

## CHAPTER 390

H.B. No. 2224

## AN ACT

relating to the provision of telecommunications items and automated information items for state governmental bodies.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 1.01(a), Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes), is amended by adding Subdivisions (3) and (4) to read as follows:

(3) "Basic certification" means a certification made under Section 2.015 of this Act.

(4) "Advanced certification" means a certification made under Section 2.02 of this Act.

SECTION 2. Section 1.01, Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) *This Act does not apply to services or facilities described by Article 10, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).*

SECTION 3. Section 1.03(a), Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The council is composed of nine members, appointed in accordance with the following:

(1) one person, appointed by the speaker of the house of representatives, who must be a member or employee of the house or an employee of a legislative agency;

(2) one person, appointed by the speaker, who must be ~~employed by~~ a representative of the private sector ~~corporation~~ and be knowledgeable in the management of ~~the corporation's~~ automated information systems ~~system~~ or telecommunications systems as used by the private sector ~~system~~;

(3) one person, appointed by the speaker, who must be employed by a state governmental body and who must be knowledgeable in the management of automated information systems or telecommunications systems;

(4) one person, appointed by the lieutenant governor, who must be a member or employee of the senate or an employee of a legislative agency;

(5) one person, appointed by the lieutenant governor, who must be ~~employed by~~ a representative of the private sector ~~corporation~~ and be knowledgeable in the management of ~~the corporation's~~ automated information systems ~~system~~ or telecommunications systems as used by the private sector ~~system~~;

(6) one person, appointed by the lieutenant governor, who must be employed by a state governmental body and who must be knowledgeable in the management of automated information systems or telecommunications systems;

(7) one person, appointed by the governor, who must be knowledgeable in the management of automated information systems or telecommunications systems as used by the private sector;

(8) one person, appointed by the governor, who must be employed by a state-supported institution of higher education in this state and who must be knowledgeable in the management of automated information systems or telecommunications systems; and

(9) one person, appointed by the governor, who must be an employee of a state governmental body other than an institution of higher education and who must be knowledgeable in the management of automated information systems or telecommunications systems.

SECTION 4. Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes), is amended by amending Sections 2.02 and 2.03 and adding Sections 2.015, 2.016, 2.021, 2.022, and 2.023 to read as follows:

*Sec. 2.015. BASIC CERTIFICATION. (a) Within 30 days after the date the council receives the following information from a state governmental body, the council shall review the information and determine if it is adequately prepared:*

*(1) a long-range plan outlining the needs of the governmental body regarding telecommunications devices and systems and automated information systems and the computers on which they are automated, including computer software; and*

*(2) a complete inventory of all telecommunications devices and systems and automated information systems and the computers on which they are automated, used by the governmental body, including computer software.*

*(b) If the council determines that the information is adequately prepared, the council shall, within that 30-day period, certify in writing to the governor, lieutenant governor, speaker of the house of representatives, State Purchasing and General Services Commission, and state auditor that the long-range plan and inventory has been properly filed with the council.*

*(c) The certifications shall be updated annually or as determined otherwise by rule of the council.*

*Sec. 2.016. ACTIONS CONTINGENT ON BASIC CERTIFICATION. If a state governmental body proposes to take any of the following actions, the council must have made, regarding that governmental body, the basic certification to the State Purchasing and General Services Commission:*

*(1) a purchase at a cost of more than \$1,500 of telecommunications devices, systems, or services or of automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software;*

*(2) a lease or lease-purchase at a cost of more than \$1,000 per month of telecommunications devices or systems or of automated information systems or the computers on which they are automated, including computer software; or*

*(3) a major conversion of telecommunications devices or systems or of automated information systems or the computers on which they are automated.*

*Sec. 2.02. ~~ADVANCED CERTIFICATION [REVIEW OF ACTIONS OF GOVERNMENTAL BODIES].~~ (a) The council shall review each action proposed by a state governmental body under Section 2.021 of this Act and shall, within 90 days after the date of the receipt of the proposal, certify in writing to the governor, lieutenant governor, speaker of the house of representatives, State Purchasing and General Services Commission, and state auditor whether the following requirements are met:*

*(1) the guidelines adopted under Section 2.01 of this Act are fulfilled;*

*(2) any items to be purchased, leased, or lease-purchased are necessary; and*

*(3) the terms of the purchase, lease, or lease-purchase are the most cost-effective alternative available; and:*

*(A) the items are best suited to fulfill the governmental body's needs;*

*(B) if appropriate, the items are capable of electronically interchanging information; and*

*(C) equivalent items are not able to be obtained, by interagency contract or otherwise, from another state governmental body.*

*(b) If the council makes the certification under Subsection (a) of this section, it shall send the certification and an appropriate requisition to the State Purchasing and General Services Commission for processing in accordance with the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). The requisition must identify the cost estimate and requirements of the purchase or lease-purchase.*

(c) The council shall, with reasonable specificity, notify the submitting state governmental body within 10 days after initial receipt of the proposal of any supporting or other information the council requires to conduct its review under Subsection (a) of this section. If the notice is not given as required by this subsection, the proposal is considered to be received, for purposes of calculating the time limits for council action under this Act, on the date of its initial receipt by the council. If the notice is given as required by this subsection, the proposal is considered to be received on the date the supporting or other information is received by the council.

*Sec. 2.021. ACTIONS CONTINGENT ON ADVANCED CERTIFICATION.* If a state governmental body proposes to take any of the following actions, the governmental body, at the same time it files an acquisition request with the State Purchasing and General Services Commission, shall also file with the council *the [any] information that the council considers necessary for it to prepare the advanced certification for the proposed action [its report under Subsection (b) of this section]:*

(1) a purchase at a cost of more than \$100,000 [~~\$20,000~~], or a greater amount as may be prescribed by rule of the council, of telecommunications devices, systems, or services or of automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, *including computer software;*

(2) a lease or lease-purchase at a cost of more than \$5,000 [~~\$1,000~~] per month, or a greater amount as may be prescribed by rule of the council, of telecommunications devices or systems or of automated information systems or the computers on which they are automated, *including computer software;* or

(3) a major conversion of telecommunications devices or systems or of automated information systems or the computers on which they are automated.

~~[(b) The council shall review each action proposed by a state governmental body under Subsection (a) of this section and shall within 60 days after receipt of the proposal and any supporting information file with the governor, lieutenant governor, speaker of the house of representatives, State Purchasing and General Services Commission, and state auditor a report about whether the guidelines adopted under Section 2.01 of this Act would be fulfilled if the governmental body's action were taken.]~~

*Sec. 2.022. DELEGATION OF REVIEW AUTHORITY; CERTIFICATION REQUIRED; EXTENSIONS.* (a) The council may designate at the discretion of the chairman or as provided by rule of the council those *basic and advanced certifications [reports on proposed actions]* which may not be made ~~[filed under this subsection]~~ until they have been reviewed and approved in writing by a majority vote of the council membership. *Certifications [Reports on proposed actions]* not so designated shall be made ~~[prepared and filed]~~ in the council's name by the council staff. The council may meet as provided in Section 1.05(b) of this Act for the purpose of meeting the requirements of this section ~~[subsection].~~

~~(b) [(e)] A state governmental body may not take an action described by Section 2.016 or 2.021 [under Subsection (a)] of this Act unless the appropriate basic or advanced certification has been made [section until 60 days after receipt of the proposal and any supporting information by the council or until the council has filed the report under Subsection (b) of this section, whichever is earlier. The failure of the council to timely file a report under Subsection (b) of this section may not be grounds for prohibiting a state governmental body from taking the action after the expiration of the 60 day period].~~

(c) The council together with the governmental body involved may agree to an extension of the time limit for making ~~[filing]~~ a *basic or advanced certification [report]*. If the council does not make a basic or advanced certification within the period prescribed by this Act for doing so or within the period covered by an extension, the council is considered to have made the appropriate certification.

*Sec. 2.023. EMERGENCY ACQUISITIONS.* (a) A state governmental body may take an action described by Section 2.016 or 2.021 of this Act without complying with the procedures prescribed by law for the action if the executive director of the

governmental body finds that a situation caused by fire, natural disaster, or other actual emergency requires the action to be taken.

(b) *Within 14 days after the date the action is taken, the executive director shall make any necessary changes to the long-range plan on file with the council and shall submit to the council the findings justifying the action. The council, on a priority basis, shall review the findings to determine if they are complete and if the action taken by the governmental body was prudent.*

Sec. 2.03. *EVALUATION* [~~MANAGEMENT AUDIT~~]. (a) The council [~~board~~] regularly shall:

(1) review and evaluate the performance of [~~each~~] state governmental bodies [~~body~~] in the use of telecommunications devices, systems, and services and in the use of automated information systems, the computers on which they are automated, and related services to determine if the governmental bodies use [~~body uses~~] these items in the most efficient and economical manner; and

(2) *in the review and evaluation, consider the extent to which state governmental bodies:*

(A) *have telecommunications devices, systems, and services and automated information systems, the computers on which they are automated, and related services, including computer software, that are appropriate and best suited to fulfill the governmental bodies' needs; and*

(B) *could better fulfill their needs by using different telecommunications devices, systems, or services or different automated information systems, the computers on which they are automated, or related services, including computer software.*

(b) The council [~~board~~] shall prepare a written report of each review and evaluation.

(c) *The council shall give a state governmental body evaluated under this section a reasonable opportunity to comment on the evaluation before the completion of the written report required by Subsection (b) of this section. The council shall send to each evaluated governmental body a copy of the written report of the evaluation, which must include the evaluated governmental body's comments on the evaluation.*

(d) *The council may negotiate an interagency contract under which the council will perform the review and evaluation of the governmental body.*

SECTION 5. Section 2.05(b), Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) *In carrying out its duty under Subsection (a) of this section, the council shall collect information regarding, and prepare and keep an inventory record of, all major software developed or acquired by state governmental bodies and all state staff expertise regarding automated information. The record shall be kept as current as reasonably possible to maximize the usefulness of the record. Each state governmental body shall file with the council an inventory record of the automated information systems software developed or acquired by the governmental body and of the expertise of the governmental body's staff regarding automated information. The governmental body shall file the record and keep it current as required by the council. The council, as determined by rule, [~~periodically~~] shall distribute to the State Purchasing and General Services Commission and other state governmental bodies information about the major automated information systems software covered by the inventory record.*

SECTION 6. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Section 3.021 and by adding Section 3.022 to read as follows:

Sec. 3.021. *PURCHASES OR LEASE OF AUTOMATED INFORMATION AND TELECOMMUNICATIONS ITEMS* [~~COMPUTERS~~]. (a) If a state agency requests the commission to purchase or lease any telecommunications devices, systems, or services or any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software, and if the purchase or lease is of a type

that requires the Automated Information and Telecommunications Council to prepare a *certification* [~~report~~], the commission may not make an award for the purchase or lease of the telecommunications device, system, or service or of the automated information software, hardware, or services until the *commission receives the appropriate certification from the Automated Information and Telecommunications Council under Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes)*, or [~~report has been filed as required by law or~~] until the expiration of the period, including any agreed extension period, within which the council is required to make the appropriate certification under that Chapter 737 [~~60 days after receipt of the proposal and any supporting information by the council as prescribed by law~~], whichever is earlier[, or the completion of an agreed extension period].

(b) *The commission shall analyze the long-range plans and the inventories that the Automated Information and Telecommunications Council receives under Section 2.015(a), Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes), as well as the requisition forms for purchasing telecommunications devices and automated information systems and computer software to determine future needs for statewide contracts. The commission shall, whenever possible, negotiate site specific license agreements for software and, when doing so, shall attempt to make that site the State of Texas.*

*Sec. 3.022. COMPETITIVE SEALED PROPOSALS. (a) The commission may acquire telecommunications devices, systems, or services or any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software, by following a procedure using competitive sealed proposals if the commission determines by rule that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state. Items to be purchased from higher education research funds may be acquired by following a procedure using competitive sealed proposals. The commission, or an institution of higher education making the acquisition if research purchasing authority has been delegated to that institution under Section 3.06 of this article, must first determine that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state. If the competitive sealed proposal procedure is to be handled by the institution of higher education, the institution shall follow the procedures outlined by this section for the commission.*

(b) *The commission shall solicit proposals by a request for proposals. The commission shall give public notice of a request for proposals in the manner provided for requests for bids under Section 3.12 of this article.*

(c) *The commission shall open each proposal in a manner that does not disclose the contents of the proposal during the process of negotiating with competing offerors. The commission shall file each proposal in a register of proposals, which shall be open for public inspection after a contract is awarded unless the register contains information that is excepted from disclosure as an open record under Section 3, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).*

(d) *As provided in a request for proposals and under the rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors in order to assess an offeror's ability to meet the solicitation requirements. After the submission of a proposal but before making an award, the commission may permit the offeror to revise the proposal in order to obtain the best final offer. The commission may not disclose any information derived from proposals submitted from competing offerors in conducting discussions under this subsection. The commission shall provide each offeror with an equal opportunity for discussion and revision of proposals.*

(e) *The commission shall invite a requisitioning agency to participate in discussions conducted under Subsection (d) of this section.*

(f) *The commission shall make a written award of a purchase or lease to the offeror whose proposal is the most advantageous to the state, considering price and*

*the evaluation factors in the request for proposals, except that if the commission finds that none of the offers is acceptable, it shall refuse all offers. The commission may not use any other factors or criteria in its evaluation. The contract file must state in writing the basis on which the award is made.*

*(g) The commission shall adopt rules necessary or convenient to perform its responsibilities under this section and shall request assistance from other state agencies as needed.*

SECTION 7. Title 20, Revised Statutes, is amended by adding Article 601c to read as follows:

**Art. 601c. LITIGATION BONDS REGARDING AUTOMATED INFORMATION AND TELECOMMUNICATIONS CONTRACTS**

*Sec. 1. This article applies to all persons submitting a bid, proposal, or other similar offer, to a state agency, as defined by the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), in which the person proposes or offers to provide to a state agency for a total anticipated consideration greater than \$500,000 any telecommunications devices, systems, or services or any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software.*

*Sec. 2. At the time the bid or proposal is submitted, in addition to any other bond or security required by statute or regulations, the person shall submit a litigation bond jointly payable to the agency requesting the goods or services and the agency responsible for administering the Act under which the purchase is made, in the amount of \$25,000 or five percent of the value of the contract, whichever is greater, rounded up to the nearest \$1,000.*

*Sec. 3. In lieu of the bond required under Section 2 of this article, a person may post a blanket litigation bond, payable to the State of Texas, in the amount of \$100,000. A person must provide evidence of the blanket bond at the time each bid or offer is submitted.*

*Sec. 4. Acceptable securities for litigation bonds are cash, a cashiers check or certified check issued by a financial institution subject to the laws of this state, a bond from a surety company chartered or authorized to do business in this state, including a blanket bond, a certificate of deposit, a certificate of savings or U.S. Treasury bond, or an assignment of negotiable stocks or bonds acceptable to the state agency conducting the bid process.*

*Sec. 5. Payment under the litigation bond may be demanded only if all of the following conditions exist:*

- (1) the person is not awarded the contract;*
- (2) the person files suit against the state;*
- (3) the suit is decided against the person; and*
- (4) the judgment reflects a determination that the suit was frivolous, was brought in bad faith, was not brought upon reasonable grounds, or was not brought with a reasonable expectation of success.*

*Sec. 6. The bond shall remain in effect for two years after the date the contract was awarded unless earlier released. A bond posted under Section 2 of this article may be released by the payees in return for a release and covenant not to sue, signed by the vendor, notarized, and delivered to the payees. The successful bidder may request and receive a release of the litigation bond at the time of contract execution.*

*Sec. 7. The agency requesting the items may waive the bond requirements of this article for a specific solicitation of offers if it determines in writing that a waiver is in the best interests of the state. The written determination, including the reasons for it, shall be incorporated and published in the solicitation of offers.*

*Sec. 8. When requested by an agency, the attorney general shall collect all claims against a litigation bond filed under this article.*

SECTION 8. The changes made by this Act in the qualifications of members of the Automated Information and Telecommunications Council do not affect the entitlement of a member serving on the effective date of this Act to continue to serve for the term for which the member was appointed.

SECTION 9. (a) The Automated Information and Telecommunications Council shall review long-range plans and inventories described by Section 2.015, Chapter 737, Acts of the 67th Legislature, Regular Session, 1981 (Article 4413(32h), Vernon's Texas Civil Statutes), as added by this Act, that on September 1, 1987, are on file with the council. The council shall make its determination and certification under Section 2.015 regarding those plans and inventories before October 1, 1987. If the council determines that a plan or inventory is not adequately prepared, the council shall notify the agency of that fact on or before October 7, 1987.

(b) During September 1987, items may continue to be acquired in the same manner that they could be acquired preceding September 1, 1987, and the former law is continued in force for this purpose.

SECTION 10. This Act takes effect September 1, 1987.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 14, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2224 on May 30, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 17, 1987.

Effective Sept. 1, 1987.