chapter 2156.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.262. UNIFORM REGISTRATION FORM. (a) The commission shall develop a uniform registration form for applying to do business with the commission or with another state agency.

(b) The commission and each state agency shall make the form available to an applicant.

(c) The form must include an application for:

(1) certification as a historically underutilized business;

(2) a payee identification number for use by the comptroller; and

(3) placement on the commission's master bidders list.

(d) A state agency shall submit to the commission each uniform registration form that it receives.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 426, Sec. 2, eff. June 18, 1999.

Sec. 2155.263. COMMISSION TO MAINTAIN CENTRALIZED MASTER BIDDERS LIST. (a) The commission shall maintain a centralized master bidders list and register on the list the name and address of each vendor that applies for registration under rules adopted under this subchapter. The commission may include other relevant vendor information on the list.

(b) The commission shall maintain the centralized master bidders list in a manner that facilitates a state agency's solicitation of vendors that serve the agency's geographic area.

(c) The centralized master bidders list shall be used for all available procurement processes authorized by this subtitle and shall also be used to the fullest extent possible by state agencies that make purchases exempt from the commission's purchasing authority.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 3, eff. June 18, 1999.

Sec. 2155.264. AGENCY SOLICITATION OF BIDS OR PROPOSALS FOR ACQUISITION OVER \$15,000. A state agency that proposes to make a purchase or other acquisition that will cost more than \$15,000 shall solicit bids or proposals from each eligible vendor on the master bidders list that serves the agency's geographic region. A

state agency may also solicit bids or proposals through the use of on-line electronic transmission or the electronic commerce network.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 494, Sec. 2, eff. Sept. 1, 1997.

Sec. 2155.265. ACCESS TO MASTER BIDDERS LIST. (a) The commission shall make the master bidders list available to each state agency that makes a purchase or other acquisition to which this subchapter applies.

(b) The commission shall make the list available either electronically or in another form, depending on each state agency's needs.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.266. REGISTRATION AND RENEWAL FEE. (a) The commission may charge a person applying for registration on the master bidders list a registration fee and may charge a registrant a biennial renewal fee in an amount designed to recover the commission's costs in:

(1) making and maintaining the master bidders list; and

(2) soliciting bids or proposals under this subchapter.

(b) The commission shall set the amount of the fees by rule. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 4, eff. June 18, 1999.

Sec. 2155.267. COMMISSION RULES AND PROCEDURES REGARDING MASTER BIDDERS LIST. (a) The commission shall adopt procedures for:

(1) making and maintaining the master bidders list; and

(2) removing an inactive vendor from the list.

(b) The commission shall establish by rule a vendor classification process under which only a vendor able to make a bid or proposal on a particular purchase or other acquisition may be solicited under this subchapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.268. USE OF STATE AGENCY BIDDERS LIST. (a) A state agency may not maintain and use its own bidders list. The prohibition of this subsection does not apply to the Texas Department of Transportation.

(b) A state agency may supplement the bidders list with its own list of historically underutilized businesses if it determines that the supplementation will increase the number of historically underutilized businesses that submit bids.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 17, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1499, Sec. 1.18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 118, Sec. 1.05, eff. Sept. 1, 2001.

Sec. 2155.269. WAIVER. The commission by rule may establish a process under which the requirement for soliciting bids or proposals from eligible vendors on a bidders list may be waived for an appropriate state agency or an appropriate purchase or other acquisition under circumstances in which the requirement is not warranted.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.270. AGENCY ASSISTANCE WITH BIDDERS LIST ISSUES. The commission may assist a state agency with issues relating to a bidders list.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. INSPECTION AND CERTIFICATION OF GOODS OR SERVICES; AUDITS

Sec. 2155.321. DEFINITIONS. In this subchapter:

(1) "Financial information" means information that the comptroller determines is necessary to audit a claim under Chapter 403.

(2) "Purchase information" means information that the commission determines is necessary to audit a purchase under this subchapter.

(3) "Service" means the furnishing of skilled or unskilled labor or professional work but does not include the service of a state agency employee.

(4) "State agency" has the meaning assigned by Section

2103.001.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 62, eff. June 19, 1997.

Sec. 2155.322. INSPECTION AND CERTIFICATION. (a) A state agency shall:

(1) inspect and evaluate at the time of receipt all goods or services that the agency receives to determine whether the goods or services comply with the contract under which they were purchased; and

(2) certify, if true, that the goods or services comply with contract requirements and that the invoice for them is correct.

(b) If state law requires that a payment for the goods or services be made on a warrant drawn or an electronic funds transfer initiated by the comptroller or a state agency with delegated authority under Section 403.060, promptly after the later of the receipt of the invoice or the receipt of the goods or services, the agency shall send to the comptroller the certification, together with the financial information and purchase information provided by the invoice and purchase voucher, on a form or in the manner agreed to by the comptroller and the commission.

(c) The commission by rule may require that purchase information be sent directly to the commission in circumstances under which the commission considers it necessary.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 63, eff. June 19, 1997.

Sec. 2155.323. COMPTROLLER AUDIT; TRANSMISSION OF PURCHASE INFORMATION TO COMMISSION. (a) On receipt of a certification, financial information, and purchase information from a state agency as required by this subchapter, the comptroller shall audit the financial information under Chapter 403.

(b) If the comptroller approves the financial information, the comptroller shall determine whether commission rules require the commission to audit the purchase information. If a commission audit is required, the comptroller shall promptly send the certification and purchase information to the commission using the method and format agreed to by the comptroller and the commission.

(c) The purchase information sent to the commission must include the:

- (1) agency number;
- (2) agency requisition number;
- (3) agency voucher number;
- (4) voucher amount;
- (5) fiscal year in which the purchase is made;
- (6) object code; and
- (7) vendor identification number.

(d) In adopting rules, the commission may determine the types of purchases for which a commission audit is required.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.324. COMMISSION AUDIT. (a) Not later than the eighth day after the date the commission receives the certification and purchase information required by this subchapter from the comptroller, the commission shall audit the information for compliance with applicable purchasing statutes and commission rules.

(b) The commission may determine the auditing method used under this section, including stratified or statistical sampling techniques.

(c) The commission shall notify the comptroller of the results of the commission's audit, using the method and format agreed to by the commission and the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.325. COMMISSION AUDIT AFTER ISSUANCE OF WARRANT. (a) The commission may audit purchase information after a warrant has been issued if the audit will expedite the payment process.

(b) For audits under this section, the commission by rule shall:

(1) determine the types of purchases that will be audited after a warrant is issued; and

(2) specify the purchase information that a state agency must send to the comptroller or the commission before a warrant is issued.

(c) For purchases audited after a warrant is issued, the comptroller shall send the certification and purchase information received by the comptroller under Section 2155.322(b) to the commission under commission rules.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 64, eff. June 19, 1997.

Sec. 2155.326. UPDATE OF COMMISSION FILES AND RECORDS. To enable the commission to update periodically computer records and close purchase order files, the comptroller shall, on request, furnish the commission with information detailing all vouchers paid under this subchapter and Section 2155.132.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.327. INTERAGENCY PURCHASES AND TRANSACTIONS. This subchapter does not apply to an interagency purchase or transaction. An interagency purchase or transaction must be accomplished on a special voucher or electronically as prescribed by the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER G. PAYMENT PROVISIONS

Sec. 2155.381. INVOICE. (a) The contractor or seller of goods or services contracted for by the commission shall submit an invoice to the ordering agency at the address shown on the purchase order.

(b) The invoice shall be prepared and submitted as provided by commission rule.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.382. PAYMENT BY WARRANT. (a) After the comptroller and the commission have approved financial information and purchase information, when advance approval of that information is required by commission rule, the comptroller shall draw a warrant on the state treasury for:

(1) the amount due on the invoice; or

(2) the amount on the invoice that has been allowed.

(b) The comptroller shall complete the procedures for drawing the warrant not later than the eighth day after the date of receiving the necessary information. If a payment is not due until after the eighth day, the comptroller may delay drawing a warrant if the delay will maximize the state's cash flow.

(c) The comptroller may issue the warrant directly to the vendor. The comptroller, when appropriate, may combine into a single warrant payments that the state owes to a vendor under more than one invoice, including payments to the vendor made on behalf of more than one state agency.

(d) The comptroller may allow or require a state agency to schedule payments that the comptroller will make to a vendor. The comptroller shall prescribe the circumstances under which advance scheduling of payments is allowed or required. The comptroller shall require advance scheduling of payments when it is advantageous to the state.

(e) The comptroller may require vendors to provide payment addresses, vendor identification numbers, and other account information directly to the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 634, Sec. 2, eff. Sept. 1, 1997.

Sec. 2155.383. ADVANCE PAYMENTS TO STATE OR FEDERAL AGENCY. A state agency may make an advance payment to a federal or other state agency for goods purchased from the agency if an advance payment will expedite delivery of the goods.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.384. AUTHORITY TO PAY CHARGES. The commission, a state agency, or an entity authorized under Chapter 271, Local Government Code, or Section 2155.202 to purchase from a contract entered into under the authority of the commission may pay a restocking charge, cancellation fee, or other similar charge if the commission, state agency, or other entity determines that the charge is justifiable.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 426, Sec. 5, eff. June 18, 1999.

Sec. 2155.385. CREDIT CARDS. (a) If authorized by rule adopted by the comptroller under Section 403.023, the commission may contract with one or more credit card issuers for state agencies to use credit cards to pay for purchases. The commission may not

enter into a contract that conflicts with the comptroller's rules.

(b) This section does not apply to contracts regarding travel services or the use of credit cards to pay for travel services under Chapter 2171.

(c) In this section and notwithstanding Section 2151.002, "state agency" has the meaning assigned by Section 403.023(e).
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.386. PREPAYMENT FOR LIBRARY MATERIALS BY INSTITUTION OF HIGHER EDUCATION. An institution of higher education may pay for books and other published library materials before receiving them if reasonably necessary for the efficient operation of the institution's libraries.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.387. PAYMENT FOR ROAD CONSTRUCTION MATERIALS DELIVERED BY VEHICLE EXCEEDING WEIGHT LIMITS. A state agency that purchases road construction materials may pay for road construction materials delivered in a vehicle that exceeds the maximum gross weight authorized by law for the vehicle an amount computed using the lesser of:

(1) the actual weight of the load; or

(2) the weight determined by subtracting the weight of the vehicle from the sum of the maximum gross weight authorized by law for the vehicle and the tolerance allowance set for the gross weight of that vehicle by Section 621.403, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.200, eff. Sept. 1, 1997.

SUBCHAPTER H. PURCHASING PREFERENCES

Sec. 2155.441. PREFERENCE FOR PRODUCTS OF PERSONS WITH MENTAL RETARDATION OR PHYSICAL DISABILITIES. (a) The products of workshops, organizations, or corporations whose primary purpose is training and employing individuals having mental retardation or a physical disability shall be given preference if they meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

(b) The workshops, organizations, or corporations shall test the products to the extent necessary to ensure quality in accordance with Section 2155.069 and may enter into contracts with a private or public entity to assist with testing.

(c) The commission is not required to purchase products under this section that do not meet formal state specifications developed by the commission or meet commercial specifications approved by the commission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 12, eff. Sept. 1, 1997.

Sec. 2155.442. PREFERENCE FOR ENERGY EFFICIENT PRODUCTS. The commission shall give preference to energy efficient products in purchases made under this subtitle if:

(1) the products meet state specifications regarding quantity and quality; and

(2) the cost of the product is equal to or less than the cost of other similar products that are not energy efficient.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.443. PREFERENCE FOR RUBBERIZED ASPHALT PAVING. The commission may give preference to rubberized asphalt paving made from scrap tires by a facility in this state in purchases of rubberized asphalt paving material if the cost as determined by a life-cycle cost benefit analysis does not exceed by more than 15 percent the bid cost of alternative paving materials.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.444. PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS AND TEXAS SERVICES.. (a) The commission and all state agencies making purchases of goods, including agricultural products, shall give preference to those produced or grown in this state or offered by Texas bidders as follows:

(1) goods produced in this state or offered by Texas bidders shall equally be given preference if the cost to the state and quality are equal; and

(2) agricultural products grown in this state shall be given first preference and agricultural products offered by Texas bidders shall be given second preference, if the cost to the state and quality are equal.

(b) If goods, including agricultural products, produced or grown in this state or offered by Texas bidders are not equal in

cost and quality to other products, then goods, including agricultural products, produced or grown in other states of the United States shall be given preference over foreign products if the cost to the state and quality are equal.

(c) In this section:

(1) "Agricultural products" includes textiles and other similar products.

(2) "Texas bidder" means a business:

(A) incorporated in this state;

(B) that has its principal place of business in this state; or

(C) that has an established physical presence in this state.

(d) The commission and all state agencies making purchase of vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation native to the region if the cost to the state is not greater and the quality is not inferior.

(e) The commission and all state agencies procuring services shall give preference to services offered by a Texas bidder if:

(1) the services meet state requirements regarding the service to be performed and expected quality; and

(2) the cost of the service does not exceed the cost of other similar services of similar expected quality that are not offered by a Texas bidder.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 5.12, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1033, Sec. 1, 2, eff. Sept. 1, 2003.

Sec. 2155.4441. PREFERENCE UNDER SERVICE CONTRACTS. A state agency that contracts for services shall require the contractor, in performing the contract, to purchase products and materials produced in this state when they are available at a price and time comparable to products and materials produced outside this state. Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.19, eff. Sept. 1, 1999.

Sec. 2155.445. PREFERENCE FOR RECYCLED, REMANUFACTURED, OR ENVIRONMENTALLY SENSITIVE PRODUCTS. (a) The commission and state agencies shall give preference to recycled, remanufactured, or environmentally sensitive products, as those terms are defined by rule of the commission, in purchases made under this subtitle if the product meets state specifications regarding quantity and quality.

(b) The commission regularly shall review and revise its procurement procedures and specifications for the purchase of goods to:

(1) eliminate procedures and specifications that explicitly discriminate against recycled, remanufactured, or environmentally sensitive products, as those terms are defined by rule of the commission;; and

(2) encourage the use of recycled, remanufactured, or environmentally sensitive products.

(c) In developing new procedures and specifications, the commission shall encourage the use of recycled products and products that may be recycled or reused or that are remanufactured or environmentally sensitive.

(d) In addition to the products covered by the definition adopted by rule under this section, in this section "recycled product" includes recycled steel products. The preference for recycled steel products under this section applies also to products purchased in connection with projects described by Section 2166.003.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 6, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1033, Sec. 3, eff. Sept. 1, 2003.

Sec. 2155.446. PURCHASE AND USE OF PAPER CONTAINING RECYCLED FIBERS. (a) The commission shall contract for paper containing the highest proportion of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that the paper is available at a reasonable price through normal commercial sources to supply the state's needs.

(b) A state agency that purchases through the commission shall place orders for papers containing recycled fibers to the highest extent of its needs and to the extent that the paper is available through the commission's purchasing procedures.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.447. PURCHASE OF RECYCLED OIL. The commission,

all state agencies, and all state agency employees who purchase motor oil and other automotive lubricants for state-owned vehicles shall give preference to motor oils and lubricants that contain at least 25 percent recycled oil if the cost to the state and the quality are comparable to those of new oil and lubricants.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2155.448. EXPENDITURES FOR RECYCLED, REMANUFACTURED, OR ENVIRONMENTALLY SENSITIVE COMMODITIES OR SERVICES. (a) Each state fiscal year, the commission by rule may identify recycled, remanufactured, or environmentally sensitive commodities or services, as those terms are defined by rule of the commission, and designate purchasing goals for the procurement of those commodities and services by state agencies for that fiscal year.

(b) A state agency that intends to purchase a commodity or service that accomplishes the same purpose as a commodity or service identified under Subsection (a) that does not meet the definition of a recycled product or that is not remanufactured or environmentally sensitive, as those terms are defined by rule of the commission, shall include with the procurement file a written justification signed by the executive head of the agency stating the reasons for the determination that the commodity or service identified by the commission will not meet the requirements of the agency.

(c) A state agency shall include in the report required by Section 2101.0115, and in an annual report to the commission at a date and in a manner and form prescribed by the commission, the expenditures made during the preceding state fiscal year for each of the commodities or services identified under Subsection (a). The annual report must at a minimum identify the total amount spent on those commodities and services and the total amount spent for commodities and services purchased that accomplish the same purpose. State agencies shall include in the reports the amount spent for all other recycled, remanufactured, and environmentally sensitive commodities and services by type of commodity and service.

(d) This section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1082, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 7, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 57, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1266, Sec. 5.03, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 1122, Sec. 1, eff. Sept. 1, 2005.

Sec. 2155.449. PREFERENCE TO PRODUCTS AND SERVICES FROM ECONOMICALLY DEPRESSED OR BLIGHTED AREA. (a) In this section, "economically depressed or blighted area" means an area that:

(1) is an economically depressed or blighted area as defined by Section 2306.004; or

(2) meets the definition of a historically underutilized business zone as defined by 15 U.S.C. Section 632(p).

(b) The commission and all state agencies procuring goods or services shall give preference to goods or services produced in an economically depressed or blighted area if:

(1) the goods or services meet state specifications regarding quantity and quality; and

(2) the cost of the good or service does not exceed the cost of other similar products or services that are not produced in an economically depressed or blighted area.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 14.03, eff. Sept. 1, 2001.

Sec. 2155.450. PREFERENCE FOR PRODUCTS OF FACILITIES ON FORMERLY CONTAMINATED PROPERTY. The commission and state agencies shall give preference to goods produced at a facility located on property for which the owner has received a certificate of completion under Section 361.609, Health and Safety Code, if the goods meet state specifications regarding quantity, quality, delivery, life cycle costs, and price.

Added by Acts 2001, 77th Leg., ch. 483, Sec. 4, eff. Sept. 1, 2001. Renumbered from V.T.C.A., Government Code Sec. 2155.449 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(84), eff. Sept. 1, 2003.

Sec. 2155.451. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS. (a) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are defined by Section 386.001,

Health and Safety Code.

(b) The commission and state agencies procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(c) The preference may be given only if the cost to the state for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 19, eff. June 20, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 14.01, eff. Jan. 11, 2004; Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 1, eff. Oct. 20, 2003.

SUBCHAPTER I. MULTIPLE AWARD CONTRACT SCHEDULE

Sec. 2155.501. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Information Resources.

(2) "Local government" has the meaning assigned by Section 271.101, Local Government Code.

(3) "Multiple award contract" means an award of a contract for an indefinite amount of one or more similar goods or services from a vendor.

(4) "Schedule" means a list of multiple award contracts from which agencies may purchase goods and services.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.502. DEVELOPMENT OF MULTIPLE AWARD CONTRACT SCHEDULE. (a) The commission shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by:

(1) the federal government, including the federal General Services Administration; or

(2) any other governmental entity in any state.

(b) In developing the schedule under Subsection (a), the commission shall 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) The commission may not list a multiple award contract on a schedule developed under this section if the goods or services provided by that contract:

(1) are available from only one vendor; or

(2) are telecommunications services, facilities, or equipment.

(d) In this section, "telecommunications" has the meaning assigned by Section 2054.003.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.503. RULES. (a) The commission and the department shall adopt rules to implement this subchapter. The rules must:

(1) establish standard terms for contracts listed on a schedule; and

(2) maintain consistency with existing purchasing standards.

(b) The commission and the department shall consult with the attorney general and the comptroller in developing rules under this section.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES. (a) A state agency or local government may purchase goods or services directly from a vendor under a contract listed on a schedule developed under this subchapter. A purchase authorized by this section satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Chapter 2157.

(b) The price listed for a good or service under a multiple award contract is a maximum price. An agency or local government may negotiate a lower price for goods or services under a contract listed on a schedule developed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.505. HISTORICALLY UNDERUTILIZED AND SMALL BUSINESSES. (a) In this section:

(1) "Historically underutilized business" has the meaning assigned by Section 2161.001.

(2) "Small business" means a small business concern as defined by regulations of the United States Small Business Administration in 13 C.F.R. Section 121.201.

(b) The commission shall strongly encourage each vendor with a contract listed on a schedule developed under this subchapter and who is not a historically underutilized business or small business to use historically underutilized or small businesses to sell or provide a service under the contract. If a vendor does not make a good faith effort to use historically underutilized and small businesses under the contract, the commission may exclude the vendor from being listed on a schedule developed under this subchapter.

(c) A historically underutilized business or small business may sell or provide a service under another vendor's contract listed on a schedule developed under this subchapter if:

(1) the contract is on a schedule developed under Section 2155.502;

(2) the vendor for the contract authorizes in writing the historically underutilized business or small business to sell or provide a service under that contract; and

(3) the historically underutilized business or small business provides that written authorization to the commission.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.506. REPORTING REQUIREMENTS. (a) A vendor listed on a contract for a schedule developed under this subchapter shall report its sales to the commission in the manner prescribed by the commission.

(b) The commission shall compile the information reported under Subsection (a) and include the information in its report under Section 2101.011.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.507. EXEMPTION FROM CATALOGUE PURCHASE METHOD FOR INFORMATION SYSTEM VENDORS. Section 2157.062 does not apply to a vendor who applies to be listed on a schedule developed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.508. INTERNET AVAILABILITY. (a) The commission shall develop a database of the multiple award contracts developed under this subchapter and make that information available on an Internet site. The database must have search capabilities that allow a person to easily access the contracts.

(b) The commission shall allow vendors to apply through the Internet site to be listed on a schedule developed under this subchapter. The applicant shall provide an electronic mail address to the commission as part of the application process.

(c) The department shall post appropriate information regarding contracts developed under this subchapter to any electronic procurement system developed under Chapter 2177. On request by the department, the commission and any vendor with a contract on a schedule developed under this subchapter shall provide to the department any information necessary for posting on the system.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.509. NOTICE REGARDING PROCUREMENTS EXCEEDING \$25,000. After a purchase order has been placed, a state agency subject to Section 2155.083 shall post, as required under that section, a procurement made under a contract listed on a schedule developed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 2.01, eff. Sept. 1, 2001.

Sec. 2155.510. REBATES. (a) The commission may collect a rebate from a vendor under a contract listed on a schedule developed under this subchapter.

(b) If a purchase resulting in a rebate under this section is made in whole or in part with federal funds, the commission shall

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.
Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.09, eff. June 18, 2003.