

GOVERNMENT CODE
CHAPTER 2157. PURCHASING: PURCHASE OF AUTOMATED INFORMATION
SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2157.001. DEFINITIONS. In this chapter:

(1) "Automated information system" includes:

(A) the computers and computer devices on which an information system is automated, including computers and computer devices that the commission identifies in guidelines developed by the commission in consultation with the department and in accordance with Chapter 2054 and rules adopted under that chapter;

(B) a service related to the automation of an information system, including computer software or computers;

(C) a telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on the network, and services related to telecommunications that are not covered under Paragraph (D); and

(D) for the department, as telecommunications provider for the state, the term includes any service provided by a telecommunications provider, as that term is defined by Section 51.002, Utilities Code.

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

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 952, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.25, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 426, Sec. 10, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1422, Sec. 4.13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 309, Sec. 7.25, eff. June 18, 2003; Acts 2005, 79th Leg., ch. 1068, Sec. 2.02, eff. Sept. 1, 2005.

Sec. 2157.002. APPLICABILITY. Subchapters A, B, and D apply only to a state agency to which Chapter 2054 applies.

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

Sec. 2157.003. DETERMINING BEST VALUE FOR PURCHASES OF AUTOMATED INFORMATION SYSTEMS. "Best value" for purposes of this chapter means the lowest overall cost of an automated information system. In determining the lowest overall cost for a purchase or lease of an automated information system under this chapter, the commission or a state agency shall consider factors including:

(1) the purchase price;

(2) the compatibility to facilitate the exchange of existing data;

(3) the capacity for expanding and upgrading to more advanced levels of technology;

(4) quantitative reliability factors;

(5) the level of training required to bring persons using the system to a stated level of proficiency;

(6) the technical support requirements for the maintenance of data across a network platform and the management of the network's hardware and software;

(7) the compliance with applicable department statewide standards validated by criteria adopted by the department by rule; and

(8) applicable factors listed in Sections 2155.074 and 2155.075.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 18, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 1068, Sec. 2.03, eff. Sept. 1, 2005.

Sec. 2157.004. TRANSFERS AND LOANS. A state agency that acquires a telecommunications device, system, or service or an automated information system by interagency transfer, contract, or loan, or by public loan, shall comply with the requirements of Chapter 2054.

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

Sec. 2157.005. TECHNOLOGY ACCESS CLAUSE. (a) The commission and the department, in consultation with other state agencies and after public comment, shall develop a technology access clause to be included in all contracts entered into by the state or state agencies that involve the acquisition of an automated information system.

(b) State funds may not be expended in the purchase of an

automated information system unless the contract contains the technology access clause. The clause must read as follows:

"The vendor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the vendor represents and warrants to (name of state agency) that the technology provided to (name of state agency) for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

(1) providing equivalent access for effective use by both visual and nonvisual means;

(2) presenting information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and

(3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

"For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance."

(c) This section applies to all contracts made by state agencies that involve the purchase of an automated information system, without regard to:

(1) the source of funds used to make the purchase;

(2) whether the purchase is made under delegated purchasing authority; or

(3) whether the purchase is made under the authority of this subtitle or other law.

(d) This section does not apply to the purchase of a wireless communications device to be used by peace officers, firefighters, and other emergency response personnel to respond to a public safety emergency.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 19, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 11, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 467, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 357, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1246, Sec. 27, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 1068, Sec. 2.04, eff. Sept. 1, 2005.

SUBCHAPTER B. CATALOG PURCHASE METHOD

Sec. 2157.061. USE OF CATALOG PURCHASE METHOD REQUIRED UNLESS BEST VALUE AVAILABLE ELSEWHERE. The commission or a state agency shall purchase an automated information system through the catalog procedure provided by this subchapter unless the commission or state agency determines that the best value may be obtained from another purchase method authorized by this subtitle.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.11, eff. June 18, 2003.

Sec. 2157.0611. REQUIREMENT TO EVALUATE THREE OFFERS WHEN POSSIBLE. A catalog purchase or lease that exceeds \$2,000 or a greater amount prescribed by commission rule shall, when possible, be based on an evaluation of at least three catalog offers made to the commission or other state agency by catalog information systems vendors. If at least three catalog offers are not evaluated by the commission or other state agency before a purchase or lease that exceeds the threshold amount is made, the commission or other agency shall document the reasons for that fact before making the purchase or lease under Section 2157.063.

Added by Acts 1997, 75th Leg., ch. 1206, Sec. 20, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 12, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 7.12, eff. June 18, 2003.

Sec. 2157.062. BASIC REQUIREMENTS FOR CATALOG VENDOR. At a minimum, a catalog information systems vendor must:

(1) maintain an Internet catalog containing each

product and service eligible for purchase by a state agency, including for each product or service:

- (A) a description;
- (B) the list price; and
- (C) the price to a state agency;

(2) maintain a maintenance, repair, and support plan for each eligible product or service;

(3) provide on request proof of the applicant's financial resources and ability to perform; and

(4) provide a guarantee that the vendor will make available equivalent replacement parts for a product sold to the state until at least the third anniversary of the date the product is discontinued.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 538, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 309, Sec. 7.13, eff. June 18, 2003.

Sec. 2157.063. DIRECT PURCHASE OR LEASE BY STATE AGENCY; NEGOTIATION OF ADDITIONAL TERMS. (a) If a purchase or lease is the best value available and is in the state's best interest, a state agency may under this subchapter purchase or lease an automated information system directly from a catalog information systems vendor and may negotiate price and additional terms and conditions to be included in a contract relating to the purchase or lease.

(b) In determining which goods or services are in the state's best interest, the agency shall consider:

- (1) the installation and hardware costs;
- (2) the overall life-cycle cost of the system or equipment;

(3) the estimated cost of employee training and estimated increase in employee productivity;

(4) the estimated software and maintenance costs; and

(5) the rules that prescribe applicable statewide standards adopted by the department.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 426, Sec. 13, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 7.14, eff. June 18, 2003; Acts 2005, 79th Leg., ch. 1068, Sec. 2.05, eff. Sept. 1, 2005.

Sec. 2157.066. CATALOG REQUIREMENTS. (a) A catalog information systems vendor shall publish and maintain a catalog described by Section 2157.062(1) in the manner required by the commission.

(b) The vendor shall revise the catalog as necessary in the manner required by the commission.

(c) Repealed by Acts 2003, 78th Leg., ch. 309, Sec. 7.25.

(d) Repealed by Acts 2003, 78th Leg., ch. 309, Sec. 7.25.

(e) In this section, "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

(f) The commission may audit a catalog information systems vendor's catalog for compliance with rules adopted under Subsection (g).

(g) The commission shall adopt rules that specify the requirements for a catalog information systems vendor's maintenance of Internet catalogs, including:

- (1) availability;
- (2) format; and
- (3) other relevant requirements.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 538, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 426, Sec. 14, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 309, Sec. 7.15, 7.25, eff. June 18, 2003.

Sec. 2157.067. CATALOG PURCHASING AVAILABLE TO CERTAIN LOCAL GOVERNMENTS. (a) The commission shall make the catalog purchasing procedure available to a local government that qualifies for cooperative purchasing under Sections 271.082 and 271.083, Local Government Code.

(b) In this section, "local government" has the meaning assigned by Section 271.081, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.16, eff. June 18, 2003.

Sec. 2157.068. PURCHASE OF COMMODITY ITEMS. (a) In this section, "commodity items" means commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public and for which

the department determines that a reasonable demand exists in two or more state agencies. The term includes seat management, through which a state agency transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop in the state agency, including all necessary hardware, software, and support services.

(b) The department shall negotiate with catalog information systems vendors to attempt to obtain a favorable price for all of state government on licenses for commodity items, based on the aggregate volume of purchases expected to be made by the state. The terms and conditions of a license agreement between a vendor and the department under this section may not be less favorable to the state than the terms of similar license agreements between the vendor and retail distributors.

(c) In contracting for commodity items under this section, the department shall make good faith efforts to provide contracting opportunities for, and to increase contract awards to, historically underutilized businesses and persons with disabilities' products and services available under Chapter 122, Human Resources Code.

(d) The department may charge a reasonable administrative fee to a state agency, political subdivision of this state, or governmental entity of another state that purchases commodity items through the department in an amount that is sufficient to recover costs associated with the administration of this section.

(e) The department shall compile and maintain a list of commodity items available for purchase through the department that have a lower price than the prices for commodity items otherwise available to state agencies under this chapter. The department shall make the list available on the world wide web or on a suitable successor to the world wide web if the technological developments involving the Internet make it advisable to do so.

(f) The department may adopt rules regulating a purchase by a state agency of a commodity item under this section, including a requirement that, notwithstanding other provisions of this chapter, the agency must make the purchase in accordance with a contract developed by the department unless the agency obtains:

(1) an exemption from the department; or

(2) express prior approval from the Legislative Budget Board for the expenditure necessary for the purchase.

(g) The Legislative Budget Board's approval of a biennial operating plan under Section 2054.102 is not an express prior approval for purposes of Subsection (f)(2). A state agency must request an exemption from the department under Subsection (f)(1) before seeking prior approval from the Legislative Budget Board under Subsection (f)(2).

(h) The department shall, in cooperation with state agencies, establish guidelines for the classification of commodity items under this section. The department may determine when a statewide vendor solicitation for a commodity item will reduce purchase prices for a state agency.

Added by Acts 1999, 76th Leg., ch. 860, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.17, eff. June 18, 2003; Acts 2005, 79th Leg., ch. 1068, Sec. 1.08, eff. Sept. 1, 2005.

SUBCHAPTER C. REQUESTS FOR PROPOSALS PURCHASE METHOD

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

(b) A state agency, other than the department, 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 department may acquire a telecommunications device, system, or service or an automated information system by using competitive sealed proposals without regard to whether the commission makes the determination required under Subsection (a) for other state agencies.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1422, Sec. 4.14, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 1068, Sec. 2.06, eff. Sept. 1,

2005.

Sec. 2157.122. SOLICITATION OF PROPOSALS; PUBLIC NOTICE. The commission or other state agency shall:

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

(2) give public notice of the request in the manner provided for requests for bids under Subchapter B, Chapter 2156.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997.

Sec. 2157.123. OPENING AND FILING 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. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997.

Sec. 2157.124. DISCUSSION AND REVISION OF PROPOSAL. (a) As provided by a request for proposals and under commission rules, the commission or other state agency may discuss an acceptable or potentially acceptable proposal with an offeror to assess the 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 an offeror to revise a proposal to obtain the best final offer.

(c) The commission or other state agency may not disclose information derived from a proposal submitted by a competing offeror 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. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997.

Sec. 2157.125. CONTRACT AWARD; FACTORS CONSIDERED. (a) The commission or other state agency shall make a written award of a purchase or lease to the offeror whose proposal under this subchapter 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 no offer submitted is acceptable.

(c) In determining which proposal under this subchapter offers the best value for the state, the commission or other state agency shall, when applicable and subject to Sections 2155.074 and 2155.075, consider factors including:

(1) the installation cost;

(2) the overall life of the system or equipment;

(3) the cost of acquisition, operation, and maintenance of hardware included with, associated with, or required for the system or equipment during the state's ownership or lease;

(4) the cost of acquisition, operation, and maintenance of software included with, associated with, or required for the system or equipment during the state's ownership or lease;

(5) the estimated cost of other supplies needed because of the acquisition;

(6) the estimated cost of employee training needed because of the acquisition;

(7) the estimated cost of necessary additional permanent employees because of the acquisition; and

(8) the estimated increase in employee productivity because of the acquisition.

(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. Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997.

Sec. 2157.126. RULES. The commission shall adopt rules necessary or convenient to perform its responsibilities regarding requests for proposals under this subchapter and shall request assistance from other state agencies as needed.

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

SUBCHAPTER D. PREAPPROVED CONTRACT TERMS AND CONDITIONS

Sec. 2157.181. PREAPPROVED CONTRACT TERMS AND CONDITIONS. (a) The commission, with the concurrence of the department, may negotiate with vendors preapproved terms and conditions to be included in contracts relating to the purchase or lease of a telecommunication device, system, or service or an automated information system awarded to a vendor by a state agency.

(b) The commission and the department must agree to the wording of preapproved terms and conditions negotiated with a vendor.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., ch. 1068, Sec. 2.07, eff. Sept. 1, 2005.

Sec. 2157.182. VALIDITY OF PREAPPROVED TERMS AND CONDITIONS; RENEGOTIATION. (a) Preapproved terms and conditions to which a vendor, the commission, and the department agree are valid for two years after the date of the agreement and must provide that the terms and conditions are to be renegotiated before the end of the two years.

(b) The commission and the department jointly shall establish procedures to ensure that terms and conditions are renegotiated before they expire in a contract between the vendor and a state agency.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., ch. 1068, Sec. 2.08, eff. Sept. 1, 2005.

Sec. 2157.183. PREAPPROVED TERM OR CONDITION PART OF CONTRACT; CHANGE OF TERM OR CONDITION. (a) Preapproved terms and conditions must be part of any contract between a state agency and a vendor that has agreed to them.

(b) A preapproved term or condition that is changed remains valid for an existing contract of which it is part but must be renegotiated before it may be part of another or a renewed contract.

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

Sec. 2157.184. NOTIFICATION OF STATE AGENCIES AND VENDORS. The commission and the department jointly shall establish procedures to notify state agencies and potential vendors of the provisions of this subchapter regarding preapproved terms and conditions.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., ch. 1068, Sec. 2.09, eff. Sept. 1, 2005.