

GOVERNMENT CODE
CHAPTER 2156. PURCHASING METHODS
SUBCHAPTER A. CONTRACT PURCHASE PROCEDURE

Sec. 2156.001. CONTRACT PURCHASE PROCEDURE AUTHORIZED. The commission may use the contract purchase procedure to purchase goods and services.

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

Sec. 2156.002. SOLICITATION OF BIDS THROUGH PUBLIC NOTICE. (a) A notice inviting bids shall be published at least once in at least one newspaper of general circulation in the state not later than the seventh day before the last day set for the receipt of bids.

(b) The notice must:

(1) include a general description of the items to be purchased;

(2) state the location at which bid forms and specifications may be obtained; and

(3) state the time and place for opening bids.

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

Sec. 2156.003. SOLICITATION OF BIDS THROUGH BIDDERS LIST; BID INVITATIONS. (a) The commission shall electronically maintain a bidders list that is integrated into the electronic procurement marketplace established by the Department of Information Resources. If the commission determines that it is in the state's best interest, the commission may also maintain the list on paper. The commission may add or delete names from the list according to applicable standards provided by Section 2156.007.

(b) In addition to any requirements of Chapter 2177, an invitation to bid on an item to be purchased may be sent electronically to a vendor on the bidders list who has expressed a desire to bid on that type of item.

(c) The commission may use the bidders list in making a purchase by any purchase method.

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

Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 7.03, eff. Sept. 1, 2001.

Sec. 2156.004. BID DEPOSIT. (a) The commission, as considered necessary, may require a bid deposit in an amount determined by the commission. The amount of the deposit, if any, must be stated in the public notice and the invitation to bid.

(b) On the award of a bid or the rejection of all bids, the commission shall refund the bid deposit of an unsuccessful bidder.

(c) The commission may accept from a bidder a bid deposit in the form of a blanket bond.

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

Amended by Acts 2003, 78th Leg., ch. 785, Sec. 35, eff. Sept. 1, 2003.

Sec. 2156.005. BID SUBMISSION AND OPENING; PUBLIC INSPECTION. (a) A bidder must submit a sealed bid to the commission or to the state agency making a purchase. The bid must be identified on the envelope as a bid.

(b) Subsection (a) does not apply to bids submitted through the use of facsimile transmission, on-line electronic transmission, or the electronic commerce network. The commission may adopt rules to ensure the identification, security, and confidentiality of bids submitted through the use of facsimile transmission, on-line electronic transmission, or the electronic commerce network.

(c) The commission or other state agency making a purchase shall open bids at the time and place stated in the invitation to bid.

(d) The commission shall keep a tabulation of all bids received by the commission available for public inspection under rules adopted by the commission. State agencies making purchases shall adopt the commission's rules related to bid opening and tabulation.

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

Amended by Acts 1997, 75th Leg., ch. 494, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1206, Sec. 13, eff. Sept. 1, 1997.

Sec. 2156.006. SUBMISSION OF ADDITIONAL MATERIAL WITH BID. (a) A bidder as an essential element of the materiality of the bid must comply with the specified time limit for the submission of written information, samples, or models at or before the time for bid opening.

(b) The commission may waive this requirement if the failure

to comply is beyond the bidder's control.

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

Sec. 2156.007. CONTRACT AWARD. (a) The commission or other state agency making a purchase shall award a contract to the bidder offering the best value for the state while conforming to the specifications required.

(b) In determining the bidder offering the best value, the commission or other state agency may consider the safety record of the bidder, the entity represented by the bidder, and any person acting for the represented entity only if:

(1) the commission or other state agency has adopted a written definition and criteria for accurately determining the safety record of a bidder; and

(2) the commission or state agency provided notice in the bid specifications to prospective bidders that a bidder's safety record may be considered in determining the bidder offering the best value for the state.

(c) A determination of a bidder's safety record may not be arbitrary and capricious.

(d) In determining the bidder offering the best value, in addition to price the commission or other state agency shall consider:

(1) the quality and availability of the goods or contractual services and their adaptability to the use required;

(2) the scope of conditions attached to the bid;

(3) the bidder's ability, capacity, and skill to perform the contract or provide the service required;

(4) the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;

(5) the bidder's character, responsibility, integrity, and experience or demonstrated capability;

(6) the quality of performance of previous contracts or services;

(7) the bidder's previous and existing compliance with laws relating to the contract or service;

(8) the bidder's previous or existing noncompliance with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates;

(9) the sufficiency of the bidder's financial resources and ability to perform the contract or provide the service; and

(10) the bidder's ability to provide future maintenance, repair parts, and service for the use of the contract's subject.

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

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Sec. 2156.008. REJECTION OF BIDS. (a) The commission or other state agency making the purchase shall reject a bid in which there is a material failure to comply with specification requirements.

(b) The commission or other state agency may reject all bids or parts of bids if the rejection serves the state's interest.

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

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Sec. 2156.009. REASONS FOR AWARD. On award of a contract, the division of the commission responsible for purchasing or the state agency making the purchase shall prepare and file with other records relating to the transaction a statement of the reasons for making the award to the successful bidder and the factors considered in determining which bidder offered the best value for the state.

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

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Sec. 2156.010. TIE BIDS. In the case of tie bids, the value and cost to the state being equal, a contract shall be awarded under commission rules.

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

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 14, eff. Sept. 1, 1997.

Sec. 2156.011. PERFORMANCE BOND. (a) The commission may

require a performance bond before executing a contract.

(b) The commission may require the bond in an amount that the commission finds reasonable and necessary to protect the state's interests.

(c) Any bond required shall be issued on the condition that the bidder faithfully execute the terms of the contract.

(d) Any bond required shall be filed with the commission.

(e) Recoveries under the bond may continue until the bond is exhausted.

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

SUBCHAPTER B. OPEN MARKET PURCHASE PROCEDURE

Sec. 2156.061. USE OF OPEN MARKET PURCHASE PROCEDURE AUTHORIZED; USE OF PROCEDURE. On a commission determination that a purchase of goods or services may be made most effectively in the open market, the commission may use the open market purchase procedure and the purchase may be made without newspaper advertising.

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

Sec. 2156.062. MINIMUM NUMBER AND EVALUATION OF BIDS. An open market purchase shall, to the extent possible, be:

(1) based on at least three competitive bids; and

(2) awarded to the bidder offering the best value for the state in accordance with standards set forth in Chapters 2155, 2156, 2157, and 2158.

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

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 15, eff. Sept. 1, 1997.

Sec. 2156.063. SOLICITATION OF BIDS. The commission and each state agency making a purchase shall solicit bids under this subchapter by:

(1) direct mail;

(2) telephone;

(3) telegraph;

(4) facsimile transmission;

(5) on-line electronic transmission; or

(6) posting on 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. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1206, Sec. 15, eff. Sept. 1, 1997.

Sec. 2156.064. RECORDING AND INSPECTION OF BIDS. (a) The commission shall keep a record of all open market orders and bids submitted on the orders.

(b) A tabulation of the bids shall be open for public inspection, under rules established by the commission.

(c) A tabulation of the bids shall always be open for inspection by the state auditor or the auditor's representative.

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

Sec. 2156.065. AGENCY REVIEW OF BIDS. (a) On the request of a state agency to review the bids on a purchase administered by the commission, the commission shall send or make available to the requesting agency copies of each bid received and the commission's recommended award.

(b) If, after review of the bids and evaluation of the quality of goods or services offered in the bids, the state agency determines that the bid selected by the commission does not offer the best value for the state, the agency may file with the commission a written recommendation that the award be made to the bidder who, according to the agency's determination, offers the best value for the state. The agency recommendation must include a justification of the agency's determination.

(c) The commission shall consider, but is not bound by, the agency recommendation in making the award.

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

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 16, eff. Sept. 1, 1997.

Sec. 2156.066. STATEMENT OF REASONS FOR AWARD. The division of the commission responsible for purchasing or the state agency making a purchase shall prepare and file with other records relating to a transaction under this subchapter a statement of the reasons for placing an order with a successful bidder for the transaction and the factors considered in determining the bid offering the best value for the state.

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

Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 16, eff. Sept. 1, 1997.

SUBCHAPTER C. COMPETITIVE SEALED PROPOSALS FOR ACQUISITION OF GOODS AND SERVICES

Sec. 2156.121. USE OF COMPETITIVE SEALED PROPOSALS. (a) The commission or other state agency may follow a procedure using competitive sealed proposals to acquire goods or services if the commission determines that competitive sealed bidding and informal competitive bidding for the purchase or type of purchase are not practical or are disadvantageous to the state.

(b) A state agency shall send its proposal specifications and criteria to the commission for approval or request the commission to develop the proposal specifications and criteria.

(c) The commission shall determine whether to delegate sole oversight of the acquisition to a state agency or to retain oversight of the procurement.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 8, eff. June 18, 1999.

Sec. 2156.122. SOLICITATION OF PROPOSALS. The commission or other state agency shall:

(1) solicit proposals under this subchapter by a request for proposals; and

(2) give public notice of a request for proposals in the manner provided for requests for bids under Subchapter B.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.124 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Sec. 2156.123. OPENING AND FILING OF PROPOSALS; PUBLIC INSPECTION. (a) The commission or other state agency shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

(b) The commission or other state agency shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from required disclosure under Subchapter C, Chapter 552.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.126 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Sec. 2156.124. DISCUSSION AND REVISION OF PROPOSALS. (a) As provided in a request for proposals and under rules adopted by the commission, the commission or other state agency may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. When the commission is managing the request for proposals process, it shall invite a requisitioning agency to participate in discussions conducted under this section.

(b) After receiving a proposal but before making an award, the commission or other state agency may permit the offeror to revise the proposal to obtain the best final offer.

(c) The commission or other state agency may not disclose information derived from proposals submitted from competing offerors in conducting discussions under this section.

(d) The commission or other state agency shall provide each offeror an equal opportunity to discuss and revise proposals.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.127 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Sec. 2156.125. CONTRACT AWARD. (a) The commission or other state agency shall make a written award of a contract to the offeror whose proposal offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and the evaluation factors in the request for proposals.

(b) The commission or other state agency shall refuse all offers if none of the offers submitted is acceptable.

(c) The commission or other state agency shall determine which proposal offers the best value for the state in accordance with Sections 2155.074 and 2155.075.

(d) The commission or other state agency shall state in writing in the contract file the reasons for making an award.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.128 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Sec. 2156.126. ADOPTION OF RULES; STATE AGENCY ASSISTANCE. The commission may adopt rules and request assistance

from other state agencies to perform its responsibilities under this subchapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.129 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

Sec. 2156.127. COMPETITIVE SEALED PROPOSALS FOR TELECOMMUNICATIONS AND AUTOMATED INFORMATION SYSTEMS NOT AFFECTED. This subchapter does not affect Subchapter C, Chapter 2157.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Renumbered from Sec. 2156.130 and amended by Acts 1997, 75th Leg., ch. 1206, Sec. 17, eff. Sept. 1, 1997.

SUBCHAPTER D. INTERSTATE COMPACTS PROCEDURE

Sec. 2156.181. INTERSTATE COMPACTS AND COOPERATIVE AGREEMENTS FOR PROCUREMENTS. (a) The commission may enter into one or more compacts, interagency agreements, or cooperative purchasing agreements with one or more state governments, agencies of other states, or other governmental entities for the purchase of goods or services if the commission determines that entering into an agreement would be in the best interest of the state.

(b) The commission may adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 426, Sec. 9, eff. June 18, 1999.