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16. Abstract <p>Traditional contracting and procurement procedures when applied to electronic data communication, computing, and software are not entirely appropriate for Advanced Traffic Management Systems, particularly if low-bid is the prime consideration for award. Purchasing and procurement legislation for the State of Texas and other states was reviewed to determine applicability in procuring Advanced Traffic Management/Intelligent Vehicle Highway Systems. In particular, researchers considered compatibility issues in expanding existing systems. The current Texas Information Resources Act (SB 381), enacted in mid-1994, appears to offer the most flexible mechanism for implementing and expanding these complex systems. Through the catalog purchase procedure, TxDOT has the opportunity to more nearly specify the most appropriate traffic management system for a given set of circumstances and to provide for expansion and extension of systems with minimal compatibility problems. National efforts to develop a standard architecture and communications protocol will further enhance the ability to procure compatible system components. TxDOT should continue to monitor and participate in those national development activities.</p> <p>Given the implementation of the Texas Information Resources Act and the anticipation of a national standard architecture and communications protocol, the following recommendations are offered in relation to procurement and expansion of Advanced Traffic Management/Intelligent Vehicle Highway Systems:</p> <ul style="list-style-type: none"> • Utilize catalog or competitive proposal procedures to procure and expand systems; • Use new NEMA protocol for future traffic controller procurement; • Develop, in conjunction with other freeway management states, message structures supported by NTCIP which accommodate IVHS functionality with devices such as CMS, CCTV, detectors, LCS, HAR, etc.; and • Specify, to the extent possible, standard, off-the-shelf hardware for communications and control. 					
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**HARDWARE/SOFTWARE COMPATIBILITY FOR
TRAFFIC MANAGEMENT/IVHS SYSTEMS**

by

James D. Carvell, Jr.
Research Engineer
Texas Transportation Institute

and

Edward J. Seymour
Research Engineer
Texas Transportation Institute

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TEXAS TRANSPORTATION INSTITUTE
The Texas A&M University System
College Station, Texas 77843-3135

IMPLEMENTATION STATEMENT

This study indicates that existing state purchasing and procurement procedures for automated information systems can and should be applied to procurement of Advanced Traffic Management Systems. In particular, the catalog purchasing procedures, enacted by the State Legislature in 1993, provide means to procure and expand systems that satisfy function and compatibility for advanced control systems. TxDOT Division of General Services Administration has implemented procedures for catalog purchases, and the procedures are currently being used by at least two districts.

Alternative purchasing procedures are available, where, for some reason, the required hardware or software cannot be listed in a state catalog. These competitive proposal procedures are defined in existing legislation.

The study recommends that protocol development on a national level be monitored and results be applied to future controller procurement when the protocol is available. Until that protocol and the national IVHS architecture development are complete TxDOT should specify, to the extent possible, standard, off-the-shelf hardware for communications and control.

DISCLAIMER

The contents of this report reflect the views of the authors who are responsible for the opinions, findings, and conclusions presented herein. The contents do not necessarily reflect the official views or policies of the Federal Highway Administration or the Texas Department of Transportation. This report does not constitute a standard, specification, or regulation, nor is it meant for construction, bidding, or permit purposes.

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SUMMARY

Because most advanced traffic management systems will be built and installed incrementally (phased construction), a compatibility problem may be introduced when new components are added to an existing system. Traditional contracting and procurement procedures when applied to electronic data communication, computing, and software are not entirely appropriate, particularly if low-bid is the prime consideration for award.

Purchasing and procurement legislation for the State of Texas and other states was reviewed to determine applicability in procuring Advanced Traffic Management/Intelligent Vehicle Highway Systems. In particular, compatibility issues in expanding existing systems were considered. The current Texas Information Resources Act (SB 381), enacted in mid-1994, appears to offer the most flexible mechanism for implementing and expanding these complex systems. Through the catalog purchase procedure, TxDOT has the opportunity to more nearly specify the most appropriate traffic management system for a given set of circumstances and to provide for expansion of systems with minimal compatibility problems.

National efforts to develop a standard architecture and communications protocol will further enhance the ability to procure compatible system components. In the interim, standard off-the-shelf hardware and standard, commonly accepted interfaces should be specified in any system implementation or expansion. TxDOT should continue to monitor and participate in those national development activities.

Given the implementation of the Texas Resources Act and the anticipation of a national standard architecture and communications protocol, the following recommendations are offered in relation to procurement and expansion of Advanced Traffic Management/Intelligent Vehicle Highway Systems:

- Utilize catalog or competitive proposal procedures to procure and expand systems,

- Use new NEMA protocol for future traffic controller procurement,
- Develop, in conjunction with other freeway management states, message structures supported by NTCIP which accommodate IVHS functionality with devices such as CMS, CCTV, detectors, LCS, HAR, etc., and
- Specify, to the extent possible, standard off-the-shelf hardware for communications and control.

1. INTRODUCTION

BACKGROUND

The Texas Department of Transportation (TxDOT), like other state DOTs with intensely developed urban areas, faces the challenge of operating freeway systems as well constructing and maintaining those freeways. TxDOT has long been a leader in developing and implementing Freeway Management Systems, with pioneering systems in Houston and Dallas. Other urban districts such as Fort Worth and San Antonio have, over time, implemented various elements of freeway surveillance, communications, and controls such as changeable message signs (CMS), ramp metering, closed circuit television (CCTV), electronic vehicle detectors, and freeway lane control signals. Austin and Dallas are currently developing Intelligent Vehicle/Highway System (IVHS) plans to guide implementation of future Advanced Traffic Management (ATM) systems. San Antonio and Houston are currently installing comprehensive freeway information and management systems that will incorporate elements of earlier systems and concentrate management functions in large control centers. El Paso is installing infrastructure to support future IVHS systems. With the exception of San Antonio, which is currently installing an area-wide system, most of these systems will be installed in phases, because of funding limitations and the magnitude of managing the installation of a total urban area-wide system.

PROBLEM STATEMENT

Because TxDOT will build and install most traffic management systems incrementally (phased construction), a compatibility problem may be introduced when new components are added to an existing system. Traditional contracting and procurement procedures when applied to electronic data communication, computing, and software are not entirely appropriate, particularly if low-bid is the prime consideration for award. Appropriate adaptation and application of existing State procurement procedures or perhaps the development of new procedures (and new legislation) will be necessary to ensure compatibility and cost-effective procurement of new and expanded systems.

2. LITERATURE REVIEW

OVERVIEW

A library search was performed for procurement procedures in transportation-related documents with forty-one publications identified. In most of these documents, procurement was not the primary focus but was included to fully describe their subjects. The researchers secured, reviewed, and summarized documents relating directly to procurement practices as they relate to this project below. In addition, current legislation and other related documents are also summarized.

CURRENT TEXAS LEGISLATION

State Legislative Code, Roads, Bridges, and Ferries, Title 116

Overview: This legislation governs the purchase and procurement of all highway improvements administered by the Texas Department of Transportation.

Application: All projects classified as highway improvements must use provisions of this code.

State Purchasing and General Services Act, Art.601 b

Overview: These statutes govern purchasing and leasing of goods and services by State agencies. The Act addresses all aspects of purchasing and procurement. The acquisition of "telecommunications devices, systems, or services or any automated information systems, the computers on which they are automated....including software" by sealed proposals (as opposed to bids) is specifically addressed (pertinent provisions in Appendix A).

Application: Since the Act specifically designates procurement of computer hardware and software and telecommunication systems as eligible for acquisition by "sealed proposals" in contrast to "sealed bids," there is the opportunity to apply these provisions to procurement of advanced traffic control and management systems. No specific language addresses expansion of

existing systems.

House Bill 2626

An act amending the State Purchasing and General Services Act passed 5/19/93 to be effective 9/1/93.

Overview: This act amends the primary act in two key aspects which relate to procurement of traffic control systems. Section Two defines "automated information systems, best value, and qualified information system vendors." It also provides for "catalog purchase procedures" for automated information systems. Appendix A presents excerpts from pertinent provisions.

Application: The further definition of "automated information systems" facilitates the application of these provisions to the primary act in procurement of traffic control systems. Procurement by other than low bid processes are enhanced by definition of "best value" as including such considerations as compatibility, expansion capability, reliability, and potential technical support. The Act does not specifically address expansion of systems but it can be inferred from the language.

Senate Bill 381

An act amending the State Purchasing Act passed 5/29/93 to be effective 6/19/93.

Overview: Same provisions as described for HB 2626.

Application: Same application as HB 2626.

Purchasing and Contracting Authority of Municipalities Chapter 252

Overview: This document covers procedures and requirements for purchasing and contracting in Texas Municipalities. Appendix A excerpts pertinent provisions from the Act.

Application: Competitive proposal procedures for "high technology procurement" are defined and described. The legislation provides a city the power to consider the relative importance of price and other evaluation factors set forth in the Request for Proposal (RFP). It also addresses the confidentiality of a proposer's submittal. High tech procurement has been used for procurement of computer traffic control systems in at least three Texas cities: Dallas, Garland, and Beaumont.

RELATED DOCUMENTS

Procurement Reengineering Project: Final Report

Texas Comptroller of Public Accounts, May 1993

Overview: The State Comptroller's Office developed this document with an independent consultant (Deloitte & Touche), with support from the General Services Commission (GSC), Department of Information Resources (DIR), and a steering committee of procurement professionals from more than 30 state agencies. The report provides seven broad recommendations with specific means of implementation. These recommendations will be used ostensibly in preparing bills for consideration by the State Legislature.

Application: The most significant recommendation related to the procurement of traffic control systems is Recommendation 6 stated as:

State agencies should be authorized to use the most suitable procurement methods for non-contract purchases.

Recommendation 6.D states the procurement procedures:

Expand the use of competitive negotiation and requests for proposals in non-contract procurement.

Recommendation 6.K states the procurement procedures:

Adopt an "evolutionary" approach to major technology procurement.

The report cautions against "packaging major technology projects into large single procurement" in recognition of rapidly developing technology. It recommends that an evolutionary procurement which would "design and build some parts of the system, test them, use them, and build some more" rather than the conventional "design the system and build it" philosophy. This recommendation, if enacted into law, could help address the problem of system compatibility during system expansion.

Procurement Issues in IVHS Development and Deployment

Procurement Task Force of the Legal Issues Committee of IVHS America, May 1993

Overview: This document addresses concerns of the IVHS community (governmental agencies, vendors, consultants, contractors, etc) with regard to the unique procurement issues in acquiring and constructing "high-tech" hardware and software systems.

- 1 Distribution of Intellectual Property Rights
- 2 Multi-Jurisdictional Issues
- 3 Inexperience With High Technology Procurement
- 4 Cost Accounting, Cost Certification, and Auditing Requirements
- 5 Liability Between the Government and the Private Vendors
- 6 Procurement Compliance Cost
- 7 Organizational Conflict of Interest Limitations
- 8 Project Uncertainties Due to the Procurement Process
- 9 Fair and Reasonable Public-Private Partnership Implementation

Application: While many of the identified issues impact procurement compatibility issues to be addressed in this project, the report does not provide specific recommended wording for contracting or procurement techniques and policies. The recommendations primarily call on governmental agencies (mostly FHWA) to develop mechanisms to address these concerns. High-tech procurement by means other than low-bid, with consideration of life cycle costs are recommended. No specific treatment of issues of concerning procurement and compatibility are addressed.

Innovative Contracting Practices

TRC N336, Transp. Res. Board/National Res. Council, December 1991.

Overview: A task force formed by TRB addressed four major topics:

- Bidding Procedures,
- Materials Control,
- Quality Control, and
- Insurance and Surety Issues.

Application: The report primarily addresses contracting practices for roadway and bridge construction. The bidding procedures recommended include the use of "alternative bidding, using

innovative contracting practices." Innovative practices include turnkey construction such as: design-build; design-build-operate; and public-private partnerships. The report addresses other alternative practices such as negotiated competitive bidding (whereby the agency may select the lowest responsible bidder and then negotiate for a better product or price) and acceptance of alternative design concepts.

Model Procurement Code for State and Local Governments

American Bar Association, August 1980

Overview: This code provides a framework for receiving sealed proposals and the circumstances where it may be advantageous to the State to use or not use this process, as opposed to sealed bids.

Application: These provisions are essentially possible in the current State sealed proposal regulations.

System Procurement Alternatives

TRB Freeway Operations Committee, January 1991

Overview: This document includes excerpts from FHWA procurement regulations and from an unnamed report which includes four alternative system procurement procedures: Sole-source; Two-step Procedure; Engineer/contractor (Turnkey); and Systems Manager.

Application: FHWA regulations allow for methods of procurement other than competitive bidding when the Division Administrator determines that either an emergency situation exists, or it is cost effective to do so. Any of the four described procurement methods could then be technically possible under the FHWA regulations. The two-step procedure incorporates elements of the sealed proposal method currently possible under current State regulations.

SUMMARY

Current legislation allows procurement by means other than low bid for information processing systems including computers, telecommunications, software, and other hardware integral to a system such as an advanced traffic management system. A key consideration is the recognition of an advanced traffic control system (an automated information system) as something other than a traditional highway improvement such as roadway construction, reconstruction, or maintenance. In particular, HB 2626 and SB 381 denote "automated information systems" as being eligible for procurement by other than low bid with other considerations being compatibility, expandability, reliability, and potential technical support. The TxDOT Division of General Services Administration has already developed procedures and guidelines for use of catalog purchase and other more flexible methods of procurement as defined under these new legislative provisions.

3. EXPERIENCE IN OTHER STATES

SURVEY OF EXPERIENCE

State DOTs known to have implemented or to be in the process of implementing advanced traffic management systems were surveyed to determine their experience in procurement of systems and what considerations of compatibility of components for staged implementation have been addressed. Example legislation from some agencies was also obtained. Most states use typical sealed bid and award to the low bidder as the method for contracting for traffic control systems; however, a "lowest and best concept" and sole source procurement where a "substantial benefit" to the agency can be demonstrated are sometimes allowed. No clear cut method of procuring and expanding traffic management systems to accomplish compatibility and insure reasonable bid prices was found. However, conversations with system designers and operators in various State DOTs did result in some guidelines to help optimize price and function. State DOTs surveyed included: Arizona, Illinois, California, Michigan, Minnesota, Virginia, Washington and Wisconsin.

SUMMARY OF LEGISLATION

In addition to interviews with State DOT personnel, several legislative codes, statutes, and acts were reviewed for usefulness in defining improvements to the current legislation in the State of Texas. Appendix B includes portions of those documents. Applicable provisions from those documents are excerpted below with pertinent wording shown in *bold italics*. (Some sections or paragraphs are deleted if they are irrelevant to this document, so numbering may not be consecutive.)

Colorado

s 24-103-201. Methods of source selection

(1) Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding pursuant to section 24-103-202, except as provided in:

- (a) Section 24-103-203, **concerning awards by competitive sealed proposals;**
- (b) Section 24-103-204, concerning small purchases;
- (c) Section 24-103-205, concerning sole source procurements;
- (d) Section 24-103-206, concerning emergency procurements;
- (e) Part 14 of article 30 of this title, concerning architect, engineer, landscape architect, and land surveying services.

s 24-103-203. Competitive sealed proposals

(1) When, pursuant to rules, the state purchasing director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing that ***the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals.*** Competitive sealed proposals may be used for the procurement of professional services whether or not the determination described by this subsection (1) has been made. The executive director may provide by ***rule that it is neither practicable nor advantageous to the state to procure specified types of supplies, services, or construction by competitive sealed bidding.***

(4) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules and shall be open for public inspection after the contract award subject to the provisions of sections 24- 72-203 and 24-72-204.

(5) The request for proposals shall state evaluation factors.

(6) As provided in the request for proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision

of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. A contract resulting from a competitive sealed proposal is not awarded until the time for protest or appeal has lapsed or the administrative appeals process has been completed. No property interest of any nature shall accrue until the contract is awarded and signed by both parties.

s 24-103-205. Sole source procurement

A contract may be awarded for a supply, service, or construction item without competition when, under rules, the state purchasing director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing **that there is only one source for the required supply, service, or construction item.** Sole source procurement provisions shall not be used when the goods or services needed are available through the division of correctional industries unless the purchasing agency specifies the division of correctional industries as the sole source provider.

Minnesota

16B.07. Competitive bids

Subdivision 1. Application. Except as otherwise provided by this chapter, all contracts for construction or repairs and all purchases of and all contracts for supplies, materials, purchase or rental of equipment, and utility services must be based on competitive bids, and all sales of property must be to the highest responsible bidder after advertising for bids pursuant to this section.

16B.08. Bids not required

Subd. 2. Single source of supply. Competitive bidding is not required for purchases clearly and legitimately limited to a single source of supply, and the purchase price may be best established by direct negotiation.

Subd. 4. Negotiated contracts.

(b) In lieu of the requirement for competitive bidding in section 16B.07, subdivision 1, ***purchases and contracts may be negotiated in those circumstances determined by the commissioner, and in any of those circumstances the commissioner shall advertise for a request for proposal as a basis for negotiation.***

Subd. 5. Federal general services administration price schedules. Notwithstanding anything in this chapter to the contrary, ***the commissioner may, instead of soliciting bids, contract for purchases with suppliers who have published schedules of prices effective for sales to the General Services Administration of the United States.*** These contracts may be entered into, regardless of the amount of the purchase price, if the commissioner considers them advantageous and if the purchase price of all the commodities purchased under the contract do not exceed the price specified by the schedule.

Subd. 6. Emergency purchases. In emergencies the commissioner may, without calling for bids, contract directly for the repair, rehabilitation, and improvement of a state-owned structure or may authorize an agency to do so, and may purchase or may authorize an agency to purchase directly supplies, materials, equipment, or utility services for immediate use. An emergency for the purposes of this subdivision is an unforeseen occurrence or combination of circumstances which calls for immediate action in the public interest.

16B.09. Contracts and purchases, award

Subdivision 1. Lowest responsible bidder. All state contracts and purchases made by or under the supervision of the commissioner or an agency for which competitive bids are required must be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the call

for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life cycle costing, where appropriate, in determining the lowest overall bid. As to contracts other than for purchases, the head of the interested agency shall make the decision, subject to the approval of the commissioner. Any or all bids may be rejected. In a case where competitive bids are required and where all bids are rejected, new bids if solicited, must be called for as in the first instance, unless otherwise provided by law.

Illinois

505/6. State agencies; competitive solicitation, selection and procurement procedures
s 6. State agencies may provide that prospective contractors be prequalified to determine their responsibility, as required by this Act. State agencies shall also provide, among other matters which are not in conflict with the policies and principles herein set forth:

a. That all purchases, contracts and expenditure of funds shall be awarded pursuant to a competitive selection procedure which may provide that contracts be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability, except as provided in paragraphs e, f, g and h of this Section.

However, a competitive selection procedure need not be followed in the following cases:

(1) Where the goods or services to be procured are economically procurable from only one source, such as contracts for local exchange telephone service, electrical energy, and other public utility services, books, pamphlets and periodicals, and specially designed business and research equipment and related supplies.

(8) Contracts for the maintenance or servicing of, or provision of repair parts for equipment which are made with the manufacturers or authorized service agent of that equipment where the provision of parts, maintenance or servicing can best be performed by the manufacturer or authorized service agent or such a contract would otherwise be advantageous to the State, but the exception provided in this sub-paragraph (8) does not apply to the subdivisions of work listed in paragraph a-1-a of this Section.

(9) Where the goods or services are procured from another governmental agency.

(10) Purchases and contracts for the use, purchase, delivery, movement or installation of data processing equipment, software or services and telecommunications and inter-connect equipment, software and services.

Virginia

s 11-37 Definitions.

The words defined in this section shall have the meanings set forth below throughout this chapter.

"Competitive sealed bidding" is a method of contractor selection which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

"Competitive negotiation" is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the

contractor.

b. Procurement of other than professional services. -- Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

s 11-41 Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

2. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

(i) By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under s 11- 41.2;

(ii) By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;

(iii) *By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or*

(iv) As otherwise provided in s 11-41.2:1.

D. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

TYPICAL PRACTICES

The following observations were derived from conversations with personnel in various State DOTs.

- Write extremely tight specifications. Enforce them stringently.
- Latch on to standard communications protocols or architectures (such as Sonet or Protocol 90).
- Provide a standard State protocol and require suppliers/bidders to build to it.
- Purchase an adequate amount of spare equipment for expansion.
- Require the supplier/bidder to guarantee a price over some fixed time period with the price to be adjusted by some agreed upon factor such as the Consumer Price Index.
- Use a sole source procurement for expansion.
- Work very closely with contractors to insure that you get fully compatible components.
- Require complete compatibility and interchangeability of expanded equipment.

- Write and enforce a strong performance specification.
- Require that all equipment interface through a standard piece of equipment such as the Model 170 controller.
- Give up on "tweaks"- stick with standard, proven technology. There is plenty of it.
- Encourage suppliers to get together and come up with a standard protocol/architecture. (There is currently a NEMA effort to do this for signal controllers.)
- Use an industry standard shell and platform such as OS/2 and a 486 or pentium PC.
- Specify in detail the exact devices required and buy them through the contractor.
- Require the vendor in the initial contract (e.g. CMS) to provide its communication protocol to subsequent vendors.
- Use the standard protocol/open architecture design being developed for local controllers. Adapt that protocol to interface with freeway management hardware elements.

APPLICABILITY OF OTHER STATES' PROCUREMENT PRACTICES

Virtually all provisions of other states' procurement statutes applicable to purchase of ATMS/IVHS are possible under current Texas procurement provisions, particularly with the enactment of the Information Resources Act (Senate Bill 381) in May 1993. In fact, of the States surveyed, Texas legislation is by far the most flexible for purchase of high technology systems such as an Advanced Traffic Management and other Intelligent Vehicle/Highway Systems. Compatibility of future systems, if common communication protocols are available, is also enhanced by the legislation now in force. Application of current legislation and compatibility issues are discussed subsequently.

Conversations with system implementers in other states resulted in some practical suggestions on how they have overcome the obstacle of traditional highway contracting practices and their relation to implementation of ATMS/IVHS systems.

4. APPLICATION OF CURRENT LEGISLATION FOR PROCUREMENT OF ADVANCED TRAFFIC MANAGEMENT/IVHS SYSTEMS

PROCUREMENT METHODS

For implementing or expanding an ATM /IVHS system, there are four primary procurement methods to be considered: 1) Competitive Sealed Bid; 2) Competitive Sealed Proposal; 3) Two-Step Sealed Bidding; and 4) Catalog Procedures. The specific method used will depend on the degree to which the design can fully define the purchase, installation, and integration of the system; the time required for system implementation; available TxDOT technical expertise; cost effectiveness; compatibility with existing and future systems; administrative requirements; and any specific legal limitations. (The discussion of the first three methods enumerated above is adapted from Reference 1, a previously unpublished document.)

Competitive Sealed Bid

Development of ATM /IVHS design and the construction of the systems have historically been conducted as distinct and separate activities. TxDOT can retain the services of private engineering firms (negotiated professional service contract) to develop conceptual and detailed designs; more typically, designs have been developed at the District level with technical assistance from TxDOT Austin Headquarters Divisions. Upon completion of detail design, the project is advertised for construction and awarded using the competitive sealed bid procurement process.

The competitive sealed bid procurement process is a rigid process in which the lowest responsible and responsive bidder is awarded the contract (2). The bidders and the contracting agency are not permitted to discuss price or the terms and conditions of the bid. Because no negotiations are permitted to take place during sealed bidding, the contracting agency's requirements must be described clearly, accurately, and as completely as possible. The

requirement places a great responsibility upon the ATM/IVHS detail designers and TxDOT to provide the contractor with system design specifications that will produce a fully integrated, functioning system.

With competitive sealed bidding, an Invitation For Bids (IFB) is issued containing a description of the item or service to be procured, the quantity, specifications, delivery schedule, quality assurance provision, inspection and acceptance criteria, and other provisions as necessary (2). The bidder must submit a bid which is fully responsive to each and every requirement in the IFB. If the bidder takes exception to any provision of the IFB, the bid may be declared "nonresponsive" and may not be considered for award, no matter how favorable the price.

The use of this procurement method for TxDOT ATM/IVHS systems is based upon current interpretation of state statutes governing TxDOT procurement procedures for designing and constructing traditional TxDOT facilities such as highways and bridges (3). The use of this procurement method is fairly straightforward for roadway and bridge construction projects. The evolutionary development of construction techniques for these types of projects has been a long-term progression, thus allowing TxDOT to accumulate a large body of knowledge to ensure consistent and quality construction.

However, the nature of ATM/IVHS system construction is quite different from roadway construction. The ATM/IVHS system is an integrated network of electronic sub-systems, including communications, computer hardware/software, and control instrumentation. These technologies are dynamic with very short innovation cycles. This proliferation of technology and component change can introduce an element of discontinuity between the different stages of system design and construction and may be particularly evident as systems are expanded after initial implementation. This, in turn, complicates the communications between the principle parties involved in the implementation and expansion process.

In a sealed competitive bid situation, the construction contractor is presented with a set of detailed design plans and specifications and is responsible for implementation. This procedure assumes that the contractor can successfully deliver a functioning system by diligently following the detail design specifications. However, this scenario does not always portray the realities of ATM/IVHS construction activities where integration of communication and computer systems is a major requirement. Installation can be complicated by a number of variables: unanticipated field conditions, software/hardware incompatibilities, Federal Communication Commission (FCC) licensing requirements, design oversights, etc.

The competitive sealed bid process can be strengthened by including provisions in the contract document that require the bidder (or as sub-contractor to the bidder) to possess the skills and have past work experience with similar installations as a prerequisite to bid on any TxDOT ATM/IVHS system installation. By pre-qualifying each bidder, TxDOT is able to establish prior to contract award whether or not each prospective bidder is capable of meeting the technical challenges posed by ATM/IVHS installations.

Competitive Sealed Proposal

The competitive sealed proposal method may be used to construct an ATM/IVHS system when it is determined that competitive sealed bidding is either not practicable or not advantageous to TxDOT. There are requirements placed upon TxDOT personnel during the negotiations and award of the contract: 1) comply with State regulations; 2) negotiate a contract that will give the contractor the greatest incentive to perform the contract in a timely fashion and at the lowest possible cost to TxDOT; 3) procure only the essential items and services that will meet the requirements for an effective ATM/IVHS system; and 4) make sure the price is "fair and reasonable" (2).

If the competitive sealed proposal process is to be used, a Request for Proposal (RFP) is issued. The RFP provides a description of the desired items and/or services, schedule of delivery, contractor qualifications, estimated total costs of the items requested, and other

pertinent information. All proposals are reviewed and a determination is made as to whether any or all are within a previously established "competitive range" and warrant consideration for negotiation.

Two major categories of information within the RFP are used to evaluate the individual offers: the technical proposal and the cost breakdown.

Technical Proposal - The technical proposal should contain sufficient information to adequately describe and evaluate the course of action to be taken by the contractor to provide an ATM/IVHS system as set forth in the RFP. This information should include:

- An identification sheet containing the system title, a synopsis of the proposed work, and a signature of the company representative who will be responsible for administering the contract.
- A detailed description of the proposed work to include a brief statement of the purpose, data base, design, scope, and methodology of the work effort, the timetable for performance, and any other matters considered pertinent to the project.
- Work experience of all principle personnel to be involved in the project (2).

Cost Data - The cost breakdown data submitted by the contractor for RFP evaluation should include, but not be limited to, the following:

- Direct Labor,
- Overhead, General and Administrative Expenses, and Other Indirect Expenses,
- Other Direct Costs, and
- Subcontracts (2).

Evaluation Factors - Evaluations would typically be conducted by a committee of TxDOT personnel with the necessary background and experience to competently review the different aspects associated with the implementation of an ATM/IVHS system. This committee should analyze each proposal based upon the following criteria:

- Technical Evaluation
 - Problem Comprehension
 - Technical Approach

-Specific Experience

-Organization and Management

- Cost Evaluation

Weighing of Evaluation Factors

The evaluation of the technical factors would typically constitute approximately three-fourths (3/4) of the overall evaluation, and the cost of the proposed effort will constitute approximately one-fourth (1/4) of the overall evaluation (2) although other weighting factors may be more appropriate. Award should be made to the offeror who submits the proposal judged the highest in accordance with the evaluation factors specified (2).

The technical and complex nature of ATM/IVHS systems meets criteria to use the competitive sealed proposal method to procure the system. The design and implementation of these types of traffic management systems are among the most complex electronic and computer control systems ever attempted by TxDOT. However, the use of the Competitive Sealed Proposal method by TxDOT requires the classification of ATM/IVHS systems as other than a highway improvement. Under current State statutes, highway improvement activity must use the low bid procurement process.

Two-Step Sealed Bidding

Two-step bidding is a hybrid method of procurement that combines sealed bidding with negotiation. It is designed to obtain the benefits of sealed bidding when it is not practicable to provide specifications for conventional competitive sealed bidding.

In the first step of the process, contractors must submit technical proposals describing the services being offered along with an explanation of the proposed engineering approach, special manufacturing processes, special testing techniques, etc., that will be used. The management approach, manufacturing plan, description of the facilities, etc., may also be required elements of the technical proposal. Price is not solicited during this first step nor is it discussed. If the offeror furnishes a price proposal, the entire proposal may be rejected. Only technical

negotiations are conducted, and those offerors who submitted technically acceptable proposals are the only ones permitted to participate in step two (2).

The second step is a sealed bid procurement in which each contractor who submitted an acceptable technical proposal during step one is invited to submit a bid on his proposal. The contractor is not permitted to submit a bid on an alternate technical proposal at this stage of the procurement, and no modifications to the technical proposal are permitted.

As with all sealed bids, the bid must be a firm fixed price or fixed price with economic price adjustment, whichever the contracting agency specifies (a bid is declared nonresponsive if it does not comply with all the terms and conditions contained in the IFB). Once the bids have been opened and the contracting agency has evaluated them, a contract is awarded to the lowest responsive, responsible bidder. The contract incorporates the lowest bidder's technical proposal as the statement of work. The contracting agency may use this technique when the agency has a firm concept of its requirements but does not have adequate specifications for conventional sealed bidding.

Like the Request for Proposal method, it is critical that a knowledgeable and diversified evaluation committee be convened to evaluate submitted proposals. Additionally, criteria for evaluation should be similar to that established for the RFP process.

Catalog Purchases

Senate Bill 381, known as the Information Resources Management Act (the Act), prescribes state agency purchase of automated information systems in ways that may be advantageous to the procurement of traffic management/IVHS systems. Traffic management/IVHS appear to satisfy the requirements and definitions of the Act.

Catalog procedures must be used for purchases of automated information systems unless it is determined that the best value (as defined below) available to the State would result from an

alternative purchase method defined in the Act. The alternative procurement methods as defined by the Act are those allowed under Article 601b of the State Purchasing Code. Two avenues for procurement of Traffic Management Systems are therefore provided for under the Act: (1) Catalog purchase and (2) Other methods when "best value" to the State is defined and documented.

The Act prescribes the following definitions.

"State agency" means a department, commission, board, office, council or other agency in the executive or judicial branch of government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

"Information resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel, including consultants and contractors.

"Information resources technologies" means data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

"Data processing" means information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic mechanical means, or both. The term includes the following.

- Central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanner, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters, and equipment and systems for computer networks;
- All related services, including feasibility studies, systems design, software development, and time-sharing services, whether provided by state employees or by others; and
- The programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

"Telecommunications" means any transmission, emission, or reception of sign signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical or other electromagnetic systems and includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government.

"Application" means a separately identifiable and interrelated set of information resources technologies that allows a state agency to manipulate information resources support specifically defined objectives.

"Project" means a program to provide information resources technologies support to functions within or among elements of a state agency, which should be characterized by well-defined parameters, specific objectives, common benefits, planned activities, scheduled completion date, and an established budget with a specified source of funding.

"Automated information systems" means 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, awarded to a vendor by a state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes), or any telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for the purpose of transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on that network.

"Best Value" means the lowest overall cost of information systems based on, but not limited to, the following factors.

- Purchase price;
- Compatibility to facilitate exchange of existing data;
- Capacity for expansion and upgrading to more advanced levels of technology;
- Quantitative reliability factors;
- The level of training required to bring end-users to a stated level of proficiency;
- The technical support requirements for maintenance of data across a network platform and management of the network's hardware and software; and
- Compliance with applicable statewide standards adopted by the Department of Information Resources or a subsequent entity as validated by criteria established by the department or a

subsequent entity in administrative rule.

Based on Senate Bill 381, the General Services Commission (GSC) has issued detailed procedures for utilizing catalog purchase for automated information systems. The procedures are shown in Attachment 1 of Appendix C. The procedures primarily address requirements for vendors desiring to have their catalogs approved for State purchases. Commodity classes requiring catalog purchase procedures are shown in Attachments 2 of Appendix C.

A "Procedure for Using Catalogs Approved by GSC" (4) outlines procedures for using approved catalogs. For purchases over \$10,000, a written description of the items or services is developed for the Request for Proposal (RFP).

- Mandatory requirements which must be met by the offeror;
- Requirements which the purchaser may desire; and
- Optional requirements which the purchaser or the offeror may add.

The RFP must include the evaluation criteria by which each offer is to be evaluated based on these requirements. Only those offers meeting **mandatory** requirements can be considered. The purchaser can then select the offeror providing the best offer and negotiate additional requirements or lower cost. Records must be kept detailing how the successful vendor was selected.

If an information resources item is not listed in any catalog, agencies are directed to encourage a current catalog vendor to add the item to its catalog. If an item cannot be added to a current catalog or a new vendor's catalog cannot be found to satisfy the requirements, the purchaser using another method of purchase allowed under Article 601b, must document the reason the catalog was not used .

If a non-catalog purchase (such as an automated traffic control system) is necessary and has been documented to be in the State's best interest, it may desirable to use provisions of Article 601b. As described in Section 2 above, acquisition of "telecommunications devices, systems,

or services or any automated information systems, the computers on which they are automatedincluding software" by **sealed proposals** (in contrast to sealed bids) is specifically allowed. The key concern is that the purchase be considered as other than a highway improvement, in which case **sealed bid** procedures would be required under the State Legislative Code, Roads, Bridges, and Ferries, Title 116.

SUMMARY

Traffic management/IVHS systems clearly meet the definition of an "automated information system" as spelled out in the Information Resources Act (SB 381). Therefore, catalog purchase procedures would be the most expeditious method for acquisition of such systems and related components if the systems can be specified in such detail that the preferred system supplier(s) can have their systems and components clearly listed and accepted into the State catalog. If this is not the case and detailed plans and specifications are prepared by the State or its consultant, then the preferred method of procurement would be by sealed competitive proposals as provided for in Article 601b. Both of these methods, catalog and sealed proposals, provide an opportunity for TxDOT to provide for compatibility in expansion of systems. Given that development and implementation of traffic management/IVHS is already underway in at least three urban districts (Fort Worth, Houston, and San Antonio), it is unlikely that seamless compatibility among systems can be accomplished. However, certain major components and devices may be compatible by specifying standard communications and other interfaces. This subject will be addressed in Section 5, Compatibility Issues.

5. COMPATIBILITY ISSUES

EXPANSION OF EXISTING AND FUTURE SYSTEMS

Purchasing and procurement procedures which are conducive to installation and expansion of traffic management/IVHS systems are possible under current legislation. Catalog purchasing procedures allow a particular vendor to submit for approval a catalog of equipment. Thus, particular items of equipment can be designated in the catalog and purchased directly. System component compatibility for expansion of systems is virtually assured by specifying a particular brand and model and performance criteria. Communications compatibility and standard architecture may yet be an issue in the not unlikely event that a particular vendor ceases supplying certain equipment or goes out of business. Therefore, the need for a standard interface and architecture still exists, even with a catalog purchase procedure.

INTER SYSTEM COMPATIBILITY

Complete compatibility of systems among the various urban areas is probably impractical, but certain elements or components can be interchangeable. Display devices such as lane control signals, ramp signals, changeable message signs (but not necessarily their control mechanisms), and "audio displays" such as highway advisory radio can be compatible among various systems and in many cases must be compatible as far as the display itself because of TMUTCD requirements. Surveillance hardware such as CCTV cameras, loop detectors, and other vehicle detectors are fairly standard and could readily function in a multi-system environment. Central hardware and software compatibility are a function of the system design and would have to be standard and be virtually identical for compatibility among systems to function. At present, the TxDOT system design is guiding implementation in Houston and Fort Worth. San Antonio is proceeding with a unique system design. System designs for Austin, Dallas, and El Paso are not yet set.

OTHER SYSTEM COMPATIBILITY CONSIDERATIONS

Several development efforts are currently underway which may have a significant effect on system compatibility and may prove advantageous to TxDOT in system development and expansion.

Advanced Transportation Controller

As a mechanism to accommodate the needs of IVHS systems and to provide user flexibility with regard to programming local controllers, Caltrans has been developing an "Advanced Transportation Controller" (ATC). This effort is an extension of Caltrans' previous experience in designing, programming, and operating the Model 170 controller. A significant concept in the design of the controller is the use of an industry standard VMEbus to allow for the addition of other IVHS functionality in the controller unit. By inserting VMEbus compatible printed circuit boards, it is possible to add control of video cameras, instrumentation interfaces (e.g., emission detection and monitoring), highway advisory radio interfaces, and others.

Because VMEbus components are available from many sources, traffic signal controller manufacturers may be able to build products that comply with the Caltrans specification without significant research and development expenditures. A goal of the Advanced Transportation Controller effort is to encourage multiple sourcing for ATCs using a single specification. Because the idea is based on industry standard components, some signal manufacturers have developed and are marketing products that are NEMA "compatible." It is possible to plug them into existing cabinets and have them perform traffic signal control operations. The target date for deployment of the ATC in California is likely to be 1995 with field testing and refinement occurring during 1994.

System Architecture and Communications Protocols

The U.S. Department of Transportation (DOT) has defined system architecture as "a

description of how the many elements, or subsystems, work together to perform the system's intended functions or to provide user services"(5). FHWA views the development of a national IVHS architecture important because it can

- Provide a common method for vehicles to communicate with roadside devices and transportation management centers.
- Permit IVHS equipped vehicles to travel across the country and utilize user services.
- Foster private sector development of products and services.

Architecture issues that impact technologies include standards, communications protocols, assignment of functions (for example, centralized versus distributed), varying levels of user services, and increasing functionality over time.

FHWA Sponsored National IVHS Architecture Project

In response with IVHS AMERICA recommendations, FHWA initiated a formal systems architecture design process funded by the U.S. DOT. This architecture development process was solicited in March 1993. From this solicitation four consortia were selected to develop different, competing architecture concepts. The lead agencies on the four teams are Hughes Aircraft, IBM, Rockwell International, and Westinghouse Electric. The start date for this work was September 15, 1993.

The schedule for the work includes a 12 month Phase I technical effort, followed by a 3 month "down-select" where the number of proposed architectures is reduced to one or two. Phase I will produce subsystem descriptions and associated data flows. Deliverables from Phase I include the following.

- Initial architecture definition (including mission, logical, and physical architecture components),
- Traceability matrix,
- Definition of simulation parameters,
- Analysis of data loading requirements,
- Initial cost analysis, and

- A proposed architecture evaluation plan.

Phase II will involve detailed analysis and systems modeling to evaluate the candidate IVHS architectures and is expected to last 16 months. Deliverables are anticipated to include detailed architecture definition (including mission, logical, and physical architecture components), traceability matrix updates, simulation study results, evolutionary deployment strategy, cost analysis, and a performance/benefit summary.

Associated with this National IVHS Architecture project is a consensus building effort involving "key stakeholders." A goal of the study is to develop an architecture that is regarded as the consensus best architecture by key stakeholders. As a part of the consensus process, a Regional Architecture Forum will be held in various regions of the country to provide an opportunity to gather local responses to the architecture alternatives.

Although the proposed architectures are not final, in all probability they will not address architecture at the component level (local controller, CMS, CCTV, LCS, etc). Rather, their goal is to define the functionality of subsystems.

NEMA National Traffic Control/IVHS Communications Protocol (NTCIP)

Communications protocols are a key element in implementing an ATM/IVHS system. In the traffic signal local controller technology arena, there currently does not exist a common set of protocols for communications. Therefore, it is difficult to develop an integrated system that provides inter-operability between manufacturer's products. Further, there is a desire by customers to view local controllers as "field processors" acting as a communications and control node performing more than traffic duties (6). These additional functions could include changeable message sign displays, surveillance camera control, sprinkler system control, and air quality monitoring.

NEMA traffic control equipment manufacturers began to formulate a National Traffic Control

IVHS Communications Protocol (NTCIP) shortly after finalizing the TS-2 traffic control hardware standard in 1992. Among other considerations, TS-2 Standards addressed communications between equipment components within the cabinet (7). However, it did not pertain to communications protocols between traffic signal local controllers and other devices external to the cabinet.

Five priority issues have been identified for action (8):

- Development of a communications standard
- Designation of the local controller as a “field processor” for various control applications
- Simplified operations and maintenance of traffic signal control equipment
- Improved procurement practices; and
- Deployment options with identified funding.

These issues were consistent with published objectives for IVHS and also consistent with prior FHWA reports on the following related topics:

Report on *Operation and Maintenance of Traffic Control Systems* (9)

Expert panel report on *Traffic Control Systems Operations and Maintenance* (10)

Report on *Traffic Control Systems Operations and Maintenance - A Plan of Action* (11).

Specific issues relevant to communications standards that have been emphasized by NEMA in their NTCIP design efforts are listed below (6):

- Develop a design that is fully documented and that could serve as an “open standard”;
- Keep communications separate from applications;
- Define a protocol that can be implemented;
- Allow multiple vendor’s products use of same communications path (connectivity);
- Share common functions between like products (interoperability); and
- Enable development of “field processors” that are communications and control nodes in an IVHS network (not just local controllers).

Significant progress for developing a publicly available NTCIP occurred in late 1994. For almost two years the Technical Committee of the NEMA Traffic Control Systems Section worked closely with representatives of the 1993 Signal Manufacturers Symposium Steering Committee to facilitate definition of the protocol. In May 1994, FHWA asked Oak Ridge National Laboratory (ORNL) to evaluate the work-in-progress draft protocol definition. As a result ORNL retained a consultant, Opus One, to review and evaluate the draft and to search for software sources to support the NTCIP. Opus One's conclusion was that no suitable software was available and that it would be cost effective to develop the required software. From June 1994 to present (November 1994), the NEMA Technical Committee refined the NTCIP protocol definition to 90% completion. Oak Ridge National Laboratory initiated a contract with Opus One for development of NTCIP software and the NEMA Technical Committee distributed the draft NTCIP for wide-spread review and comment.

6. RECOMMENDATIONS

Shortly after the inception of this project, State of Texas legislation was enacted which will significantly enhance the procurement of ATMS/IVHS (Advanced Traffic Management Systems/Intelligent Vehicle Highway Systems). Ongoing national efforts in development of a common protocol for traffic signal controllers also promise significant advantages to TxDOT in the procurement of traffic signal controllers. The date for delivery of the national architecture for IVHS is sometime in the future. However, procurement of ATMS can continue with considerable assurance that such systems will be compatible with the national architecture if interfaces, protocols, and other communications-related features are specified as standard or commonly accepted technology to the extent practical. Furthermore, catalog purchase procedures and procurement by competitive proposals can virtually assure that future systems will be compatible.

The following recommendations are offered in relation to procurement and expansion of Advanced Traffic Management and Intelligent Vehicle/Highway Systems.

UTILIZE CATALOG OR COMPETITIVE PROPOSAL PROCEDURES TO PROCURE AND EXPAND SYSTEMS

The Information Resources Management Act (Senate Bill 381) requires that catalog purchasing procedures be used for procurement of automated information systems unless there are compelling, documentable reasons that it would be to the State's advantage to use another purchasing method. If it is apparent that catalog purchase is not feasible, a competitive proposal method would be most appropriate for procurement of an ATMS/IVHS system. Although the purchase of such a system by this latter method has technically been possible under previous legislation, it was apparently not used because State Statutes were interpreted to require that traffic control and management systems be classed as highway improvements which required sealed bid procedures.

The catalog purchase of services related to ATMS/IVHS systems has already been utilized in the Houston District; and the Dallas District plans to utilize catalog purchase for the procurement of a traffic management system for North Central Expressway. This clearly demonstrates that such systems are considered "automated information systems." Therefore, if catalog purchase is not feasible, either the competitive sealed proposal or the two-step sealed bid can be used to ensure that the systems procured are fully compatible with the design requirements.

Summary

- Catalog procedures are appropriate, desirable, and should be used when the supplier has the specific, desired system listed in the State catalog. This is applicable in both implementation of new systems and in the expansion of existing systems.
- Competitive sealed proposals or a two step bidding process are appropriate and should be used for the circumstance when a specific system is not listed in the State's catalog.

USE NEW NEMA PROTOCOL FOR FUTURE TRAFFIC CONTROLLER PROCUREMENT

As described in Section 5, NEMA National Traffic Control/IVHS Protocol (NTCIP), industry and operating agencies are cooperating in developing a communication standard for local traffic controllers and designation of the local controller as a "field processor" capable of various control applications. The date for availability of this protocol is not firm, but a draft will be available for review in mid-1994. Therefore, it is not practical nor advisable for TxDOT to develop its own standard protocol. Until the NTCIP is available and accepted, the Department should minimize the number of controllers purchased under its current specifications. If purchase of new controllers is necessary in the interim, the Department should require that the supplier provide detailed documentation of its protocol to increase the possibility of interfacing the unit with future systems.

Summary

- TxDOT should adopt the National Traffic Control/IVHS Communication Protocol(NTCIP) when it becomes available.
- In the interim, until the NTCIP becomes available, traffic controller purchases should be minimized.
- If traffic controllers must be purchased, the specification should require the successful bidder to provide detailed documentation of its protocol.

DEVELOP, IN CONJUNCTION WITH OTHER FREEWAY MANAGEMENT STATES, MESSAGE STRUCTURES SUPPORTED BY NTCIP WHICH ACCOMMODATE IVHS FUNCTIONALITY WITH DEVICES SUCH AS CMS, CCTV, DETECTORS, LCS, HAR, ETC.

The NTCIP effort has as one of its priority issues the designation of the local controller, in addition to the traditional function as an intersection controller, as a field processor for various monitoring and control applications related to traffic management and control.

These functions may include:

- Control and monitoring of Changeable Message Signs (CMS),
- Control of Closed Circuit Television cameras (CCTV),
- Control and monitoring of Lane Control Signals (LCS),
- Monitoring of Highway Advisory Radio (HAR),
- Control and monitoring of ramp metering,
- Monitoring and processing of field vehicle detector data,
- Monitoring of other traffic related measuring devices (e.g. vehicle emissions), and
- Control and monitoring of non-traffic related subsystems such as drainage and irrigation of highway rights-of-way.

Other state departments of transportation with ATMS/IVHS in place or planned have a vested interest in development of a common protocol and interface for both installation and

expansion of traffic management systems. The ongoing effort by NEMA to include user-definable messages other than normal intersection control will be of great interest to these other departments as well as to TxDOT. Because of this common interest, TxDOT should join with these other agencies to determine if the NTCIP does in fact meet requirements for ATMS/IVHS and, if so, develop a common message structure that does meet their requirements, based to the extent possible within the NTCIP.

Summary

- In conjunction with other freeway management states, determine if the NTCIP is adequate for use in ATMS/IVHS.
- If the NTCIP is adequate, develop with these other states a common message structure based on the NTCIP.
- If it is determined that the NTCIP is not adequate for these applications, develop in conjunction with other states a suitable common protocol and message structure.

SPECIFY, TO THE EXTENT POSSIBLE, STANDARD, OFF-THE-SHELF HARDWARE FOR COMMUNICATIONS AND CONTROL

The current national efforts in developing a standard IVHS architecture and a standard controller communications protocol will potentially be of great benefit to TxDOT in procurement and expansion of compatible ATMS/IVHS. Regardless of the success and delivery date of those endeavors, it is to TxDOT's advantage to procure hardware items with standard, commonly used interfaces such as RS 232, or a standard coax port. If the national efforts are successful, these components can be more easily interfaced to systems designed using the new protocols and architecture. If for whatever reason the national standards are not accepted, then the equipment can more readily be interfaced to a new or expanded system. If no "standard" interface exists, the minimum interface requirement should be that the device can be monitored and commanded by an IBM personal computer with readily available interfaces such as an RS 232 port, a coaxial interface port, or a high

speed modem.

Summary

- Whenever practicable, TxDOT should specify standard, off-the-shelf control, monitoring, and communications hardware and hardware interfaces.
- The minimum standard for interface should be that the device can be monitored and commanded by an IBM compatible personal computer.

7. SUMMARY

Purchasing and procurement legislation for the State of Texas and in other states was reviewed to determine applicability in procuring Advanced Traffic Management/Intelligent Vehicle Highway Systems. In particular, compatibility issues in expanding existing systems were considered. The current Texas Information Resources Act (SB 381), enacted in mid-1994, appears to offer the most flexible mechanism for implementing and expanding these complex systems. Through the catalog purchase procedure, TxDOT has the opportunity to more nearly specify the most appropriate traffic management system for a given set of circumstances and to provide for expansion and extension of systems with minimal compatibility problems.

The national efforts to develop a standard architecture and communications protocol will further enhance the ability to procure compatible system components. In the interim, standard off the shelf hardware and standard , commonly accepted interfaces should be specified in any system implementation or expansion. TxDOT should continue to monitor and participate in those national development activities.

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APPENDIX A

TEXAS LEGISLATIVE CODES FOR PROCUREMENT OF HIGHWAY IMPROVEMENTS

ARTICLE 601B-STATE PURCHASING AND GENERAL SERVICES ACT

**SENATE BILL 381 AN AMENDMENT TO THE STATE PURCHASING AND
GENERAL SERVICES ACT**

- KNOWN AS THE "INFORMATION RESOURCES MANAGEMENT ACT"

**HOUSE BILL 2626 AS FINALLY PASSED AND SENT TO THE GOVERNOR
- AN AMENDMENT TO THE STATE PURCHASING AND GENERAL
SERVICES ACT**

ART. 601B, STATE PURCHASING AND GENERAL SERVICES ACT

ARTICLE I. GENERAL PROVISIONS

Short Title

Section 1.01. This Act may be cited as the State Purchasing and General Services Act.

Definitions

Section 1.02. In this Act:

(1) "Commission" means the State Purchasing and General Services Commission.

(2) "State agency" means:

(A) any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state except the Texas High-Speed Rail Authority;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

ARTICLE 2. ADMINISTRATIVE PROVISIONS

Commission

Sec. 2.01. The State Purchasing and General Services Commission is established.

Membership

Sec. 2.02. The commission is composed of three members appointed by the governor with the advice and consent of the senate.

Terms

Sec. 2.03. Members of the commission hold office for staggered terms of six years, with a member's term expiring on January 31 of each odd-numbered year.

Officers; meetings; quorum

Sec. 2.04. (a) The governor annually shall appoint a chairman from among the commission members.

(b) The commission shall meet at least once each month. The commission may meet at other times at the call of the chairman or as provided by the commission's rules.

(c) Two members of the commission constitute a quorum.

Expenses

Sec. 2.05. A member of the commission is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission.

Administration; Staff

Sec. 2.06. (a) The commission shall employ an executive director who shall serve at the pleasure of the commission. The executive director shall execute a bond payable to the state in such sum as the commission may deem necessary, to be approved by the commission and conditioned upon the faithful performance of the duties of the office. Premiums for said bond also shall be payable from such appropriations for the commission as are authorized by the legislature. The executive director must have demonstrated executive and organizational ability.

(b) The executive director shall manage the affairs of the commission subject to and under the direction of the commission. All direction of the commission to the executive director shall be made at an open meeting of the commission and made a part of the minutes of the commission. A member of the commission may not grant any authority to the executive director or any other employee by power of attorney.

(c) The executive director shall employ two associate deputy directors, who shall administer the operation of the divisions of the commission as provided by this Act.

(d) The executive director may employ a staff necessary to administer the functions of the commission.

Application of Sunset Act

Sec. 2.07. The commission is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the commission is abolished and this Act expires September 1, 1991.

Report

Sec. 2.08. Not later than the 30th day after the date on which each regular session of the legislature begins, the commission shall report to the legislature concerning the activities of the commission during the preceding legislative interim and shall recommend any amendments to current law that would result in an increase in efficiency, economy, or productivity in the areas monitored by the commission.

Divisions

Sec. 2.09. (a) The commission is divided into divisions as provided by this section. One associate deputy director shall direct the travel division and other divisions as directed by the executive director. The other associate deputy director shall direct the remaining divisions as directed by the executive director.

(b) Each division shall be managed by a division director who shall report to the appropriate associate deputy director.

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ARTICLE 3. PURCHASING

Establishment of purchasing system

Sec. 3.01. (a) The commission shall purchase, lease, rent, or otherwise acquire all supplies, materials, services, and equipment for all state agencies, except for the following materials and services acquired for libraries operated as a part of university systems or institutions of higher education or for state-owned hospitals or clinics:

- (1) serial and journal subscriptions;
- (2) rare library materials, including books and papers;
- (3) other library materials, including books, papers, and copyrighted materials, and library services that are available from only one supplier or only from a person holding exclusive distribution rights to the materials or services; and
- (4) materials, supplies, or equipment purchased 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 his designee certifies that the purchase of the particular supplies, material, or equipment through the group purchasing program is the most cost-effective method of purchasing available.

(b) The commission shall institute and maintain an effective and economical system for purchasing supplies, materials, services, and equipment.

(c) "Services," as used in this article, means the furnishing of skilled or unskilled labor or professional work but does not include:

- (1) professional services covered by the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes);
- (2) services of an employee of a state agency;
- (3) consulting services or services of a private consultant as defined by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes); or
- (4) services of public utilities.

Limits of authority

Sec. 3.02. The commission's authority does not extend to purchases of supplies, materials, services, or equipment:

- (1) for resale;
- (2) for auxiliary enterprises;
- (3) for organized activities relating to instructional departments of institutions of higher learning and similar activities of other state agencies; or
- (4) from gifts or grants, including industrial grants or contracts in support of research or federal grants or contracts in support of research.

Purchases or Lease of Automated Information and Telecommunications Items

Sec. 3.021. If a state agency requests the commission to purchase, lease, or otherwise acquire 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 is subject to Section 18, Information Resources Management Act (Article 4413(32j), Vernon's Texas Civil Statutes), 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 notice of the appropriate determination under that Act or until the commission verifies that the department did not issue timely notification of its determination under the requirements of that Act.

Competitive Sealed Proposals

Sec. 3.022. (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.

Transfers and loans of automated information and telecommunications items

Sec. 3.023. Any acquisition by a state agency covered by the Information Resources Management Act (Article 4413(32j), Vernon's Texas Civil Statutes) of 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, that is by interagency transfer, contract, or loan, or that is by loan from the public, must comply with the Information Resources Management Act (Article 4413(32j), Vernon's Texas Civil Statutes).

Preapproved contract terms and conditions

Sec. 3.024 (a) The commission may negotiate with vendors preapproved terms and conditions to be included in contracts relating to the purchase or lease of 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, awarded to a vendor by a state agency covered by the Information Resources Management Act (Article 4413(32j), Vernon's Texas Civil Statutes). The commission must agree to the wording of any preapproved terms and conditions negotiated with a vendor.

(b) Preapproved terms and conditions to which a vendor and the commission agree are valid for two years after the date of that agreement, and must provide that they shall be renegotiated before the expiration of two years. The commission shall establish procedures to ensure that terms and conditions are renegotiated before they expire in a contract between the vendor and a state agency.

(c) The preapproved terms and conditions must be part of any contract between a state agency and a vendor that has agreed to them. A preapproved term or condition that is changed remains valid for any existing contract of which it is part but must be renegotiated before it may be part of any other or a renewed contract.

(d) The commission shall establish procedures to notify potential vendors of the provisions of this section.

Purchase of motor vehicles for school districts

Sec. 3.03. The commission shall purchase all motor vehicles used for transporting school children, including buses, bus chassis, and bus bodies, tires, and tubes, for school districts participating in the Foundation School Program as provided by Subchapter F, Chapter 21, Texas Education Code.¹ All purchases must comply with the alternative fuels requirements specified by Subchapter F, Chapter 21, Texas Education Code.

¹V.T.C.A. Education Code, § 21.161 et seq.

Mental health and mental retardation community centers

Sec. 3.04. Community centers for mental health and mental retardation services that are receiving state grants-in-aid under the provisions of Article 4 of the Texas Mental Health and Mental Retardation Act¹ may purchase drugs and medicines through the commission.

¹Article 3547-204.

Purchases by the legislature

Sec. 3.05. Either house of the legislature, or any 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 utilize the purchasing services of the commission for purchasing supplies, materials, services, equipment, and those items covered by Article XVI, Section 21, of the Texas Constitution.

Purchases by Texas national research laboratory commission

Sec. 3.051. This act does not apply to purchases of supplies, materials, services, and equipment for the Texas National Research Laboratory Commission, except that the Texas National Research Laboratory Commission may use the services of the commission for those purchases.

Delegation of authority to state agencies

Sec. 3.06. (a) In this section, "institution or other agency of higher education" means an institution of higher education or other agency of higher education as those terms are defined by Section 61.003, Education Code.

(b) The commission may delegate purchasing functions to a state agency.

(c) At the request of an institution or other agency of higher education, the commission shall delegate to the institution or agency authority to purchase supplies, materials, services, or equipment for research projects from state funds appropriated to it for that purpose. An institution or agency acting under the delegated authority shall follow the commission's monetary limits and procedures regarding competitive bidding in the purchase of research supplies, materials, services, or equipment, but in making purchases the institution or agency may consider other factors, including quality, reliability, expected life span, and compatibility with existing equipment.

Emergency purchases

Sec. 3.07. The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of each emergency purchase.

Purchases less than a specified monetary amount

Sec. 3.08. (a) State agencies are delegated the authority to purchase supplies, materials, and equipment if the purchase does not exceed \$500. The commission by rule shall prescribe procedures for these purchases, and by rule may delegate to state agencies the authority to purchase supplies, materials, or equipment if the purchase exceeds \$500.

(b) The commission by rule may delegate to the comptroller the commission's authority under Section 3.15 to audit purchases and purchase data when the purchases do not exceed \$500 or a greater amount prescribed by the commission.

(c) Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed \$100, or a greater amount prescribed by rule of the commission.

(d) Supplies or materials purchased under this section may not include:

(1) items for which contracts have been awarded under the contract purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;

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

(3) scheduled items that have been designated for purchase by the commission.

(e) Large purchases may not be divided into small lot purchases in order to meet the specified dollar limits.

(f) Agencies making purchases under this section must attempt to obtain at least three competitive bids from sources which normally offer for sale the merchandise being purchased.

Review of specifications

Sec. 3.09. (a) The commission shall review the specifications and conditions of purchase of any supplies, materials, equipment, or services desired to be purchased.

(b) If the commission finds that specifications and conditions of a purchase request have been drawn to describe a product which is proprietary to one vendor and does not include language which permits an equivalent product to be supplied, it shall require written justification of the requested specifications or conditions, signed by the agency head or the chairman of the governing body. For an institution of higher education, the written justification may be signed by the person designated by the president or governing body as purchasing officer for the institution. The written justification shall contain the following:

(1) explanation of the need for the specifications;

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

(3) other information requested by the commission.

(c) If a resubmission with written justification is to be required by the commission, it shall notify the requesting state agency of that fact within 10 days after the date of receipt of the purchase request.

(d) If the commission, after considering all factors, takes exception to the justifications, it shall purchase the supplies, materials, services, or equipment as requested and report the reasons for its exceptions to the agency head or the chairman of the governing body, the state auditor, the Legislative Budget Board, and the governor.

(e) The commission shall issue an invitation to bid to vendors within 20 days after the date of receipt of the written justification required.

(f) The commission shall not delay processing a purchase requisition by submitting the specifications and conditions to the state auditor's office for comment or recommendation prior to issuing the invitation to bid to vendors.

Purchase methods

Sec. 3.10. In purchasing supplies, materials, services, and equipment the commission may use, but is not limited to, the contract purchase procedure, the multiple award contract procedure, and the open market purchase procedure. The commission shall have the authority to combine orders in a system of schedule purchasing, and it shall at all times try to benefit from purchasing in bulk. All purchases of and contracts for supplies, materials, services, and equipment shall, except as provided herein, be based whenever possible on competitive bids.

Contract purchase procedure

Sec. 3.11. (a) Notice. Notice inviting bids shall be published at least once in at least one newspaper of general circulation in the state and at least seven days preceding the last day set for the receipt of bids. The newspaper notice shall include a general description of the articles to be purchased, and shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

(b) Bidders List. The commission shall maintain a bidders list and shall add or delete names from the list by the application and utilization of applicable standards set forth in Subsection (e) of this section. Bid invitations shall be sent only to those who have expressed a desire to bid on the particular types of items which are the subject of the bid invitation. Use of the bidders list shall not be confined to contract purchases but it may be used by the commission as it may find desirable in making any purchase.

(c) Bid Deposits. When deemed necessary bid deposits in amounts to be set by the commission shall be prescribed in the public notices and the invitation to bid. The commission shall establish and maintain records of bid deposits and their disposition with the cooperation of the state auditor, and upon the award of bids or rejection of all bids, bid deposits shall be returned to unsuccessful bidders making bid deposits. The commission may accept a bid deposit in the form of a blanket bond from any bidder.

(d) Bid Opening Procedure. Bids shall be submitted to the commission, sealed, and identified as bids on the envelope. Bids shall be opened at the time and place stated in the public notices and the invitation to bid. The state auditor or a member of his staff may be present at any bid opening. A tabulation of all bids received shall be available for public inspection under regulations to be established by the commission.

(e) Award of Contract. The commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models on or before the opening time is essential to the materiality of a bid, provided, however, that the commission shall have the authority to waive this provision if the failure to comply is beyond control of the bidder. In determining who is the lowest and best bidder, the commission may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership, or institution provided, however, that the commission has adopted a written definition and criteria for accurately determining the safety record of a bidder and has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the lowest and best bidder and, provided further, that such determinations are not arbitrary and capricious. In determining who is the lowest and best bidder, in addition to price, the commission shall consider:

(1) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;

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

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

(4) whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;

(5) the character, responsibility, integrity, reputation, and experience of the bidder;

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

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

(8) any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;

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

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

(f) Rejection of Bids. If a bid is submitted in which there is a material failure to comply with the specification requirements, such bid shall be rejected and the contract awarded to the bidder submitting the lowest and best bid conforming to the specifications, provided, however, the commission shall in any event have the authority to reject all bids or parts of bids when the interest of the state will be served thereby.

(g) Bid Record. When an award is made, a statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.

(h) Tie Bids. In case of tie bids, quality and service being equal, the contract shall be awarded under rules and regulations to be adopted by the commission.

(i) Performance Bonds. The commission may require a performance bond before entering a contract in such amount as it finds reasonable and necessary to protect the interests of the state. Any bond required under this subsection shall be conditioned that the bidder will faithfully execute the terms of the contract into which he has entered. Any bond required shall be filed with the commission and recoveries may be had thereon until it is exhausted.

Open market purchase procedure

Sec. 3.12. (a) When the commission determines that any purchases of supplies, materials, equipment, or services may be made most effectively in the open market, such purchases may be made without newspaper advertising.

(b) Minimum Number of Bids. All open market purchases shall, whenever possible, be based on at least three competitive bids, and shall be awarded to the lowest and best bidder in accordance with the standards set forth under this article.

(c) Notice Inviting Bids. The commission shall solicit bids by:

- (1) direct mail request to prospective vendors; or
- (2) telephone or telegraph.

(d) Recording. The commission shall keep a record of all open market orders and bids submitted thereon, and a tabulation of the bids shall, under rules and regulations to be established by the commission, be open to public inspection; provided, they shall always be open to inspection by the state auditor or his representatives.

(e) Agency Review. If a state agency requests that it be allowed to review the bids on a purchase request, the commission shall forward copies of the bids received or make the same available to the requesting agency along with the commission's recommended award. If, after review of the bids and evaluation of the quality of products offered in the bids, the state agency determines that the bid selected by the commission is not in its opinion the lowest and best bid, it may file with the commission a written recommendation, complete with justification, that the award be made to the bidder determined to be the lowest and best bid. The commission shall give consideration to, but is not bound by, the agency recommendation in making the award.

(f) Statement of Award. A statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.

Compliance with antitrust laws

Sec. 3.13. A bidder offering to sell supplies, materials, services, or equipment to the state shall certify on each bid submitted that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state codified in Section 15.01, et seq., Business & Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The attorney general shall prepare the certification statement which is to be made a part of the bid form.

Invoice

Sec. 3.14. The contractor or seller of supplies and/or services contracted for by the commission shall render an invoice to the ordering agency at the address shown on the purchase order. The invoice shall be prepared and submitted under such rules and regulations as the commission shall provide.

Invoice; check of goods or services

Text of section effective until September 1, 1991

Sec. 3.15. (a) As soon as supplies, materials, or equipment are received by a state agency they shall be inspected by the agency to see if they correspond in every particular with those covered by the contract under which they were purchased, and if the invoice is correct, the agency shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. As soon as an invoice is received for services rendered to any state agency, the agency shall determine if such services correspond in every particular with those services contracted for and that the invoice is correct, and shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. The state agency shall complete the procedures for transmittal of the invoice and purchase voucher to the commission promptly after receipt of the supplies, materials, or equipment or performance of the services or receipt of the invoice for the supplies, materials, equipment, or services, whichever is later.

(b) If the commission finds such invoice and purchase voucher forms correct, it shall approve and transmit same to the state comptroller. The commission shall complete the procedures for transmittal of the invoice and purchase voucher to the state comptroller within eight days after receipt of the invoice and purchase voucher. The commission is not required to process vouchers in payment of telephone service within eight days but shall process them as expeditiously as possible.

Text of section effective September 1, 1991

Sec. 3.15. (a) In this section:

(1) "Financial data" means the information that the comptroller determines is necessary to audit a claim in accordance with Chapter 403, Government Code.

(2) "Purchase data" means the information that the commission determines is necessary to audit a purchase in accordance with this section.

(b) As soon as supplies, materials, equipment, or services are received, the receiving state agency shall inspect and evaluate them to determine whether they correspond in every particular with the contract under which they were purchased. If they correspond and if the invoice for them is correct, then the agency shall certify the existence of those facts. The agency shall then transmit to the comptroller the certification, financial data, and purchase data contained on the invoice and purchase voucher. The transmission of the certification, financial data, and purchase data shall be accomplished on the forms or in the method and format agreed upon by the comptroller and the commission. The agency shall make the transmission promptly after the later of the receipt of the supplies, materials, equipment, or services and the receipt of the invoice. The commission by rule may require that purchase data be transmitted directly to the commission when the commission deems it necessary.

(c) After receiving a certification, financial data, and purchase data from a state agency, the comptroller shall audit the financial data in accordance with Chapter 403, Government Code. If the comptroller approves the financial data, the comptroller shall determine whether the commission's rules require the commission to audit the purchase data. When such an audit is required, the comptroller shall promptly transmit the certification and purchase data to the commission using the method and format agreed upon by the comptroller and the commission. At a minimum, the purchase data transmitted shall consist of the agency number, agency requisition number, agency voucher number, voucher amount, fiscal year, object code, and vendor identification number. The commission may use its discretion in adopting rules for determining the types of purchases that must be audited by the commission in accordance with this section.

(d) After receiving the certification and purchase data from the comptroller, the commission shall, within eight days, audit the data for compliance with applicable purchasing statutes and rules of the commission. The commission may determine the auditing method, including the use of stratified or statistical sampling techniques. The commission shall notify the comptroller concerning the results of the commission's audit, using the method and format agreed upon by the commission and the comptroller.

(e) The commission may audit purchase data after a warrant has been issued when such an audit would expedite the payment process. Concerning such audits, 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 data, if any, that a state agency must transmit to the comptroller or the commission before a warrant is issued.

(f) After the issuance of a warrant in accordance with Subsection (e) of this section, the comptroller shall transmit the certification and purchase data to the commission in accordance with the commission's rules.

(g) So that the commission can periodically update its computer records and close its purchase order files, the comptroller shall, upon request, furnish the commission with information detailing all vouchers paid under this section and Section 3.08 of this Act.

Invoice; payment

Sec. 3.16. (a) After the comptroller and the commission have approved financial data and purchase data, when such advance approval is required by the rules of the commission, the comptroller shall draw a warrant upon the state treasury for the amount due on the invoice or for so much thereof as has been allowed.

(b) The comptroller shall complete the procedures for drawing the warrant within eight days after receipt of the necessary information. If a payment is not due until after the preceding eight-day period has expired, the comptroller may delay drawing a warrant whenever such a delay would maximize the state's cash flow.

Specifications and standards program; test and inspection program

Sec. 3.17. The commission shall have the authority to establish and maintain a specifications and standards program to coordinate the establishment and maintenance of uniform standards and specifications for materials, supplies, and equipment purchased by the commission. The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of materials, supplies, and equipment may be continuously accomplished. The commission may also establish and maintain a program of testing and inspecting to ensure that materials, supplies, services, and equipment meet specifications, and may make contracts for testing. If any state agency determines that any supplies, materials, services, or equipment received do not meet specifications, it shall promptly notify the commission in writing detailing the reasons why the supplies, materials, services, or equipment do not meet the specifications of the contract. The commission shall immediately determine whether or not the reported supplies, materials, services, or equipment meet specifications. The sole power to determine whether materials, supplies, services, and equipment meet specifications shall rest with the commission. When the commission finds that contract specifications or conditions have not been complied with, it shall take action, with the assistance of the attorney general, if necessary, against the defaulting contractor.

Usage figures

Sec. 3.18. The commission shall maintain usage figures on the consumption and use of supplies, materials, services, and equipment purchased for state agencies, institutions, boards, and commissions, and shall furnish using agencies upon request usage and consumption figures maintained. The commission is directed to cooperate with the state budget offices and the state auditor in the preparation of usage and consumption figures of supplies, materials, services, and equipment.

Conflict of interest

Sec. 3.19. No member of the commission or any employee or appointee of the commission shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to any agency of the State of Texas. Neither shall any member or employee or appointee, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation, or contract for future reward or compensation from any such party.

Preference for products of retarded or handicapped persons

Sec. 3.20. The products of workshops, organizations, or corporations whose primary purpose is training and employing mentally retarded or physically handicapped persons shall be given preference if they meet state specifications as to quantity, quality, and price.

Purchase and use of paper containing recycled fibers

Sec. 3.21. The commission shall contract for paper containing the highest percent of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that such paper is available at a reasonable price through normal commercial channels to supply the needs of the state. All agencies which purchase through the commission are directed to place orders for papers containing recycled fibers to the highest extent of their needs and to the extent that such paper is available through purchasing procedures of the commission.

Preference for rubberized asphalt paving

3.21I. 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 does not exceed by more than 15 percent the bid cost of alternative paving materials.

Exemption of goods or services of blind persons

Sec. 3.22. The provisions of this article with respect to competitive bids are not applicable to state purchases of blind-made goods or services offered for sale to state agencies as a result of efforts made by the Texas Commission on Purchases of Blind-Made Goods and Services acting in accordance with legislation applicable to the committee if the goods or services meet state specifications as to quantity and quality and the cost is not in excess of the fair market price of like items.

Contracts with Department of Corrections

Sec. 3.23. The commission is hereby authorized to make contracts with the Texas Department of Corrections for the purchase of supplies, equipment, services, and materials for use by other state agencies.

Advance payments to state or federal agencies

Sec. 3.24. All state agencies are authorized to make advance payments to federal and other state agencies for merchandise purchased from such agencies when advance payments will expedite the delivery of the merchandise.

Contracts for printing laws

Sec. 3.25. (a) The commission shall, at the opening of each regular session of the Texas Legislature, award a special contract for printing the general and special laws and resolutions to be passed by each regular or special session of the current legislature, the contract to be separate and apart from all other contracts for public printing. The general and special laws shall be printed in separate volumes upon order of the commission. The contracts for the printing shall be prepared by the commission and shall provide such penalties as will assure the delivery of the laws within the contract time limit. The printer shall be required to begin delivery of completed books within a reasonable time after the printing is completed and binding commenced, which limit shall be set out in the call for bids made by the commission. An appropriation shall be made by the legislature to pay the cost of compiling, indexing, and printing all such laws and resolutions.

(b) There shall also be placed in the contract a stipulation requiring the printer to have the proof read and corrected before submitting such proof to the state. The comptroller shall not issue a warrant to the printer in payment for the printing of such laws and resolutions unless and until the printer, if an individual, or if a corporation, partnership, or association, the vice-president, secretary, or manager of same has made a sworn affidavit that he has complied with this section.

(c) Such laws and resolutions shall be compiled and printed under the direction of the secretary of state, who shall within 26 days, excluding Sundays, after adjournment of the legislature furnish the printer all copy therefor, the delivery of the first copy to the printer to begin as the bills are signed by the governor; provided that copy for the index shall be given to the printer within five days after the printer has furnished all page proofs of the laws to the secretary of state.

(d) The secretary of state shall distribute the printed laws of each session of the legislature as follows: (1) one copy to the governor, (2) one copy to the lieutenant governor, (3) three copies to each of the heads of all departments, (4) one copy to each of the judges of the several courts throughout the state, (5) one copy to each district and county attorney in the state, and (6) one copy to each member of the legislature.

Prohibition of reproduction or disposition of matter printed under public contract

Sec. 3.26. (a) Except under contract or agreement with the state as hereinafter provided authorizing them so to do, it shall be unlawful for any person, firm, corporation, or association of persons doing any printing, under contract, for the State of Texas, to reproduce, print, or prepare or to sell or furnish any such printing or printed matter or any reprint, reproduction, or copy of same, or plate, type, mat, cut, or engraving from which such printing contract was executed, except the amount and number of copies contracted to be printed and furnished to the State of Texas under such contract.

(b) Any printing done under contract for any department, the legislature, or either branch thereof, any board, commission, court, officer or agent of the State of Texas, as well as any such work done directly for the state, shall for the purposes of this article be deemed to have been done for the State of Texas.

(c) With the consent of the commission and the governor, any person, firm, corporation, or association may print extra copies and sell them at a price fixed by the commission, whenever in the opinion of the commission and the governor the printed matter should be distributed in such manner for the benefit of the public. Any such contract for the printing and sale of such extra copies shall be approved by the attorney general.

(d) Any person, firm, corporation, or association of persons violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, and in the event the violation is by a natural person or the agent or employee of a person, corporation, firm, or association, the punishment may be by jail sentence not to exceed 30 days in addition to such fine. The conviction of an agent or employee shall not bar conviction of the principal also.

Surplus war materials

Sec. 3.27. The commission is authorized and directed to purchase for any county or any other political subdivision of this state such surplus war materials or surplus goods, merchandise, equipment, or other wares from the federal government or its agencies as may be offered for sale by them, provided the county or other political subdivision shall request the commission to make such purchase, and provided it shall deposit with the commission sufficient funds to cover payment therefor.

Preference to Texas and United States products

Sec. 3.28. (a) The commission and all state agencies making purchases of supplies, materials, equipment, or agricultural products shall give preference to those produced or grown in Texas or offered by Texas bidders on the following basis:

(i) Supplies, materials, or equipment produced in Texas or offered by Texas bidders shall be given equal preference, the cost to the state and quality being equal.

(ii) Agricultural products grown in Texas shall be given first preference and second preference shall be given to those agricultural products offered by Texas bidders, the cost to the state and quality being equal.

(b) If supplies, materials, equipment, or agricultural products produced or grown in Texas or offered by Texas bidders are not equal in cost and quality, then supplies, materials, equipment, or agricultural products produced or grown in other states of the United States of America shall be given preference over foreign products, the cost to the state and quality being equal.

(c) In this section, "agricultural products" includes items such as textiles.

Purchase of passenger vehicles

Sec. 3.29. A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 145 SAE horsepower. This provision does not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

(b)(1) A state agency operating a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, may not purchase or lease after September 1, 1991, any motor vehicle unless that vehicle is capable of using compressed natural gas or other alternative fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates or any combination thereof.

(2) A state agency may acquire or be provided equipment or refueling facilities necessary to operate such vehicles using compressed natural gas or other alternative fuels:

(A) by purchase or lease as authorized by law;

(B) by gift or loan of the equipment or facilities; or

(C) by gift or loan of the equipment or facilities or other arrangement pursuant to a service contract for the supply of compressed natural gas or other alternative fuels.

(3) If such equipment or facilities are donated, loaned, or provided through other arrangement with the supplier of compressed natural gas or other alternative fuels, the supplier shall be entitled to recoup its actual cost of donating, loaning, or providing the equipment or facilities through its fuel charges under the supply contract.

(4) The commission may waive the requirements of this subsection for any state agency upon receipt of certification supported by evidence acceptable to the commission that:

(A) the agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can reasonably be expected to establish a central refueling station for compressed natural gas or other alternative fuels; or

(B) the agency is unable to acquire or be provided equipment of refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied.

(c)(1) Any state agency which operates a fleet of more than 15 motor vehicles, excluding law enforcement and emergency vehicles, shall achieve the following percentages of vehicles capable of using compressed natural gas or other alternative fuels by the times specified:

(A) the percentage shall be equal to or greater than 30 percent of the number of fleet vehicles operated by September 1, 1994; and

(B) equal to or greater than 50 percent of the number of fleet vehicles operated by September 1, 1996.

(2) The Texas Air Control Board must review this alternative fuel use program by December 31, 1996, and, if the Texas Air Control Board determines that the program has been effective in reducing total annual emissions from motor vehicles in the area, state agencies operating fleets of more than 15 motor vehicles shall achieve a percentage of fleet vehicles capable of using compressed natural gas or other alternative fuels equal to or greater than 90 percent of the number of fleet vehicles operated by September 1, 1998, and thereafter.

(3) The commission shall support the Texas Air Control Board in collecting reasonable information needed to determine the air quality benefits from use of alternative fuels at affected agencies.

(4) Each state agency in its annual financial report to the legislature must show its progress in achieving these percentage requirements by itemizing purchases, leases, and conversions of motor vehicles and usage of compressed natural gas or other alternative fuels.

(d) The commission, in the development of the compressed natural gas or other alternative fuel use program, should work with state agency fleet operators, vehicle manufacturers and converters, fuel distributors, and others to delineate the vehicles to be covered, taking into consideration range, specialty uses, fuel availability, vehicle manufacturing and conversion capability, safety, resale values, and other relevant factors. State agencies may meet the percentage requirements of this section through purchase of new vehicles or the conversion of existing vehicles, in accordance with federal and state requirements and applicable safety laws, to use the alternative fuels.

(e) The commission may reduce any percentage specified or waive the requirements of Subsection (c) of this section for any state agency upon receipt of certification supported by evidence acceptable to the commission that:

(1) The agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has or can reasonably be expected to establish a central refueling station for compressed natural gas or other alternative fuels; or

(2) The agency is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using compressed natural gas or other alternative fuels at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied.

(f) The commission in purchasing, leasing, maintaining, or converting vehicles for compressed natural gas or other alternative fuels use shall comply with all applicable safety standards promulgated by the United States Department of Transportation and the Railroad Commission of Texas or their successor agencies.

Authority to pay charges

Sec. 3.30. The commission or a state agency may pay a restocking charge, cancellation fee, or other similar charge if the commission determines that the charge is justifiable.

Authority to pay for road construction materials

Sec. 3.31. A state agency that purchases road construction materials may pay for the 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 allowed set for the gross weight of that vehicle by Subdivision 1, Section 6, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6704d-11, Vernon's Texas Civil Statutes).

AN ACT

1 relating to the acquisition or provision of goods and services by
2 the state.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 PART 1. GENERAL STATE ACQUISITION PROCESS

5 SECTION 1.01. (a) Section 2, Texas Public Finance Authority
6 Act (Article 601d, Vernon's Texas Civil Statutes), is amended to
7 read as follows:

8 Sec. 2. PURPOSE. The purpose of this Act is to provide a
9 method of financing:

10 (1) for the acquisition or construction of buildings
11 in Travis County, Texas; and

12 (2) for the purchase or lease of equipment by state
13 agencies in the executive or judicial branch of state government.

14 (b) The amendment of Section 2, Texas Public Finance
15 Authority Act (Article 601d, Vernon's Texas Civil Statutes), by
16 Section 42, H.B. No. 2626, Acts of the 73rd Legislature, Regular
17 Session, 1993, has no effect.

18 SECTION 1.02. (a) Subsection (a), Section 9A, Texas Public
19 Finance Authority Act (Article 601d, Vernon's Texas Civil
20 Statutes), is amended to read as follows:

21 (1) The authority may issue and sell obligations for the
22 financing of a lease or other agreement so long as the agreement
23 concerns equipment that a state agency in the executive or judicial

1 branch of state government has purchased or leased or intends to
2 purchase or lease. The authority's power to issue obligations
3 includes the power to issue and sell obligations for the financing
4 of a package of agreements involving one or more state agencies.

5 (b) The amendment of Subsection (a), Section 9A, Texas
6 Public Finance Authority Act (Article 601d, Vernon's Texas Civil
7 Statutes), by Section 43, H.B. No. 2626, Acts of the 73rd
8 Legislature, Regular Session, 1993, has no effect.

9 SECTION 1.03. Subdivision (3), Section 1, Chapter 454, Acts
0 of the 65th Legislature, Regular Session, 1977 (Article 6252-11c,
1 Vernon's Texas Civil Statutes), is amended to read as follows:

2 (3) "State agency" has the meaning assigned by Section
3 1.02, State Purchasing and General Services Act (Article 601b,
4 Vernon's Texas Civil Statutes) [means---a---state---department,
5 commission,--board,--officer,--institution,--facility,--or--other--agency
6 the--jurisdiction--of--which--is--not--limited--to--a--geographical--portion
7 of--the--state,---The--term--includes--a--university--system--and--an
8 institution--of--higher--education--as--defined--in--Section--61.003,
9 Education--Code,---The--term--does--not--include--a--public--junior
10 college].

11 SECTION 1.04. Subchapter C, Chapter 403, Government Code, is
12 amended by adding Section 403.039 to read as follows:

13 Sec. 403.039. TEXAS IDENTIFICATION NUMBER SYSTEM. (a) The
14 controller shall assign a Texas Identification Number, based on
15 the controller's taxpayer identification number system, to each

1 person, other than a state employee, who supplies property or
2 services to the state for compensation or reimbursement.

3 (b) The Texas Identification Number system shall be used by
4 each state agency as the primary identification system for persons,
5 other than state employees, who supply property or services to the
6 agency for compensation or reimbursement. The agency may assign
7 secondary numbers if the secondary numbering system does not
8 unnecessarily create duplication of data bases, efforts, or costs.

9 (c) All state agencies shall cooperate with the comptroller
10 to convert existing relevant identification systems to the Texas
11 Identification Number system. The comptroller may adopt rules
12 governing the conversion to and the administration of the Texas
13 Identification Number system, including rules on the procedure for
14 applying for a number under the system.

15 (d) In this section, "state agency" means any department,
16 commission, board, office, or other agency in the executive,
17 legislative, or judicial branch of state government, including an
18 institution of higher education.

19 SECTION 1.05. The comptroller shall begin implementation of
20 the Texas Identification Number system, as added by Section 1.04 of
21 this part, as soon as practicable. A state agency may phase in its
22 use of the system but shall fully implement the system not later
23 than September 1, 1998.

24 SECTION 1.06. Section 1.03, State Purchasing and General
25 Services Act (Article 601b, Vernon's Texas Civil Statutes), is

1 amended by adding Subsections (l) through (p) to read as follows:

2 (l) The commission and each state agency shall prepare as
3 part of its strategic plan under Article 6252-11, Revised Statutes,
4 as added by Chapter 384, Acts of the 72nd Legislature, Regular
5 Session, 1991, a written plan for increasing the commission's or
6 the agency's use of historically underutilized businesses in
7 purchasing and in public works contracting. On request, the
8 commission shall provide technical assistance to an agency that is
9 preparing its plan under this subsection. The plan must include:

0 (1) a policy or mission statement relating to
1 increasing use of historically underutilized businesses by the
2 commission or agency;

3 (2) goals to be met by the commission or agency in
4 carrying out the policy or mission; and

5 (3) specific programs to be conducted by the
6 commission or agency to meet the goals stated in the plan,
7 including a specific program to encourage contractors to use
8 historically underutilized businesses as partners and
9 subcontractors.

0 (m) The commission and each state agency shall prepare an
1 annual report for each fiscal year documenting progress under its
2 plan for increasing use of historically underutilized businesses.
3 The commission or agency shall file the report with the governor,
4 lieutenant governor, and speaker of the House of Representatives
5 not later than December 31 of each year.

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1 (n) In cooperation with the state auditor, the commission
2 shall develop a standard form for reports prepared under Subsection
3 (m) of this section.

4 (o) The commission shall assist the Texas Department of
5 Commerce in the performance of the department's duties under
6 Section 481.103, Government Code.

7 (p) The commission shall encourage the use of historically
8 underutilized businesses by state agencies by:

9 (1) working with state agencies to establish a
10 statewide policy for increasing use of historically underutilized
11 businesses;

12 (2) assisting state agencies in seeking historically
13 underutilized businesses capable of supplying materials and
14 services that the agencies require;

15 (3) assisting state agencies in identifying and
16 advising historically underutilized businesses on the types of
17 goods and services needed by the agencies; and

18 (4) assisting state agencies in increasing the volume
19 of business placed with historically underutilized businesses.

20 SECTION 1.07. Article 3, State Purchasing and General
21 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
22 amended by adding Section 1.081 to read as follows:

23 Sec. 1.081. CATALOGUE PURCHASE PROCEDURE. (a) A vendor who
24 wants to sell or lease automated information systems under this
25 section to state agencies covered by the Information Resources

1 Management Act (Article 4413(32j), Revised Statutes) shall apply to
2 the commission for designation as a "qualified information systems
3 vendor" according to an application process promulgated by the
4 commission. At a minimum, the application process shall include
5 submission of the following elements:

6 (1) a catalogue containing all products and services
7 eligible for purchase by state agencies, including descriptions of
8 each product or service, the list price of each product or service,
9 and the price to Texas state agencies of each product or service;

10 (2) a maintenance, repair, and support plan for all
11 eligible products and services;

12 (3) proof of the applicant's financial resources and
13 ability to perform; and

14 (4) a guarantee that the vendor will make available
15 equivalent replacement parts for products sold to Texas for at
16 least three years from the date of a product's discontinuation.

17 (b) Within 90 days after the effective date of the law
18 enacting this section the commission shall establish standards and
19 criteria for designating qualified information systems vendors on a
20 regional and statewide basis. A vendor remains qualified until the
21 commission determines the vendor fails to meet the criteria set
22 forth in this section. Vendors granted regional status may sell
23 catalogue-listed products and services directly to state agencies
24 covered by the Information Resources Management Act (Article
25 4413(32j), Revised Statutes) within a region defined by the

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1 commission. Vendors granted statewide status may sell
2 catalogue-listed products and services directly to any state agency
3 covered by the Information Resources Management Act (Article
4 4413(32j), Revised Statutes). The commission's standards and
5 criteria shall be developed in accordance with the following
6 parameters:

7 (1) the ability of the vendor to provide adequate and
8 reliable support and maintenance;

9 (2) the vendor's ability to provide adequate and
10 reliable support and maintenance in the future;

11 (3) the technical adequacy and reliability of the
12 vendor's products; and

13 (4) consistency with standards adopted by the
14 Department of Information Resources or a subsequent entity.

15 (c) If a vendor is designated by the commission as a
16 qualified information systems vendor, the vendor shall publish and
17 maintain a catalogue containing all products and services eligible
18 for purchase by state agencies, including descriptions of each
19 product or service, the list price of each product or service, and
20 the price to Texas state agencies of each product or service. The
21 vendor shall update the catalogue on an as-needed basis to reflect
22 changes in price or the availability of products or services and
23 shall forward a copy of each updated catalogue to the commission
24 and all eligible purchasers.

25 (d) A state agency covered by the Information Resources

1 Management Act (Article 4413(32j), Revised Statutes) may purchase
2 or lease automated information systems directly from a qualified
3 information systems vendor and may negotiate additional terms and
4 conditions to be included in contracts relating to the purchase or
5 lease, provided the purchase or lease is based on the best value
6 available and is in the state's best interest. In determining
7 which products or services are in the state's best interest, the
8 agency shall consider the following factors:

9 (1) installation costs and hardware costs;

10 (2) the overall life cycle cost of the system or
11 equipment;

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

14 (4) estimated software and maintenance costs; and

15 (5) compliance with applicable statewide standards
16 adopted by the Department of Information Resources or a subsequent
17 entity as validated by criteria established by the department or a
18 subsequent entity in administrative rule.

19 (e) The commission shall establish rules and regulations and
20 implement the catalogue purchase procedure set forth in this
21 section no later than January 1, 1994.

22 (f) Purchases of automated information systems shall be made
23 through the catalogue procedure enumerated in this section unless
24 the commission or state agency determines that the best value
25 available accrues from an alternative purchase method authorized by

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1 this Act.

2 (g) The commission shall make the catalogue purchasing
3 procedure enumerated in this section available to local governments
4 who qualify for cooperative purchasing under Sections 271.082 and
5 271.083, Local Government Code. In this subsection, "local
6 government" has the meaning assigned to it by Section 271.081,
7 Local Government Code.

8 SECTION 1.08. Section 1.02, State Purchasing and General
9 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
10 amended by adding Subdivisions (4), (5), and (6) to read as
11 follows:

12 (4) "Automated information systems" means any
13 automated information systems, the computers on which they are
14 automated, or a service related to the automation of information
15 systems or the computers on which they are automated, including
16 computer software, awarded to a vendor by a state agency covered by
17 the Information Resources Management Act (Article 4413(32)),
18 Revised Statutes), or any telecommunications apparatus or device
19 that serves as a component of a voice, data, or video
20 communications network for the purpose of transmitting, switching,
21 routing, multiplexing, modulating, amplifying, or receiving signals
22 on that network.

23 (5) "Best value" means lowest overall cost of
24 information systems based on the following factors including but
25 not limited to:

1 (A) purchase price;

2 (B) compatibility to facilitate exchange of
3 existing data;

4 (C) capacity for expansion and upgrading to more
5 advanced levels of technology;

6 (D) quantitative reliability factors;

7 (E) the level of training required to bring
8 end-users to a stated level of proficiency;

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

12 (G) compliance with applicable statewide
13 standards adopted by the Department of Information Resources or a
14 subsequent entity as validated by criteria established by the
15 department or a subsequent entity in administrative rule.

16 (6) "Qualified information systems vendor" means
17 manufacturers or resellers of automated information systems who are
18 authorized by the commission to publish catalogues of products and
19 services which may be directly purchased by state agencies covered
20 by the Information Resources Management Act (Article 4413(32)),
21 Revised Statutes).

22 SECTION 1.09. Section 10.05, State Purchasing and General
23 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
24 amended to read as follows:

25 Sec. 10.05. SHARING OF SERVICES OR FACILITIES.

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1 (a) Telecommunications facilities and services, to the extent
2 feasible and desirable, shall be provided on an integrated or
3 shared basis, or both, to avoid waste of state funds and manpower.

4 (b) The commission, the Department of Information Resources,
5 and the comptroller shall develop, in coordination with The Texas
6 A&M University System, The University of Texas System, other
7 institutions of higher education, and other state agencies, a plan
8 for a state telecommunications network that will effectively and
9 efficiently meet the long-term voice, video, and computer
10 communications requirements of state government. The plan should
11 recognize that all state agencies and institutions of higher
12 education are a single entity for purposes of purchasing and
13 determining tariffs. The plan shall incorporate efficiencies
14 obtained through the use of shared transmission services and open
15 systems architecture as they become available, building on existing
16 systems as appropriate, and the developers of the plan shall make
17 use of the technical expertise of the institutions of higher
18 education and state agencies. The commission, department, and
19 comptroller shall present to the governor and the legislature a
20 comprehensive summary of the plan and its implementation schedule
21 before September 1, 1994.

22 SECTION 1.10. Not later than January 1, 1995, the General
23 Services Commission shall submit to the governor, lieutenant
24 governor, and speaker of the house of representatives a report on
25 the competitive sealed proposal process established by Section

1 3.0221, State Purchasing and General Services Act (Article 601b,
2 Vernon's Texas Civil Statutes), as added by H.B. No. 2626, Acts of
3 the 73rd Legislature, Regular Session, 1993, that includes:

4 (1) a list of all purchases made under the process
5 during the state fiscal year ending August 31, 1994, including
6 purchases by institutions and other agencies of higher education
7 under authority delegated by the commission;

8 (2) an analysis of benefits and disadvantages of the
9 process; and

10 (3) recommendations for improving the process.

11 SECTION 1.11. Article 5, State Purchasing and General
12 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
13 amended by adding Section 5.265 to read as follows:

14 Sec. 5.265. COMMON SURETY OR INSURER. If it is advantageous
15 to the state, the commission, or an agency whose project is
16 exempted from all or part of this article under Section 5.13 of
17 this article, may negotiate an arrangement with a surety or an
18 insurer, as appropriate, authorized to do business in this state to
19 furnish some or all of the bonds, insurance, or both that a
20 contractor or subcontractor is required to execute or carry to
21 receive a contract or subcontract on a project administered by the
22 commission or other agency. Notwithstanding Section 1, Chapter 87,
23 Acts of the 56th Legislature, Regular Session, 1959 (Article
24 7.19-1, Vernon's Texas Insurance Code), and its subsequent
25 amendments, the commission or other agency may require a contractor

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1 or subcontractor to meet part or all of the bonding or insurance
2 requirements for the project under the arrangement negotiated by
3 the commission or other agency.

4 SECTION 1.12. Article 5, State Purchasing and General
5 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
6 amended by adding Section 5.342 to read as follows:

7 Sec. 5.342. ACQUISITION OF EXISTING BUILDING AS ALTERNATIVE
8 TO LEASING SPACE. (a) This section applies only to meeting office
9 space needs of one or more state agencies in a county in which the
10 state is leasing at least 50,000 square feet of usable office
11 space.

12 (b) The commission may meet office space needs of one or
13 more state agencies that are being met through leased space by
14 purchasing one or more existing buildings in accordance with this
15 section. The purchase of a building may include the purchase of
16 the building's grounds and related improvements. The purchase of a
17 building under this section must be:

18 (1) financed through bonds issued by the Texas Public
19 Finance Authority; and

20 (2) approved by the legislature if it is in session or
21 by the Legislative Budget Board if the legislature is not in
22 session.

23 (c) The commission may purchase a building under this
24 section only if the commission determines that the projected annual
25 total space occupancy costs of the purchased space will not exceed,

1 over the term of the bonded indebtedness, the projected annual
2 total space occupancy costs of meeting the same space needs through
3 leased space. In this section, "total space occupancy costs"
4 include:

5 (1) for leased space, the direct cost of the lease
6 payments for the space;

7 (2) for purchased space, the direct cost of rental or
8 installment payments for the space under Section 12(b), Texas
9 Public Finance Authority Act (Article 601d, Vernon's Texas Civil
10 Statutes);

11 (3) the cost of any necessary renovations;

12 (4) operating costs, including janitorial and utility
13 costs; and

14 (5) for purchased space, the cost of maintaining a
15 cash replacement reserve sufficient to service structural
16 maintenance requirements reflecting the expected performance life
17 of the major capital expense items of the building for the term of
18 the bonded indebtedness.

19 (d) If the commission has made the necessary determination
20 under Subsection (c) of this section and the purchase has been
21 approved by the legislature or the Legislative Budget Board under
22 Subsection (b) of this section, the Texas Public Finance Authority
23 shall issue and sell bonds to finance the purchase in accordance
24 with the Texas Public Finance Authority Act (Article 601d, Vernon's
25 Texas Civil Statutes), and the commission may purchase the building

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1 in accordance with that Act and other applicable law. The
2 limitation prescribed by Section 9, Texas Public Finance Authority
3 Act (Article 601d, Vernon's Texas Civil Statutes), relating to the
4 location of a building for which bonds may be issued and sold does
5 not apply to financing the purchase of a building under this
6 section.

7 (e) Any person from whom real property or any existing
8 buildings or other improvements are purchased under this section
9 shall provide to the commission the name and the last known address
10 of each person who:

11 (1) owns record legal title to the property,
12 buildings, or other improvements; or

13 (2) owns a beneficial interest in the property,
14 buildings, or other improvements through a trust, nominee, agent,
15 or any other legal entity.

16 (f) When a state agency vacates leased space to move into
17 space in a building purchased under this section or when the leased
18 space itself is purchased under this section, the money
19 specifically appropriated by the legislature or the money available
20 to and budgeted by the agency for lease payments for the leased
21 space for the remainder of the biennium may be used only for rental
22 or installment payments for the purchased space under Section
23 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's
24 Texas Civil Statutes), and for the payment of operating expenses
25 for the purchased space that are incurred by the commission. The

1 comptroller may adopt rules for the administration of this
2 subsection.

3 SECTION 1.13. Subsections (c) and (m), Section 4.15, State
4 Purchasing and General Services Act (Article 601b, Vernon's Texas
5 Civil Statutes), are amended to read as follows:

6 (c) Except as provided by this section and Article 6252-3e,
7 Revised Statutes, the commission shall determine the amount of
8 space in a building to be allocated to private tenants and the
9 types of activities in which the tenants may engage based on the
10 market for certain activities among employees and visitors in the
11 building and in the vicinity of the building. Except as provided
12 by Subsection (m) [f}] of this section, the amount of space
13 allocated to private tenants may not exceed 15 percent of the total
14 space in the building. Any space leased to provide child care
15 services for state employees shall not be counted in the 15 percent
16 maximum.

17 (m) If the commission determines under Section 5.34 or 5.342
18 of this Act that the purchase of an existing building is more
19 advantageous to the state than ~~constructing~~ [the-construction-of] a
20 new building or continuing to lease space for a state agency, but a
21 purchase of the building would be subject to existing leases to
22 private tenants that exceed 15 percent of the total space in the
23 building, the commission may purchase the building subject to
24 existing leases notwithstanding Subsection (c) of this section.
25 When an existing lease to a private tenant expires, the commission

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1 may renew the lease subject to this section, including Subsection
2 (c).

3 SECTION 1.14. Subsection (b), Section 9, Texas Public
4 Finance Authority Act (Article 601d, Vernon's Texas Civil
5 Statutes), is amended to read as follows:

6 (b) When the acquisition or construction of a building has
7 been authorized in accordance with this Act or under Section 5.34
8 or 5.142, State Purchasing and General Services Act (Article 601b,
9 Vernon's Texas Civil Statutes), the board shall promptly issue and
10 sell bonds in the name of the authority under this Act, including
11 Sections 10B and 16 of this Act, to finance the acquisition or
12 construction of the building. When the proceeds from the bond
13 issuance are available, the board shall promptly deposit the
14 proceeds in the state treasury under Section 23 of this Act and
15 shall promptly make the determinations that are to be made by the
16 board under Section 23 of this Act.

17 SECTION 1.15. Subsection (a), Section 10, Texas Public
18 Finance Authority Act (Article 601d, Vernon's Texas Civil
19 Statutes), as amended by Chapter 1244, Acts of the 71st
20 Legislature, Regular Session, 1989, is amended to read as follows:

21 (a) Except as permitted by Sections 24A(b)(5) and 24A(d) of
22 this Act or Section 5.34 or 5.142, State Purchasing and General
23 Services Act (Article 601b, Vernon's Texas Civil Statutes), before
24 the board may issue and sell bonds, the legislature by law must
25 have authorized in this Act, the General Appropriations Act, or

1 another Act the specific project for which the bonds are to be
2 issued and sold and must have authorized the estimated cost of the
3 project or the maximum amount of bonded indebtedness that may be
4 incurred by the issuance and sale of bonds for the project. In
5 recognition that the cost estimates for acquisition, construction,
6 repair, or renovation of a project will not be final at the time
7 the project is authorized for financing and that the bonds may be
8 issued to fund associated costs, including but not limited to
9 reasonably required reserve funds, capitalized interest,
10 administrative costs of the authority, and issuing expenses, the
11 principal amount of any bond issue for that purpose may be up to
12 1-1/2 the amount of the estimated cost for the project being
13 financed. For additional costs to be included in that principal
14 amount, the board must affirmatively find that those costs are
15 necessary and reasonable at the time the bonds are issued.

16 SECTION 1.16. Section 481.105, Government Code, is
17 transferred to Article 3, State Purchasing and General Services Act
18 (Article 601b, Vernon's Texas Civil Statutes), redesignated as
19 Section 3.281, and amended to read as follows:

20 Sec. 3.281 [481.105]. PARTICIPATION BY SMALL BUSINESSES IN
21 STATE PURCHASING. The commission [office] shall foster
22 participation of small businesses in the purchasing activities of
23 the state by:

24 (1) assisting state agencies in developing procedures
25 to ensure the inclusion of small businesses on state agency roster

1 bid lists;

2 (2) informing small businesses of state purchasing
3 opportunities;

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

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

10 (5) assisting state agencies with the development of a
11 comprehensive list of small businesses capable of providing
12 materials, supplies, equipment, or services to the state; [and]

13 (6) making recommendations to state agencies for
14 simplification of specifications and terms to increase the
15 opportunities for small business participation;

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

18 (8) assisting state agencies in seeking small
19 businesses capable of supplying materials and services that the
20 agencies require;

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

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

1 SECTION 1.17. On the effective date of this part, all
2 powers, duties, and obligations of the Office of Small Business
3 Assistance of the Texas Department of Commerce under Section 1.03,
4 State Purchasing and General Services Act (Article 601b, Vernon's
5 Texas Civil Statutes), and under former Section 481.105, Government
6 Code, are transferred to the General Services Commission as
7 prescribed by this part. All records and property in the custody
8 of the office that relate to a function transferred by this part
9 are transferred to the commission. All appropriations to the
10 office for functions transferred by this part and all employees of
11 the office employed primarily to engage in those functions are
12 transferred to the commission. An application for certification as
13 a disadvantaged business is transferred without change in status
14 from the office to the commission. All rules, standards, and
15 specifications of the office relating to the functions transferred
16 by this part remain in effect as rules, standards, and
17 specifications of the commission unless superseded by the
18 commission.

19 SECTION 1.18. Subchapter B, Chapter 435, Government Code, is
20 amended by adding Section 435.027 to read as follows:

21 Sec. 435.027. GRONER A. PITTS NATIONAL GUARD ARMORY. The
22 Texas National Guard armory located in Brownwood, Texas, is named
23 the Groner A. Pitts National Guard Armory in honor of Groner A.
24 Pitts.

25 SECTION 1.19. The State Purchasing and General Services Act

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{Article 601b, Vernon's Texas Civil Statutes} is amended by adding Article 3A to read as follows:

ARTICLE 3A. CENTRAL AUTOMATED PURCHASING

Sec. 3A.01. STUDY AND DESIGN PROCESS. The commission and the comptroller shall jointly study and design a central automated purchasing system for use by state agencies. The design must be compatible with the uniform statewide accounting system and must allow state agencies to select goods or services from an automated catalogue, order the goods or services electronically, and enter electronically on the system the fact of receipt of the goods or services. The design must also allow an entry of receipt on the system to serve as an authorization for the comptroller to pay the vendor on verification that the agency is authorized by law to purchase the goods or services.

Sec. 3A.02. ASSISTANCE BY OTHER STATE AGENCIES. On the request of the commission or the comptroller, the Department of Information Resources and other state agencies shall assist the commission and the comptroller in the study and design process authorized by Section 3A.01 of this article.

Sec. 3A.03. REPORT TO LEGISLATURE. Not later than January 1, 1995, the commission and the comptroller shall each submit to the legislature a report containing the agency's recommendations relating to:

(1) the cost, feasibility, and advisability of implementing a central automated purchasing system as designed by

the agencies; and

(2) other advisable changes that concern the state's methods of acquiring goods and services that would become feasible if the state implemented the central automated purchasing system.

Sec. 3A.04. RULES. The commission and the comptroller may adopt rules to administer this article.

Sec. 3A.05. EXPIRATION. This article expires on September 1, 1995.

SECTION 1.20. Subsections (f) and (k), Section 9, Information Resources Management Act (Article 4413(32)), Revised Statutes), are amended to read as follows:

(f) At the request of a state agency, the [The] department may provide technical and managerial assistance relating to information resources management, including automation feasibility studies, systems analysis, and design, training, and technology evaluation [at-the-request-of-a-state-agency].

(k) The department may [shall-operate-on-a--self-supporting basis--a--computer-service-facility-and] provide computer services under interagency contracts to state agencies that choose to contract with the department [subscribe-to-the-service].

SECTION 1.21. Section 13, Information Resources Management Act (Article 4413(32)), Revised Statutes), is amended to read as follows:

Sec. 13. PERFORMANCE [ANNHAB] REPORT. (a) Not later than November [February] 1 of each even-numbered year, the board shall

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1 review and approve and the department shall present a [department's
 2 annual] report on the use of information resources technologies by
 3 [management--activities--of] state government [7--based-on-the-annual
 4 performance-reports-submitted-to-the-department-by--state--agencies
 5 under-Section-20-of-this-article]. The [annual] report must:

6 (1) assess the progress made toward meeting the goals
 7 and objectives of the state strategic plan for information
 8 resources management;

9 (2) describe major accomplishments of the state or a
 10 specific [and--each] state agency in information resources
 11 management;

12 (3) describe major problems confronting the state or a
 13 specific state [the-existing-major-data-bases-and-applications-in
 14 each] agency in information resources management;

15 (4) [describe--all---existing---interagency---computer
 16 networks;

17 [{5}] provide a summary of the total expenditures for
 18 information resources and information resources technologies by
 19 [each-agency-and] the state;

20 [{6}--provide--an--inventory--list--by--major--categories;
 21 of-the-state's-information-resources-technologies;] and

22 [5] [{7}--identify--and] make recommendations for
 23 improving the effectiveness and cost efficiency of the state's use
 24 of information resources [regarding-opportunities--for--multiagency
 25 information-resources-management-activities].

1 (b) The [approved-annual] report [of-the--department] shall
 2 be submitted to the governor and to the legislature [legislative
 3 Budget-Board].

4 (c) The department may make interim reports that it
 5 considers necessary.

6 (d) The department is entitled to obtain any information
 7 concerning a state agency's information resources and information
 8 resources technologies that the department determines is necessary
 9 to prepare a report under this section.

10 SECTION 1.22. Section 15, Information Resources Management
 11 Act (Article 4413(32)), Revised Statutes), is amended to read as
 12 follows:

13 Sec. 15. PROJECT REVIEW. (a) In this section, "major
 14 information resources project" means any information resources
 15 technology project identified in a state agency's biennial
 16 operating plan with development costs that exceed \$1,000,000 and
 17 that:

18 (1) requires one year or longer to reach operations
 19 status;

20 (2) involves more than one state agency; or

21 (3) substantially alters work methods of state agency
 22 personnel or the delivery of services to clients.

23 (b) A state agency may not expend appropriated funds for a
 24 major information resources project unless the project has been
 25 approved by the department in the agency's biennial operating plan.

(c) The department shall develop rules or guidelines for its review of major information resources projects. [INITIAL OPERATING PLANS: (a) Once each biennium, each state agency's information resources manager shall prepare an initial operating plan. An agency is not required to identify specific acquisitions or the method of acquisition in the plan. The plan must be approved by the governing body of the agency and submitted to the department for approval not later than the date that the agency is required to submit its first legislative appropriations request.

(b) A state agency's initial operating plan must, for each request under each legislative Budget Board assumption:

(1) state how the agency's requested appropriations for the management, operation, and procurement of information resources would be spent;

(2) contain a summary of the agency's needs for information resources, technologies, and the estimated cost of meeting those needs during the next biennium;

(3) list the existing and proposed projects for the agency during the next biennium, including:

(A) the anticipated measurable benefits of those projects and the measurement standards used to determine those benefits;

(B) the major resources required to conduct the projects;

(4) the agency's estimated total cost of each

project by legislative program as found in the agency's legislative appropriations request;

(B) the cost and implementation schedule for each stage of each project;

(E) the number, type, approximate cost, schedule, and, if known, the planned method of acquisition for all procurements associated with each project that are subject to review under department rules; and

(F) the estimated internal development costs for each project, including an allocation of costs for the use of fixed assets and an allocation for administrative costs;

(4) provide an estimator, given the estimated workload, of the percentage of existing and proposed information resources technologies that will be required after all existing and proposed projects are implemented; and

(5) any other information the department considers necessary.]

SECTION 1.23. Section 16, Information Resources Management Act (Article 4413(32)), Revised Statutes, is amended to read as follows:

Sec. 16. BIENNIAL [FINAL] OPERATING PLANS. (a) Each state agency shall submit an [a final] operating plan to the department each state fiscal biennium not later than the 30th day after the date that the General Appropriations Act for the biennium becomes law [earliest of the following dates of each odd-numbered year:

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1 ~~{1}--September--};~~
2 ~~{2}--the--60th--day--after--the---date---the---General~~
3 ~~Appropriations--Act--becomes--law--if--it--becomes--law--on--or--before--July~~
4 ~~31--of--that--year--;--or~~

5 ~~{3}--the--30th--day--after--the---date---the---General~~
6 ~~Appropriations--Act--becomes--law--if--it--becomes--law--after--July--31--of~~
7 ~~that--year--}.~~

8 (b) The [At-a-minimum, the] plan shall describe the agency's
9 current and proposed projects for the biennium ~~[must--include,--in~~
10 ~~addition--to--the--information--required--in--the--initial--operating--plan,--~~
11 ~~the--following:~~

12 ~~{1}--the---amount--of--money--related--to--information~~
13 ~~resources--actually--appropriated--to--the--agency--for--the--biennium~~
14 ~~beginning--September--};--and~~

15 ~~{2}--an--identification--of--changes,--if--any,--in--the~~
16 ~~agency's--priorities--for--projects--and--associated--procurements--as--set~~
17 ~~forth--in--the--initial--operating--plan].~~

18 (c) ~~[The department may consult the comptroller to verify a~~
19 ~~state agency's approved funds:~~

20 ~~{d}~~ A state agency shall amend its biennial ~~[final]~~
21 operating plan when necessary to reflect changes in the plan during
22 a biennium. ~~[The plan shall also be amended if necessary to show~~
23 ~~the impact of a consulting services contract or report that may~~
24 ~~affect software development, hardware configuration, or changes in~~
25 ~~the agency's management of information resources;--The substance of~~

1 ~~any amendment submitted to the plan must also be included in an~~
2 ~~appropriate approved agency strategic plan or approved agency~~
3 ~~strategic plan amendment.]~~

4 SECTION 1.24. Section 17, Information Resources Management
5 Act (Article 44)(32), Revised Statutes), is amended to read as
6 follows:

7 Sec. 17. PROCEDURES FOR SUBMITTING AND EVALUATING OPERATING
8 PLANS. (a) The department by rule shall adopt instructions to
9 guide state agencies in their preparation of biennial ~~[initial~~
10 ~~operating plans and final] operating plans. The instructions must:~~

11 (1) specify the format of the plans;

12 (2) specify ~~[require--the--submission--of] the~~
13 information required to be included in the plans ~~[by this article];~~
14 ~~[and]~~

15 (3) list the general criteria that the department will
16 use to evaluate the plans; and

17 (4) specify procedures for the submission, review,
18 approval, and disapproval of plans and amendments, including
19 procedures for review or reconsideration of the department's
20 disapproval of a plan or plan amendment.

21 (b) ~~[The department shall notify a state agency in writing~~
22 ~~of the department's approval or disapproval of an initial operating~~
23 ~~plan;--The notification shall be sent not later than 120 days after~~
24 ~~the date the department receives the plan;~~

25 ~~{c}--The department shall notify a state agency in writing~~

1 of the department's approval or disapproval of a final operating
2 plan. The notification shall be sent not later than 30 days after
3 the date the department receives the plan. If the department's
4 determination is due after September 1 of an odd-numbered year, a
5 state agency may operate as if the plan had been approved until the
6 department actually makes its determination.

7 (fd) If the department disapproves a state agency's initial
8 operating plan or final operating plan, the department shall
9 provide to the agency in writing the reasons for the disapproval.
10 If the agency cannot resolve the problems that caused disapproval
11 within 30 days after the date the notice of disapproval is
12 received, the agency shall notify the department in writing of the
13 reasons why the problems cannot be resolved. The notification
14 shall be sent to the department not later than 30 days after the
15 date that the agency receives notice of the department's
16 disapproval.

17 (fe) Before a state agency may amend its final operating
18 plan, the agency must submit the proposed amendment to the
19 department for approval. All amendments affecting operations
20 during a fiscal year must be submitted not later than June 1 of
21 that fiscal year. The department shall notify the agency of the
22 department's approval or disapproval not later than the 30th day
23 after the date the proposed amendment is received. If the
24 department disapproves a proposed amendment, the department shall
25 state the reasons for the disapproval in writing to the agency's

1 information resources manager. The department shall adopt rules
2 for the procedures a state agency must follow when submitting a
3 revision of proposed amendments to the department after the
4 department has disapproved the amendments.

5 (ff) The department may not approve a state agency's initial
6 operating plan or final operating plan unless the agency has
7 submitted and the department has approved a current agency
8 strategic plan.

9 (fg) A state agency that disagrees with the department's
10 disapproval of an initial operating plan, final operating plan, or
11 an amendment to either of those plans may submit a written request
12 to the department for special review. On receipt of a request, the
13 executive director shall inform the board. The board shall
14 consider the merits of the agency's position and make its decision
15 on the matter at the next regularly scheduled board meeting. The
16 state agency may appear and present its position at that meeting.
17 The decision of the board is final. The board shall adopt rules
18 for the fair and efficient administration of this subsection.

19 (fh) Each state agency shall submit a copy of its biennial
20 [final] operating plan, as approved by the department, to the
21 governor, the Legislative Budget Board, and the state auditor not
22 later than 30 days after the date that the department approves the
23 plan. If an agency fails to comply with this subsection, the
24 governor may direct the comptroller to deny the agency access to
25 the agency's appropriations that relate to the management of

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1 information resources. The denial of access may continue until the
2 governor is satisfied with the agency's compliance with this
3 subsection.

4 ~~{1}--As--a--consequence--of--evaluating--an--initial--operating
5 plan--or--a--final--operating--plan,--the--department--may--require--a--state
6 agency--to--submit--or--obtain--certain--information--as--part--of--its
7 procurement--process,--This--may--be--required--when:~~

8 ~~{1}--an--agency--is--planning--a--noncompetitive
9 procurement;~~

10 ~~{2}--an--agency--is--planning--a--system--conversion;--or~~

11 ~~{3}--the--department--determines--that--the--information
12 would--be--necessary--or--appropriate;~~

13 SECTION 1.25. Section 19, Information Resources Management
14 Act (Article 4413(32j), Revised Statutes), is amended to read as
15 follows:

16 Sec. 19. INFORMATION RESOURCES MANAGERS. (a) The person
17 required to sign an agency's strategic plan, or that person's
18 designee, shall serve as the agency's information resources
19 manager. A member of the board of the department may not also
20 serve as the information resources manager of a state agency.

21 (b) ~~{1}--the--department--performs--substantially--all
22 information--processing--for--a--state--agency,--the--agency--may--designate
23 the--department--as--the--agency's--information--resources--manager,--the
24 department--may--by--rule--define--the--circumstances--in--which--it--may
25 serve--as--an--agency's--information--resources--manager;~~

1 ~~{c}~~ Each state agency shall cooperate as necessary with
2 its information resources manager to enable that person to perform
3 the duties required of the information resources manager by law.

4 ~~{c}~~ ~~{d}~~ The department shall provide guidelines to state
5 agencies regarding the initial and continuing education
6 requirements needed for information resources managers ~~[not--later
7 than--September--1,--1990,--to--be--effective--on--September--1,--1992]~~. Any
8 person who is appointed the information resources manager of a
9 state agency before September 1, 1992, is exempt from the
10 requirements of the department regarding initial education needed
11 for that position. The department may provide educational
12 materials and seminars for state agencies and information resources
13 managers.

14 ~~{d}~~ ~~{e}~~ The information resources manager is responsible
15 for the preparation of the operating plans under Sections 16 and 17
16 ~~[15-17] of this article,--and--the--annual--performance--report--under~~
17 ~~Section--28--of--this--article]~~.

18 SECTION 1.26. The Information Resources Management Act
19 (Article 4413(32j), Revised Statutes) is amended by adding Section
20 18A to read as follows:

21 Sec. 18A. INTERAGENCY CONTRACTS. (a) A state agency may
22 not enter into an interagency contract for the receipt of
23 information resources technologies, including a contract with the
24 department, unless the agency complies with this section.

25 (b) A state agency that proposes to receive information

1 resources, technologies under a contract with another state agency
 2 must first give public notice of a request for proposals or a
 3 request for bids.

4 (c) A state agency may not enter into an interagency
 5 contract to receive information resources technologies if the
 6 agency receives a bid or proposal under Subsection (b) of this
 7 section under which the agency can receive the same or
 8 substantially the same technologies from a private vendor for less
 9 than the cost that would be incurred by the agency under the
 10 interagency contract. If a bid or proposal is received under
 11 Subsection (b) of this section that would allow the agency to
 12 accomplish the application or project at an acceptable level of
 13 quality and for an acceptable period for a total cost to the state
 14 of less than the total cost to the state of the best proposed
 15 interagency contract, as that cost is determined by the department,
 16 a contract for the accomplishment of the application or project
 17 shall be awarded to the bidder with the lowest and best bid, or the
 18 offeror whose proposal is most advantageous to the state as
 19 determined from competitive sealed proposals.

20 (d) The department by rule may define circumstances in which
 21 certain interagency contracts that will cost less than a minimum
 22 amount established by the department are exempted from the
 23 requirements of this section or this article, if the department
 24 determines that it would be more cost effective for the state.

25 SECTION 1.27. Section 26, Information Resources Management

1 Act (Article 4413(32j), Revised Statutes), is amended to read as
 2 follows:

3 Sec. 26. APPLICATION TO STATE LOTTERY OPERATIONS. (a) The
 4 lottery division in the office of the comptroller is not included
 5 in the agency strategic plan~~[r-initial-operating-plan]~~ or biennial
 6 ~~[final]~~ operating plan of the comptroller. The lottery division is
 7 not subject to the planning and procurement requirements of this
 8 Act.

9 (b) The electronic funds transfer system for the operation
 10 of the state lottery is not included in the agency strategic plan~~[r-~~
 11 ~~initial-operating-plan]~~ or biennial ~~[final]~~ operating plan of the
 12 state treasurer. Operations of the state treasurer that relate to
 13 the state lottery are not subject to the planning and procurement
 14 requirements of this Act.

15 SECTION 1.28. (a) Sections 18 and 20, Information Resources
 16 Management Act (Article 4413(32j), Revised Statutes), are repealed.

17 (b) Section 3.021, State Purchasing and General Services Act
 18 (Article 601b, Vernon's Texas Civil Statutes), is repealed.

19 SECTION 1.29. (a) Effective August 31, 1994, Sections 21
 20 and 22, Information Resources Management Act (Article 4413(32j),
 21 Revised Statutes), are repealed. On that date, all amounts in the
 22 Department of Information Resources revolving fund account
 23 established under Section 22, Information Resources Management Act
 24 (Article 4413(32j), Revised Statutes), are transferred to the
 25 undedicated portion of the general revenue fund.

1 (b) Before August 31, 1994, the Department of Information
2 Resources shall assist state agencies that use the department's
3 services under Section 21, Information Resources Management Act
4 (Article 4413(32j), Revised Statutes), to obtain suitable
5 alternative services.

6 SECTION 1.30. This part takes effect immediately.

7 PART 2. ABOLITION OF TEXAS SURPLUS PROPERTY AGENCY

8 SECTION 2.01. Subsection (c), Section 2.06, State Purchasing
9 and General Services Act (Article 601b, Vernon's Texas Civil
10 Statutes), is amended to read as follows:

11 (c) The executive director shall employ two associate deputy
12 directors, who shall administer the operation of the divisions of
13 the commission, except the surplus and salvage property division,
14 as provided by this Act. The commission shall:

15 (1) employ a third associate deputy director to
16 administer the operation of the surplus and salvage property
17 division as provided by this Act, and that associate deputy
18 director serves at the pleasure of the commission; or

19 (2) assign the duty to administer the surplus and
20 salvage property division directly to the executive director, who
21 shall directly administer that division subject to and under the
22 direction of the commission.

23 SECTION 2.02. Section 2.09, State Purchasing and General
24 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
25 amended to read as follows:

1 Sec. 2.09. DIVISIONS. (a) The commission is divided into
2 divisions as provided by this section. The associate deputy
3 director employed to administer the surplus and salvage property
4 division shall direct that division as provided by Subsection (c)
5 of this section. Another (One) associate deputy director shall
6 direct the travel division and other divisions as directed by the
7 executive director. The other associate deputy director shall
8 direct the remaining divisions as directed by the executive
9 director.

10 (b) Each division shall be managed by a division director
11 who shall report to the appropriate associate deputy director,
12 except as provided by Subsection (c) of this section.

13 (c) The surplus and salvage property division is established
14 to administer Article 9 of this Act. Notwithstanding Section
15 2.06(b) of this Act, and unless the commission assigns the duty to
16 administer the division directly to the executive director, the
17 affairs of the division are managed by the associate deputy
18 director of that division, whose management is subject to and under
19 the direction of the commission and who reports directly to the
20 commission. All direction of the commission to the associate
21 deputy director shall be made at an open meeting of the commission
22 and made a part of the minutes of the commission. The division may
23 share support functions with other divisions of the commission, but
24 the division shall operate autonomously from the rest of the
25 commission, and the administration of the division must be housed

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1 in a different building than other commission functions. If the
2 commission assigns the duty to administer the division directly to
3 the executive director, the division must still operate
4 autonomously from the rest of the commission, and, except for the
5 executive director's office, the administrative functions of the
6 division must still be housed in a different building from other
7 commission functions.

8 SECTION 2.03. Subsection (a), Section 8.01, State Purchasing
9 and General Services Act (Article 601b, Vernon's Texas Civil
10 Statutes), is amended to read as follows:

11 (a) This article applies to:

12 (1) personal property belonging to the state; and

13 (2) real or personal property acquired by or otherwise
14 under the commission's jurisdiction under Section 9.16 of this Act
15 and 40 U.S.C. Section 483c, 484(j), or 484(k).

16 SECTION 2.04. Subsection (a) Section 9.01, State Purchasing
17 and General Services Act (Article 601b, Vernon's Texas Civil
18 Statutes), is amended by amending Subdivisions (3) and (4) and
19 adding Subdivision (8) to read as follows:

20 (1) "Property" means personal property. The term does
21 not include real property, or any interest in real property, except
22 federal real property acquired under Section 9.16 of this article
23 and Section 484(k), Federal Property and Administrative Services
24 Act. ~~Personal; however; personal~~ property related to real
25 property may be sold under this law if its removal and disposition

1 is to carry out a lawful objective under this law or any other law.
2 The term includes property lawfully confiscated and subject to
3 disposal by a state agency.

4 (4) "Surplus property":

5 (A) means:

6 (i) any personal property which is in
7 excess of the needs of any state agency and which is not required
8 for its foreseeable needs; or

9 (ii) federal surplus property acquired by
10 the commission or otherwise under the commission's jurisdiction
11 under Section 9.16 of this article and 40 U.S.C. Section 483c or
12 Section 484(j) or 484(k), Federal Property and Administrative
13 Services Act; and

14 (B) includes property that ~~(surplus property)~~
15 may be used or new but possesses some usefulness for the purpose
16 for which it was intended or for some other purpose.

17 (8) "Federal Property and Administrative Services Act"
18 means the Federal Property and Administrative Services Act of 1949
19 (40 U.S.C. Section 484).

20 SECTION 2.05. Section 9.02, State Purchasing and General
21 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
22 amended to read as follows:

23 Sec. 9.02. ESTABLISHMENT OF PROCEDURES. The commission
24 shall establish and maintain procedures for the transfer, sale, or
25 disposal, as prescribed by law, of:

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1 (1) surplus and salvage property no longer needed by
2 state agencies; and

3 (2) federal surplus property that the state acquires
4 under the Federal Property and Administrative Services Act.

5 SECTION 2.06. Section 9.03, State Purchasing and General
6 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
7 amended to read as follows:

8 Sec. 9.03. MAILING LISTS OF ASSISTANCE ORGANIZATIONS AND
9 POLITICAL SUBDIVISIONS. The commission shall maintain a mailing
10 list, renewable annually, of assistance organizations and political
11 subdivision purchasing agents or other officers performing similar
12 functions who have asked for information on surplus or salvage
13 equipment or material the state may have available. (The
14 commission shall provide the list to the Texas Surplus Property
15 Agency.)

16 SECTION 2.07. Subsection (a), Section 9.05, State Purchasing
17 and General Services Act (Article 601b, Vernon's Texas Civil
18 Statutes), is amended to read as follows:

19 (a) If surplus or salvage property of a state agency is not
20 disposed of under the provisions of Section 9.04 of this article,
21 the commission shall sell the property by competitive bid or
22 auction or delegate to the state agency having possession of the
23 property the authority to sell the property on a competitive bid
24 basis. The commission or agency shall collect a fee from the
25 purchaser. The commission shall set the fee in an amount to

1 recover the costs associated with the sale of the property, but the
2 amount may not be less than two percent nor more than 12 percent of
3 the proceeds from the sale of the property.

4 SECTION 2.08. Section 9.13, State Purchasing and General
5 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
6 amended to read as follows:

7 Sec. 9.13. EXEMPTION. For purposes of this article the
8 terms "surplus" and "salvage" shall not apply to products and
9 by-products of research, forestry, agricultural, livestock, and
10 industrial enterprises [in-excess-of-that-quantity-required-for
11 consumption-by-the-producing-agency-when-such-agencies-have-a
12 continuing-and-adequate-system-of-marketing-research-and-sales; the
13 efficiency-of-which-shall-be-certified-to-the-commission-by-the
14 state-auditor;---A-qualifying-agency-shall-furnish-the-commission
15 with-a-copy-of-the-rates-and-regulations-and-latest-revisions
16 thereof-promulgated-by-the-policy-making-body-of-each-agency-or
17 institution-for-the-guidance-and-administration-of-the-programs
18 enumerated-herein;---When-requested-by-such-agency-or-institution-to
19 do-so-the-commission-shall-dispose-of-the-property-as-provided-for
20 in-this-article].

21 SECTION 2.09. Section 9.14, State Purchasing and General
22 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
23 amended to read as follows:

24 Sec. 9.14. AUTHORIZATION OF AGENCIES TO DISPOSE OF PROPERTY.
25 The commission may authorize an agency to dispose of surplus or

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1 salvage property where the agency demonstrates to the commission
2 its ability to make such disposition under the rules and
3 regulations set up by the commission, as provided for herein.
4 State eleemosynary institutions and institutions and agencies of
5 higher learning shall be excepted from the terms of this article
6 that relate to the disposition of their surplus or salvage
7 property.

8 SECTION 2.10. Article 9, State Purchasing and General
9 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
10 amended by adding Sections 9.16 and 9.17 to read as follows:

11 Sec. 9.16. FEDERAL SURPLUS PROPERTY. (a) The commission is
12 the designated state agency under Section 484(j) of the Federal
13 Property and Administrative Services Act.

14 (b) The commission may:

15 (1) acquire and warehouse federal property allocated
16 to the commission under the Federal Property and Administrative
17 Services Act; and

18 (2) distribute the property:

19 (A) to an entity or institution that meets the
20 qualifications for eligibility for the property under the Federal
21 Property and Administrative Services Act; and

22 (B) without complying with the provisions of
23 this article that relate to the disposition of surplus state agency
24 property.

25 (c) The commission may:

1 (1) disseminate information and assist a potential
2 applicant regarding the availability of federal surplus real
3 property;

4 (2) assist in the processing of an application for
5 acquisition of federal real property and related personal property
6 under Section 484(k) of the Federal Property and Administrative
7 Services Act;

8 (3) assist in assuring use of the property; and

9 (4) engage in an activity relating to the use of
10 federal surplus property by another state agency, institution, or
11 organization engaging in or receiving assistance under a federal
12 program.

13 (d) The commission shall:

14 (1) file a state plan of operation that complies with
15 federal law and operate in accordance with the plan;

16 (2) take necessary action to meet the minimum
17 standards for a state agency in accordance with the Federal
18 Property and Administrative Services Act; and

19 (3) cooperate to the fullest extent consistent with
20 this section.

21 (e) The commission may:

22 (1) make the necessary certifications and undertake
23 necessary action, including an investigation;

24 (2) make expenditures or reports that may be required
25 by federal law or regulation or that are otherwise necessary to

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1 provide for the proper and efficient management of the commission's
2 functions under this section;

3 (3) provide information and reports relating to the
4 commission's activities under this section that may be required by
5 a federal agency or department; and

6 (4) adopt rules necessary for the efficient operation
7 of its activities under this section or as may be required by
8 federal law or regulation.

9 (f) The commission may enter into an agreement, including:

10 (1) a cooperative agreement with a federal agency
11 under Section 484(n) of the Federal Property and Administrative
12 Services Act;

13 (2) an agreement with a state agency for surplus
14 property of a state agency that will promote the administration of
15 the commission's functions under this section; or

16 (3) an agreement with a group or association of state
17 agencies for surplus property that will promote the administration
18 of the commission's functions under this section.

19 (g) The commission may act as an information clearinghouse
20 for an entity or institution that may be eligible to acquire
21 federal surplus property and may assist, as necessary, the entity
22 or institution to obtain federal surplus property.

23 (h) The commission may:

24 (1) acquire and hold title or make capital
25 improvements to real property in accordance with Subsection (i) of

1 this section; or

2 (2) make an advance payment of rent for a distribution
3 center, office space, or another facility that is required to carry
4 out the commission's functions under this section.

5 (i) The commission may collect a service charge for the
6 commission's acquisition, warehousing, distribution, or transfer of
7 property. The commission may not collect a charge for real
8 property in an amount that is greater than the reasonable
9 administrative cost the commission incurs in transferring the
10 property.

11 (j) A charge collected under Subsection (i) of this section
12 shall be deposited in the state treasury to the credit of the
13 surplus property service charge fund, and income earned on money
14 in the surplus property service charge fund shall be credited to
15 that fund. Money in the fund may be used only to carry out the
16 functions of the commission under this section.

17 (k) The commission may appoint advisory boards and
18 committees necessary and suitable to administer this section.

19 (l) The commission may employ, compensate, and prescribe the
20 duties of personnel, other than members of advisory boards and
21 committees, necessary and suitable to administer this section. A
22 personnel position may only be filled by an individual selected and
23 appointed on a nonpartisan merit basis.

24 Sec. 9.17. ADMINISTRATIVE COST RECOVERY STUDY. The
25 commission shall conduct a study to determine if its functions

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1 under this article can be made self-supporting by charging fees for
2 commission services. If the commission determines that a function
3 can be made self-supporting through charging fees, the commission
4 shall prepare a fee implementation plan. Before January 1, 1995,
5 the commission shall report to each member of the legislature the
6 results of the study and the implementation plan for fee recovery,
7 if any. This section expires January 1, 1995.

8 SECTION 2.11. Subsection (a), Section 403.271, Government
9 Code, is amended to read as follows:

10 (a) This subchapter applies to:

11 (1) all personal property belonging to the state; and

12 (2) real and personal property acquired by or
13 otherwise under the jurisdiction of the state under 40 U.S.C.
14 Section 483c, 484(j), or 484(k), and Section 9.16, State Purchasing
15 and General Services Act (Article 601b, Vernon's Texas Civil
16 Statutes).

17 SECTION 2.12. (a) The General Services Commission and the
18 Texas Surplus Property Agency shall coordinate the transfer of all
19 Texas Surplus Property Agency functions to the General Services
20 Commission as required by this part. The administrative functions
21 of the Texas Surplus Property Agency are transferred to the General
22 Services Commission to be carried out by staff located in Austin,
23 in accordance with the State Purchasing and General Services Act
24 (Article 601b, Vernon's Texas Civil Statutes), as amended by this
25 Act.

1 (b) The transfer of all functions from the Texas Surplus
2 Property Agency to the General Services Commission shall be
3 accomplished as soon as practicable, but not later than the 45th
4 day after the effective date of this part, at which time the Texas
5 Surplus Property Agency is abolished.

6 (c) The transfer required by this part includes the transfer
7 of all assets, duties, powers, obligations, and liabilities,
8 including contracts, leases, real or personal property, funds,
9 employees, furniture, computers and other equipment, and files and
10 related materials used by the Texas Surplus Property Agency.

11 (d) A form, rule, or procedure adopted by the Texas Surplus
12 Property Agency that is in effect on the effective date of this
13 part remains in effect on and after that date as if adopted by the
14 General Services Commission until amended, repealed, withdrawn, or
15 otherwise superseded by the commission.

16 (e) All unexpended appropriations made to the Texas Surplus
17 Property Agency are transferred to the General Services Commission.

18 (f) Notwithstanding Subsections (b) and (e) of this section
19 and Section 2.13 of this Act:

20 (1) to the extent that changes in law made by this Act
21 are changes that must be approved by the federal government under
22 federal law relating to surplus property as a condition of this
23 state's full participation in the federal surplus property program,
24 the appropriate prior law is continued in effect until the
25 necessary approval is received; and

1 (2) if the abolition of the Texas Surplus Property
2 Agency and the transfer of its functions under this Act must be
3 approved by the federal government under federal law relating to
4 surplus property as a condition of this state's full participation
5 in the federal surplus property program, the Texas Surplus Property
6 Agency and the law under which it performs its functions are
7 continued in effect until the necessary approval is received.

8 SECTION 2.13. The following laws are repealed:

9 (1) Chapter 32, Acts of the 62nd Legislature, Regular
10 Session, 1971 (Article 6252-6b, Vernon's Texas Civil Statutes); and

11 (2) Subsections (d), (e), and (g), Section 9.04, State
12 Purchasing and General Services Act (Article 601b, Vernon's Texas
13 Civil Statutes).

14 SECTION 2.14. This part takes effect September 1, 1993,
15 except that:

16 (1) the amendment to Subsection (a), Section 403.271,
17 Government Code, takes effect when Subchapter L, Chapter 403,
18 Government Code, as added by Section 2.30, Chapter 8, Acts of the
19 72nd Legislature, 2nd Called Session, 1991, takes effect; and

20 (2) the amendment to Subsection (a), Section 8.01,
21 State Purchasing and General Services Act (Article 601b, Vernon's
22 Texas Civil Statutes), does not take effect if on or before
23 September 1, 1993, Article 8, State Purchasing and General Services
24 Act (Article 601b, Vernon's Texas Civil Statutes), is repealed on
25 certification by the comptroller of the implementation of the fixed

1 asset component of the uniform statewide accounting system, in
2 accordance with Subsection (d), Section 6.01, Chapter 8, Acts of
3 the 72nd Legislature, 2nd Called Session, 1991.

4 PART J. TRAVEL

5 SECTION 3.01. Section 14.01, State Purchasing and General
6 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
7 amended to read as follows:

8 Sec. 14.01. DIVISION. The travel division of the commission
9 is composed of the central travel office and the office of vehicle
10 fleet maintenance. The commission shall adopt rules to implement
11 this article, including rules related to:

12 (1) the structure of travel agency contracts that the
13 commission makes;

14 (2) the procedures the commission uses in requesting
15 and evaluating bids or proposals for travel agency contracts from
16 providers; and

17 (3) the use of negotiated contract rates for travel
18 services by state agencies; and

19 (4) exemptions from the prohibition prescribed by
20 Section 14.02(d) of this article.

21 SECTION 3.02. Subsections (b) and (c), Section 14.02, State
22 Purchasing and General Services Act (Article 601b, Vernon's Texas
23 Civil Statutes), are amended to read as follows:

24 (b) The central travel office shall initially provide
25 services to designated agencies located in Travis County and shall

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1 extend its services to all state agencies as it develops the
 2 capability to do so. The office may negotiate contracts with
 3 private travel agents, with travel and transportation providers,
 4 and with credit card companies that provide travel services and
 5 other benefits to the state. The commission shall make contracts
 6 with more than one provider of travel agency services. Contracts
 7 entered into under this section are not subject to the competitive
 8 bidding requirements imposed under Article 3 of this Act. The
 9 comptroller of public accounts shall audit travel vouchers in
 10 accordance with Chapter 403, Government Code, and its subsequent
 11 amendments, for compliance with [of] rules adopted to enforce the
 12 provisions of this section.

13 (c) State agencies in the executive branch of state
 14 government shall participate in accordance with commission rules in
 15 the commission's contracts for travel services. Institutions[~~r~~
 16 provided-that-institutions] of higher education as defined by
 17 Section 61.003, Education Code, shall not be required to
 18 participate in the commission's contracts for travel agency
 19 services or other travel services purchased from funds other than
 20 general revenue funds or educational and general funds as defined
 21 by Section 51.009, Education Code. The commission may provide by
 22 rule for exemptions from required participation. Agencies of the
 23 state that are not required to participate in commission contracts
 24 for travel services may participate as provided by Subsection (a)
 25 of this section.

1 SECTION 3.03. Section 14.02, State Purchasing and General
 2 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
 3 amended by adding Subsections (d) and (e) to read as follows:

4 (d) This subsection applies only to a state agency in the
 5 executive branch of state government that is required to
 6 participate in the commission's contracts for travel services.
 7 Except as provided by commission rule, a state agency may not:

8 (1) purchase commercial airline or rental car
 9 transportation if the amount of the purchase exceeds the amount of
 10 the central travel office's contracted fares or rates; or

11 (2) reimburse a person for the purchase of commercial
 12 airline or rental car transportation for the amount that exceeds
 13 the amount of the central travel office's contracted fares or
 14 rates.

15 (e) The commission shall educate state agencies about
 16 Subsection (d) of this section. The comptroller shall audit travel
 17 vouchers in accordance with Chapter 403, Government Code, and its
 18 subsequent amendments, for compliance with Subsection (d) of this
 19 section. To facilitate the audit of the travel vouchers, the
 20 commission shall consult with the comptroller before the commission
 21 adopts rules or procedures under Subsection (d) of this section.

22 SECTION 3.04. This part takes effect September 1, 1991,
 23 except that Sections 3.01 and 3.03 of this part take effect January
 24 1, 1991.

PART 4. MAIL

SECTION 4.01. Article 11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 11.021 to read as follows:

Sec. 11.021. OUTGOING FIRST-CLASS MAIL. (a) This section applies only to outgoing first-class mail practices of state agencies located in Travis County.

(b) The commission shall evaluate the outgoing first-class mail practices of state agencies located in Travis County, including the lists, systems, and formats used to create mail. The commission shall adopt rules for the state agencies to implement this section.

(c) The commission shall achieve the maximum available discount on postal rates in all cases in which acceptable levels of timeliness, security, and quality of service can be maintained notwithstanding the discounted rate.

(d) A state agency to which this section applies shall consult with the commission before the agency may:

(1) purchase, upgrade, or sell mail processing equipment;

(2) contract with a private entity for mail processing; or

(3) take actions that significantly affect the agency's first-class mail practices.

(e) The commission by interagency contract shall establish a

fee-for-service structure to charge and collect fees from each state agency to which this section applies for the commission's services under this section. The total amount charged a state agency under this section shall not exceed the amount of the agency's appropriated funds for outgoing first-class mail, as determined by the Legislative Budget Board, minus the agency's fixed costs for these services. The commission shall transfer to the general revenue fund the amount of a fee charged a state agency under this subsection that is greater than the amount of the commission's actual expenses for performing services for the agency.

(f) The commission shall adopt and distribute to each state agency to which this section applies guidelines by which state outgoing first-class mail practices may be measured and analyzed, using, to the extent possible, the services of the United States Postal Service. The commission shall review and update these guidelines not less often than once every two years after the date of the adoption of the guidelines. Not later than the 90th day after the date of the distribution of the initial guidelines and not less often than annually after the date of that distribution, the commission shall provide training to state agency personnel who handle first-class mail. The commission, to the extent possible, may use the free training provided by the United States Postal Service.

(g) If the commission determines that the upgrade of

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1 existing mail production or processing equipment or the purchase of
2 new mail production or processing equipment is required to improve
3 the outgoing first-class mail practices of the commission or other
4 state agencies located in Travis County, the commission shall
5 prepare a cost-benefit analysis demonstrating that the upgrade or
6 purchase is more cost-effective than contracting with a private
7 entity to provide that equipment or mail service. The commission
8 shall approve the most cost-effective method.

9 (h) A cost-benefit analysis prepared under this section and
10 a request for bids or a request for proposals prepared to implement
11 a course of action under this section shall be sent to the state
12 auditor for review and comment as soon as practicable after
13 preparation. The state auditor's office shall perform its review
14 and offer its comments not later than the 14th working day after
15 the day it receives the analysis or the request for bids or
16 proposals.

17 (i) Not later than February 1, 1995, the commission shall
18 report to the legislature all significant changes in first-class
19 mail practices under this section. The report shall include a
20 discussion of funds transferred to the general revenue fund under
21 Subsection (e) of this section. This subsection expires June 1,
22 1995.

23 SECTION 4.02. This part takes effect immediately.

24 PART 5. EMERGENCY

25 SECTION 5.01. The importance of this legislation and the

1 crowded condition of the calendars in both houses create an
2 emergency and an imperative public necessity that the
3 constitutional rule requiring bills to be read on three several
4 days in each house be suspended, and this rule is hereby suspended,
5 and that this Act take effect and be in force according to its
6 terms, and it is so enacted.

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 381 passed the Senate on March 9, 1993, by the following vote: Yeas 30, Nays 0; May 25, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 27, 1993, House granted request of the Senate; May 29, 1993, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 381 passed the House, with amendments, on May 22, 1993, by a non-record vote; May 27, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by the following vote: Yeas 139, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

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AN ACT

relating to the continuation and operation of the General Services Commission and to the transfer of certain functions to or from the commission; the purchase, financing, management, and use of real and personal property of the state; and contracting for certain services provided to the state or among state agencies; providing for the issuance of revenue bonds; making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.02(3), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "Historically underutilized [Disadvantaged] business" means:

(A) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities are owned by one or more persons who:

(i) are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, and [who] have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; and

(ii) have a proportionate interest and

demonstrate active participation in the control, operation, and management of the corporation's affairs;

(B) a sole proprietorship created for the purpose of making a profit that is 100 percent owned, operated, and controlled by a person described by Paragraph (A)(i) of this subdivision;

(C) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership is owned by one or more persons who: (i) are described by Paragraph (A)(i) of this subdivision; and

(ii) [v---Those---persons---must] have a proportionate interest and demonstrate active participation in the control, operation, and management of the partnership affairs;

(D) a joint venture in which each entity in the joint venture is a historically underutilized [disadvantaged] business under this subdivision; or

(E) a supplier contract between a historically underutilized [disadvantaged] business under this subdivision and a prime contractor under which the historically underutilized [disadvantaged] business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

SECTION 2. Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (4), (5), and (6) to read as follows:

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H.B. No. 2626

1 (4) "Automated information systems" means any
 2 automated information systems, the computers on which they are
 3 automated, or a service related to the automation of information
 4 systems or the computers on which they are automated, including
 5 computer software, awarded to a vendor by a state agency covered by
 6 the Information Resources Management Act (Article 4413(32)),
 7 Revised Statutes) or any telecommunications apparatus or device
 8 that serves as a component of a voice, data, or video
 9 communications network for the purpose of transmitting, switching,
 10 routing, multiplexing, modulating, amplifying, or receiving signals
 11 on that network.

12 (5) "Best value" means lowest overall cost of
 13 information systems based on the following factors, including, but
 14 not limited to:

15 (A) purchase price;

16 (B) compatibility to facilitate exchange of
 17 existing data;

18 (C) capacity for expansion and upgrading to more
 19 advanced levels of technology;

20 (D) quantitative reliability factors;

21 (E) the level of training required to bring
 22 end-users to a stated level of proficiency;

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

26 (G) compliance with applicable statewide
 27 standards adopted by the Department of Information Resources or a

1 subsequent entity as validated by criteria established by the
 2 department or a subsequent entity in administrative rule.

3 (6) "Qualified information systems vendor" means
 4 manufacturers or resellers of automated information systems who are
 5 authorized by the commission to publish catalogues of products and
 6 services which may be directly purchased by state agencies covered
 7 by the Information Resources Management Act (Article 4413(32)),
 8 Revised Statutes).

9 SECTION 3. Section 1.03, State Purchasing and General
 10 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
 11 amended to read as follows:

12 Sec. 1.03. HISTORICALLY UNDERUTILIZED [DISADVANTAGED]
 13 BUSINESSES. (a) The commission [~~Office--of--Small--Business~~
 14 ~~Assistance--of--the--Texas--Department--of--Commerce~~] shall certify
 15 businesses that are historically underutilized [disadvantaged]
 16 businesses. As part of its certification procedures, the
 17 commission [office] may approve a municipal program that certifies
 18 historically underutilized [disadvantaged] businesses under
 19 substantially the same definition prescribed by Section 1.02(3) of
 20 this Act and may certify businesses certified by the municipality
 21 as historically underutilized [disadvantaged] businesses under this
 22 Act.

23 (b) The commission [office] shall compile in the most
 24 cost-efficient format a directory of businesses certified as
 25 historically underutilized [disadvantaged] businesses under
 26 Subsection (a) of this section. The commission [office] shall
 27 update the directory at least semiannually and provide a copy of

1 the directory to ~~[the--commission---and]~~ each state agency
 2 semiannually. The commission shall provide access to the directory
 3 either electronically or in another format, depending on the needs
 4 of each state agency. On request, the commission shall make the
 5 directory available to local governments and the public. The
 6 commission and state agencies shall use the directory in
 7 determining awards of state purchasing and public works contracts.

8 (c) The commission shall prepare a report based on a
 9 compilation and analysis of reports submitted to it by each state
 10 agency and information provided by the comptroller. [commission
 11 and-each-state-agency-shall-report-to-the-office] The report shall
 12 include the total number and dollar amount of contracts awarded and
 13 actually paid to historically underutilized [disadvantaged]
 14 businesses certified by the commission. Not later than September
 15 15 and March 15 of each year, each state agency shall submit to the
 16 commission information required by the commission for its
 17 preparation of the report required by this subsection. (These
 18 reports-shall-be-made-each-January-and-July-and-shall-report-on-the
 19 previous--six-month--period---The-office-shall-compile-and-analyze
 20 the-reports-and-submit-a-report--based-on--the--analysis--to--the
 21 presiding--officer-of-each-house-of-the-legislature-each-February.)
 22 The commission shall submit a consolidated report on April 15 of
 23 each year on the previous six-month period to the joint committee
 24 charged with monitoring the implementation of the historically
 25 underutilized business goals. The commission shall submit a
 26 consolidated report on October 15 of each year on the preceding
 27 fiscal year to the presiding officer of each house of the

1 legislature, the members of the legislature and the joint
 2 committee. The commission may require information from a state
 3 agency and may adopt rules to administer this section. The
 4 comptroller shall provide information to the commission that will
 5 assist the commission in the performance of its duties under this
 6 section. Subsections (d)-(k) of this section apply to the report
 7 and information required under this section.

8 (d) Each state agency that participates in a group
 9 purchasing program under Section 3.01(a)(5) of this Act shall
 10 include in the information submitted to the commission under
 11 Subsection (c) of this section a separate list of purchases from
 12 historically underutilized businesses that are made through the
 13 group purchasing program and shall report the dollar amount of each
 14 purchase that is allocated to the reporting agency.

15 (e) To ensure accuracy in reporting the use of historically
 16 underutilized businesses, each state agency shall continuously
 17 maintain, and shall compile monthly, information relating to the
 18 agency's use, and the use by each operating division of the agency,
 19 of historically underutilized businesses, including information
 20 regarding subcontractors and suppliers required by Subsection (f)
 21 of this section.

22 (f) A contractor or supplier to whom a state agency has
 23 awarded a contract shall report to the agency the identity of each
 24 historically underutilized business to whom the contractor or
 25 supplier has awarded a subcontract for the purchase of supplies,
 26 materials, services, or equipment.

27 (g) The commission, in cooperation with the comptroller and

1 each state agency reporting under this section, shall categorize
2 each historically underutilized business that is included in a
3 report under this section by sex, race, and ethnicity.

4 (h) The report required by Subsection (c) of this section
5 shall include an analysis of the relative level of opportunity for
6 historically underutilized businesses for various classes or
7 categories of acquisitions of materials, supplies, equipment, and
8 services.

9 (i) The commission shall seek the advice of the governor,
10 the legislature, and state agencies in facilitating identification
11 of and development of opportunities for historically underutilized
12 businesses.

13 (j) [†] The commission shall offer assistance and training
14 to historically underutilized [disadvantaged] businesses regarding
15 state procurement procedures. The commission shall advise
16 historically underutilized [disadvantaged] businesses of the
17 availability of state contracts and advise historically
18 underutilized [disadvantaged] businesses to enter the businesses'
19 names on the state's bid list.

20 (k) It is the intent of this measure that reports of
21 historically underutilized business purchasing and contracts shall
22 form a record of each agency's purchases in which the agency
23 selected the vendor. If the vendor was selected by the commission
24 as part of its state contract program, the purchase shall be
25 reflected on the commission's report of its own purchases except in
26 those cases where an agency selects a sole source vendor under the
27 provisions of Section 3.09 of this Act. In the case of Section

1 3.09 purchases, the selections of vendors shall remain part of the
2 record of the agency selecting the vendor, not the commission.

3 SECTION 4. Section 1.04(a), State Purchasing and General
4 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
5 amended to read as follows:

6 (a) A person commits an offense if the person intentionally
7 applies as a historically underutilized [disadvantaged] business
8 for an award of a purchasing contract or public works contract
9 under this Act and the person knowingly does not meet the
10 definition of a historically underutilized [disadvantaged] business
11 under Section 1.02(3) of this Act.

12 SECTION 5. Section 2.02, State Purchasing and General
13 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
14 amended to read as follows:

15 Sec. 2.02. MEMBERSHIP. The commission is composed of six
16 members appointed by the governor with the advice and consent of
17 the senate. All members must be representatives of the general
18 public. Appointments to the commission shall be made without
19 regard to the race, color, disability [handicap], sex, religion,
20 age, or national origin of the appointees. In making appointments
21 under this section, the governor shall attempt to appoint members
22 of different minority groups, including females, African-Americans,
23 Hispanic-Americans, Native Americans, and Asian-Americans. A
24 person is not eligible for appointment if the person or the
25 person's spouse:

26 (1) is employed by or participates in the management
27 of a business entity or other organization that contracts with the

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1 commission;

2 (2) owns or controls, directly or indirectly, more
3 than a 10 percent interest in a business entity or other
4 organization that contracts with the state; or

5 (3) uses or receives a substantial amount of tangible
6 goods, services, or funds from the commission, other than
7 compensation or reimbursement authorized by law for commission
8 membership, attendance, or expenses.

9 SECTION 6. Section 2.06(i), State Purchasing and General
10 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
11 amended to read as follows:

12 (i) The executive director or the executive director's
13 designee shall prepare and maintain a written policy statement to
14 assure implementation of a program of equal employment opportunity
15 under which all personnel transactions are made without regard to
16 race, color, disability [handicap], sex, religion, age, or national
17 origin. The policy statement must include:

18 (1) personnel policies, including policies relating to
19 recruitment, evaluation, selection, appointment, training, and
20 promotion of personnel, that are in compliance with requirements of
21 the Commission on Human Rights Act (Article 5221k, Vernon's Texas
22 Civil Statutes), and its subsequent amendments;

23 (2) a comprehensive analysis of the commission work
24 force that meets federal and state guidelines;

25 (3) procedures by which a determination can be made of
26 significant underutilization in the commission work force of all
27 persons for whom federal or state guidelines encourage a more

1 equitable balance; and

2 (4) reasonable methods to address appropriately those
3 areas of significant underutilization.

4 SECTION 7. Section 2.06(j), State Purchasing and General
5 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
6 amended to read as follows:

7 (j) A policy statement prepared under Subsection (i) of this
8 section must cover an annual period, be updated at least annually,
9 be reviewed annually by the Commission on Human Rights for
10 compliance with Subsection (i)(1) of this section, and be filed
11 with the governor's office.

12 SECTION 8. Section 2.07, State Purchasing and General
13 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
14 amended to read as follows:

15 Sec. 2.07. APPLICATION OF SUNSET ACT. The commission is
16 subject to Chapter 325, Government Code (Texas Sunset Act). Unless
17 continued in existence as provided by that chapter, the commission
18 is abolished and this Act expires September 1, 2001 [1993].

19 SECTION 9. Section 2.10(c), State Purchasing and General
20 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
21 amended to read as follows:

22 (c) The commission shall prepare and maintain a written plan
23 that describes how a person who does not speak English [or-who-has
24 e-physical;-mental;-or-developmenta;-disability] can be provided
25 reasonable access to the commission's programs. The commission
26 shall also comply with federal and state laws for program and
27 facility accessibility.

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1 SECTION 10. Section 3.01, State Purchasing and General
2 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
3 amended by adding Subsection (e) to read as follows:

4 (e) The Texas Youth Commission may purchase care and
5 treatment services for its wards, including educational services,
6 and such purchases shall be negotiated to achieve fair and
7 reasonable prices at rates which do not exceed any maximum provided
8 by law. Selection of service providers shall be based upon the
9 qualifications and demonstrated competence of the provider.

10 SECTION 11. Section 3.022, State Purchasing and General
11 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
12 amended by adding Subsection (h) to read as follows:

13 (h) A medical or dental unit as that term is defined in
14 Section 61.003, Education Code, may purchase the following types of
15 medical equipment by the use of competitive sealed proposals if it
16 follows commission rules and procedures provided by this section
17 regarding the use of competitive sealed proposals and submits to
18 the commission a written finding that competitive sealed bidding or
19 informal competitive bidding is not practical or is disadvantageous
20 to the state for the proposed acquisition:

21 (1) prototypical medical equipment not yet available
22 on the market;

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

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

1 SECTION 12. Article 3, State Purchasing and General Services
2 Act (Article 601b, Vernon's Texas Civil Statutes), is amended by
3 adding Section 3.0221 to read as follows:

4 Sec. 3.0221. COMPETITIVE SEALED PROPOSALS; ACQUISITION OF
5 CERTAIN SUPPLIES, MATERIALS, EQUIPMENT, AND ROUTINE SERVICES. (a)
6 The commission may follow a procedure using competitive sealed
7 proposals to acquire:

8 (1) supplies, materials, or equipment if the cost of
9 acquisition is \$1 million or more; or

10 (2) routine services if the cost of acquisition is
11 \$100,000 or more.

12 (b) Only the commission may acquire goods or services using
13 competitive sealed proposals under this section. The commission
14 may not delegate this authority to a state agency.

15 (c) To acquire goods or services using competitive sealed
16 proposals under this section, the commission must first determine
17 in an open meeting that competitive sealed bidding or informal
18 competitive bidding is not practical or is disadvantageous to the
19 state.

20 (d) The commission shall solicit proposals by a request for
21 proposals. The commission shall give public notice of a request
22 for proposals in the manner provided for requests for bids under
23 Section 3.12 of this article.

24 (e) The commission shall consult with appropriate personnel
25 of a requisitioning agency to develop specifications for a request
26 for competitive sealed proposals under this section.-

27 (f) The commission shall open each proposal in a manner that

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

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

20 (h) The commission shall invite a requisitioning agency to
21 participate in discussions conducted under Subsection (g) of this
22 section.

23 (i) The commission shall make a written award of a contract
24 to the offeror whose proposal is the most advantageous to the
25 state, considering price and the evaluation factors in the request
26 for proposals, except that if the commission finds that none of the
27 offers is acceptable, it shall refuse all offers. The contract

1 file must state in writing the basis on which the award is made.

2 (j) The commission may adopt rules and request assistance
3 from other state agencies to perform its responsibilities under
4 this section.

5 (k) This section does not affect Section 3.022 of this
6 article regarding the use of competitive sealed proposals for
7 acquiring goods or services related to telecommunications or
8 automated information technology.

9 SECTION 13. Section 3.04, State Purchasing and General
10 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
11 amended to read as follows:

12 Sec. 3.04. MENTAL HEALTH AND MENTAL RETARDATION COMMUNITY
13 CENTERS; ASSISTANCE ORGANIZATIONS. Community centers for mental
14 health and mental retardation services that receive [ere-receiving]
15 state grants-in-aid under the provisions of Article 4 of the Texas
16 Mental Health and Mental Retardation Act and assistance
17 organizations as defined by Section 9.01 of this Act that receive
18 any state funds may purchase goods and services [drugs--and
19 medicines] through the commission.

20 SECTION 14. Article 3, State Purchasing and General Services
21 Act (Article 601b, Vernon's Texas Civil Statutes), is amended by
22 adding Section 3.061 to read as follows:

23 Sec. 3.061. GROUP PURCHASING PROGRAMS. (a) Institutions of
24 higher education, as defined by Section 61.003, Education Code, are
25 authorized to purchase materials, supplies or equipment through
26 group purchasing programs that offer discount prices to
27 institutions of higher education.

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1 (b) The commission shall promulgate rules allowing purchases
2 through group purchasing programs unless the commission determines
3 within a reasonable period of time after receiving notification of
4 a particular purchase that a lower price is available through the
5 commission.

6 (c) The rules shall also include provisions that provide for
7 commission determination of compliance with state laws and
8 commission rules regarding purchasing with historically
9 underutilized businesses.

10 (d) This section does not affect other authority granted to
11 institutions of higher education under this Act.

12 SECTION 15. Section 3.07(b), State Purchasing and General
13 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
14 amended to read as follows:

15 (b) Each emergency purchase made under this section is
16 subject to the historically underutilized [disadvantaged] business
17 provisions of Section 3.10 of this article.

18 SECTION 16. Article 3, State Purchasing and General Services
19 Act (Article 601b, Vernon's Texas Civil Statutes), is amended by
20 adding Section 3.081 to read as follows:

21 Sec. 3.081. CATALOGUE PURCHASE PROCEDURE. (a) A vendor who
22 wants to sell or lease automated information systems under this
23 section to state agencies covered by the Information Resources
24 Management Act (Article 4413(32j), Revised Statutes) shall apply to
25 the commission for designation as a "qualified information systems
26 vendor" according to an application process promulgated by the
27 commission. At a minimum, the application process shall include

1 submission of the following elements:

2 (1) a catalogue containing all products and services
3 eligible for purchase by state agencies, including descriptions of
4 each product or service, the list price of each product or service,
5 and the price to Texas state agencies of each product or service;

6 (2) a maintenance, repair, and support plan for all
7 eligible products and services;

8 (3) proof of the applicant's financial resources and
9 ability to perform; and

10 (4) a guarantee that the vendor will make available
11 equivalent replacement parts for products sold to Texas for at
12 least three years from the date of a product's discontinuation.

13 (b) Within 90 days of the effective date of this Act the
14 commission shall establish standards and criteria for designating
15 qualified information systems vendors on a regional and statewide
16 basis. A vendor remains qualified until the commission determines
17 the vendor fails to meet the criteria set forth in this section.
18 Vendors granted regional status may sell catalogue-listed products
19 and services directly to state agencies covered by the Information
20 Resources Management Act (Article 4413(32j), Revised Statutes)
21 within a region defined by the commission. Vendors granted
22 statewide status may sell catalogue-listed products and services
23 directly to any state agency covered by the Information Resources
24 Management Act (Article 4413(32j), Revised Statutes). The
25 commission's standards and criteria shall be developed in
26 accordance with the following parameters:

27 (1) the ability of the vendor to provide adequate and

1 reliable support and maintenance;

2 (2) the vendor's ability to provide adequate and
3 reliable support and maintenance in the future;

4 (3) the technical adequacy and reliability of the
5 vendor's products; and

6 (4) consistency with standards adopted by the
7 Department of Information Resources or a subsequent entity.

8 (c) If a vendor is designated by the commission as a
9 qualified information systems vendor, the vendor shall publish and
10 maintain a catalogue containing all products and services eligible
11 for purchase by state agencies, including descriptions of each
12 product or service, the list price of each product or service, and
13 the price to Texas state agencies of each product or service. The
14 vendor shall update the catalogue on an as-needed basis to reflect
15 changes in price or the availability of products or services and
16 shall forward a copy of each updated catalogue to the commission
17 and all eligible purchasers.

18 (d) A state agency covered by the Information Resources
19 Management Act (Article 4413(32j), Revised Statutes) may purchase
20 or lease automated information systems directly from a qualified
21 information systems vendor and may negotiate additional terms and
22 conditions to be included in contracts relating to the purchase or
23 lease, provided the purchase or lease is based on the best value
24 available and is in the state's best interest. In determining
25 which products or services are in the state's best interest, the
26 agency shall consider the following factors:

27 (1) installation costs and hardware costs;

1 (2) the overall life cycle cost of the system or
2 equipment;

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

5 (4) estimated software and maintenance costs; and

6 (5) compliance with applicable statewide standards
7 adopted by the Department of Information Resources or a subsequent
8 entity as validated by criteria established by the department or a
9 subsequent entity in administrative rule.

10 (e) The commission shall establish rules and regulations and
11 implement the catalogue purchase procedure set forth in this
12 section no later than January 1, 1994.

13 (f) Purchases of automated information systems shall be made
14 through the catalogue procedure enumerated in this section unless
15 the commission or state agency determines that the best value
16 available accrues from an alternative purchase method authorized by
17 this Act.

18 (g) The commission shall make the catalogue purchasing
19 procedure enumerated in this section available to local governments
20 that qualify for cooperative purchasing under Sections 271.082 and
21 271.083, Local Government Code. In this subsection, "local
22 government" has the meaning assigned to it by Section 271.081,
23 Local Government Code.

24 SECTION 17. Section 3.10(b), State Purchasing and General
25 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
26 amended to read as follows:

27 (b) The commission and each state agency shall make a good

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1 faith effort to assist historically underutilized [disadvantaged]
 2 businesses to receive not less than 30 [at-least-+0] percent of the
 3 total value of all contract awards for the purchase of supplies,
 4 materials, services, and equipment that the commission or other
 5 agency expects to make during [for] a [state-agency-in-its] fiscal
 6 year. The commission and each state agency shall estimate the
 7 expected total value of the [an-agency's] contract awards they
 8 expect to make that are subject to this subsection not later than
 9 the 60th day of the agency's fiscal year and may revise the
 10 estimate as new information requires.

11 SECTION 18. Section 3.101, State Purchasing and General
 12 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
 13 amended to read as follows:

14 Sec. 3.101. CENTRALIZED MASTER BIDDERS LIST [LISTS].

15 (a) This section:

16 (1) applies to all purchases or other acquisitions
 17 under this article, including the acquisition of services, for
 18 which competitive bidding or competitive sealed proposals are
 19 required;

20 (2) applies to each [all] state agency [agencies] that
 21 makes [make] purchases or other acquisitions under this article,
 22 including the commission and agencies that make purchases or other
 23 acquisitions under Section 3.06 of this article; and

24 (3) does not apply to purchases or other acquisitions
 25 made by the commission under Section 3.11 of this article.

26 (b) The commission shall develop a uniform registration form
 27 for application to do business with the commission or with any

1 state agency. The commission and each state agency shall make the
 2 form available to applicants. The form shall include an
 3 application for:

4 (1) certification as a historically underutilized
 5 business;

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

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

9 (c) A state agency shall submit to the commission each
 10 uniform registration form that it receives. The commission shall
 11 send to the comptroller a copy of each uniform registration form.

12 (d) The commission [~~The registration forms shall constitute~~
 13 ~~a valid application for a bidders list by all state agencies.~~
 14 ~~Nothing in this subsection shall be construed as preventing any~~
 15 ~~state agency from developing and using its own registration form~~
 16 ~~but such forms shall not be required in addition to or in lieu of~~
 17 ~~the uniform registration form developed by the commission.~~

18 [~~Each state agency~~] shall maintain a master bidders list
 19 and annually register on the list the name and address of each
 20 vendor that applies for registration in accordance with rules
 21 adopted under this section. The commission [An agency] may include
 22 other relevant vendor information on the list. Each state agency
 23 shall solicit bids or proposals from all eligible vendors on the
 24 list that serve the agency's geographic region, as provided by this
 25 section, when the agency proposes to make a purchase or other
 26 acquisition that will cost more than \$15,000 [95,000]. The
 27 commission shall maintain the master bidders list in a manner that

1 facilitates a state agency's solicitation of vendors that serve the
2 agency's geographic area.

3 (e) The commission shall make the master bidders list
4 available to each state agency that makes purchases or other
5 acquisitions to which this section applies. The commission shall
6 provide access to the list either electronically or in another
7 format, depending on the needs of each state agency.

8 (f) The commission [~~+~~---A---state---agency] may charge
9 applicants for registration a fee and may charge registrants an
10 annual renewal fee in an amount designed to recover the
11 commission's [agency+s] costs in developing and maintaining the
12 master [its] bidders list and in soliciting bids or proposals under
13 this section. The commission [An-agency] shall set the amount of
14 the fees by rule.

15 (g) The commission [~~+~~---Each---state---agency] shall adopt
16 procedures for developing and maintaining the master [its] bidders
17 list and procedures for removing inactive vendors from the list.

18 (h) The commission [~~+~~---Each-state-agency] shall establish
19 by rule a vendor classification process under which only vendors
20 that may be able to make a bid or proposal on a particular purchase
21 or other acquisition are solicited under this section.

22 (i) A state agency may maintain and use its own bidders list
23 only if the commission determines by rule that the agency has
24 specialized needs that can best be met through maintaining and
25 using its own specialized bidders list. The commission by rule may
26 prescribe the categories of purchases or other acquisitions for
27 which an agency's specialized bidders list may be used. An agency

1 may supplement the bidders list with its own list of historically
2 underutilized businesses if it determines that supplementation will
3 increase the number of historically underutilized businesses that
4 submit bids.

5 (j) [+g] The commission may establish by rule a process
6 under which the requirement for soliciting bids or proposals from
7 eligible vendors on a [the] bidders list may be waived for
8 appropriate state agencies or appropriate purchases or other
9 acquisitions in circumstances in which the requirement is not
10 warranted. The commission also may assist state agencies regarding
11 issues that arise under this section.

12 SECTION 19. Section 3.15(h), State Purchasing and General
13 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
14 amended to read as follows:

15 (h) This section does not apply to interagency purchases or
16 transactions. Interagency purchases and transactions must be
17 accomplished on special vouchers or electronically as prescribed by
18 the comptroller [~~of-public-accounts---The-commission-shall-audit~~
19 ~~all-interagency-purchases-and-transactions--after--they--have--been~~
20 ~~completed~~].

21 SECTION 20. Section 3.29(a), State Purchasing and General
22 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
23 amended to read as follows:

24 (a) A state agency may not purchase or lease a vehicle
25 designed or used primarily for the transportation of persons,
26 including a station wagon, that has a wheel base longer than 113
27 inches or that has more than 160 SAE net horsepower, except that

1 the vehicle may have a wheel base of up to 116 inches or SAE net
 2 horsepower of up to 280 if the vehicle will be converted so that it
 3 is capable of using compressed natural gas or another alternative
 4 fuel that results in comparably lower emissions of oxides of
 5 nitrogen, volatile organic compounds, carbon monoxide, or
 6 particulates. This exception to the wheel base and horsepower
 7 limitations applies to a state agency regardless of the size of the
 8 agency's vehicle fleet. The wheel base and horsepower limitations
 9 prescribed by this subsection do [This-provision-dees] not apply to
 10 the purchase or lease of a vehicle to be used primarily for
 11 criminal law enforcement or a bus, motorcycle, pickup, van, truck,
 12 three-wheel vehicle, tractor, or ambulance.

13 SECTION 21. Section 4.01, State Purchasing and General
 14 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
 15 amended by amending Subsection (a) and by adding Subsection (d) to
 16 read as follows:

17 (a) The commission shall have charge and control of all
 18 public buildings, grounds and property of the state, and is the
 19 custodian of all public personal property, and is responsible for
 20 the proper care and protection of such property from damage,
 21 intrusion, or improper usage. ~~[The--commission--is--expressly~~
 22 ~~directed--to--take--any--steps--necessary--to--protect--public--buildings~~
 23 ~~against--any--existing--or--threatened--fire--hazards.]~~ The commission
 24 is authorized to provide for the allocation of space in any of the
 25 public buildings to the departments of the state government for the
 26 uses authorized by law, and is authorized to make any repairs to
 27 any such buildings or parts thereof necessary to the serviceable

1 accommodation of the uses to which such buildings or space therein
 2 may be allotted.

3 (d) The commission may allocate space in buildings in the
 4 Texas Judicial Complex only to:

- 5 (1) a court;
- 6 (2) a judicial agency;
- 7 (3) the attorney general's office;
- 8 (4) the Texas Department of Criminal Justice;
- 9 (5) the Texas Youth Commission;
- 10 (6) the Criminal Justice Policy Council;
- 11 (7) the State Commission on Judicial Conduct;
- 12 (8) the State Office of Administrative Hearings;
- 13 (9) the Board of Law Examiners;
- 14 (10) the Interagency Council on Sex Offender

15 Treatment;

- 16 (11) building security;
- 17 (12) building maintenance; or
- 18 (13) a vending facility operated under Chapter 94,

19 Human Resources Code.

20 SECTION 22. Article 4, State Purchasing and General Services
 21 Act (Article 601b, Vernon's Texas Civil Statutes), is amended by
 22 adding Section 4.082 to read as follows:

23 Sec. 4.082. TEXAS JUDICIAL COMPLEX. "Texas Judicial
 24 Complex" is the collective name of the Supreme Court Building, the
 25 Tom C. Clark State Courts Building, and the Price Daniel, Sr.,
 26 Building.

27 SECTION 23. Section 4.01, State Purchasing and General

1 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
2 amended by adding Subsection (b-1) to read as follows:

3 (b-1) The space in the old State Board of Insurance State
4 Office Building, located on San Jacinto Street between 11th and
5 12th streets in Austin, is allocated to the legislature and
6 legislative agencies for their use. The presiding officers of each
7 house of the legislature shall jointly decide the allocation of the
8 space within the building.

9 SECTION 24. Section 4.13, State Purchasing and General
10 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
11 transferred to Chapter 443, Government Code, designated as Section
12 443.020, and amended to read as follows:

13 Sec. 443.020 [4+13]. PASS KEYS TO ROOMS IN THE CAPITOL. Any
14 person who shall make or have made or keep in his possession a pass
15 or master key to the rooms and apartments in the state capitol,
16 unless authorized to do so, shall be fined not exceeding \$100.

17 SECTION 25. Section 5.16(c), State Purchasing and General
18 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
19 amended to read as follows:

20 (c) A project analysis shall consist of (1) a complete
21 description of the facility or project together with a
22 justification of such facility or project prepared by the using
23 agency, (2) a detailed estimate of the amount of space needed to
24 meet the needs of the using agency and to allow for realistic
25 future growth, (3) a description of the proposed facility prepared
26 by an architect/engineer and including schematic plans and outline
27 specifications describing the type of construction and probable

1 materials to be used, sufficient to establish the general scope and
2 quality of construction, (4) an estimate of the probable cost of
3 construction, (5) a description of the proposed site of the project
4 and an estimate of the cost of site preparation, (6) an overall
5 estimate of the cost of the project, (7) the information about
6 historic structures considered instead of new construction that was
7 prepared as required by Section 5.01A of this article, [and] (8) an
8 evaluation of energy alternatives as required by Section 5.161 of
9 this article, and (9) other information as required by the
10 commission. A project analysis may include two or more alternative
11 proposals for meeting the space needs of the using agency by (1)
12 new construction, (2) acquisition and rehabilitation of an existing
13 or historic structure, or (3) a combination of the above. If any
14 part of the project involves the construction or rehabilitation of
15 a building that is to be used primarily as a parking garage or for
16 office space for the state government, the project analysis also
17 shall include a description of the amount and location of space in
18 the building that can be made available for lease, under Section
19 4.15 of this Act, to private tenants or shall include a statement
20 of the reason that the lease of space in the building to private
21 tenants is not feasible. All estimates involved in the preparation
22 of a project analysis shall be carefully and fully documented and
23 incorporated into the project analysis.

24 Throughout the preparation of the project analysis, the
25 commission and any private architect/engineer employed by the
26 commission shall work closely and cooperatively with the using
27 agency to the end that the project analysis shall fully reflect the

1 needs of the using agency.

2 The using agency shall use the cost of the project as
3 determined by such project analysis as the basis of its request to
4 the budget offices of this state.

5 SECTION 26. Article 5, State Purchasing and General Services
6 Act (Article 601b, Vernon's Texas Civil Statutes), is amended by
7 adding Section 5.161 to read as follows:

8 Sec. 5.161. EVALUATION OF ENERGY ALTERNATIVES. (a) For
9 each project for which a project analysis is prepared under Section
10 5.16 of this article, and for which the construction, alteration,
11 or repair involves installing or replacing all or part of an energy
12 system, energy source, or energy-consuming equipment, the
13 commission, or the private architect/engineer employed by the
14 commission, shall prepare a written evaluation of energy
15 alternatives for the project.

16 (b) An evaluation prepared under this section shall include
17 information about the economic and environmental impact of various
18 energy alternatives, including an evaluation of economic and
19 environmental costs both initially and over the life of the system,
20 source, or equipment.

21 (c) An evaluation under this section shall identify the best
22 energy alternative for the project considering both economic and
23 environmental costs and benefits.

24 SECTION 27. Section 5.22, State Purchasing and General
25 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
26 amended by amending Subsection (b) and adding Subsection (d) to
27 read as follows:

1 (b) Responsibility for the selection of a private
2 architect/engineer employed for any project covered by the
3 provisions of this article shall be vested in the commission. The
4 commission shall adopt rules that state the criteria the commission
5 uses to evaluate the competence and qualifications of private
6 architects/engineers. The commission shall develop the rules in
7 consultation with the Texas Board of Architectural Examiners and
8 the State Board of Registration for Professional Engineers. Except
9 in an emergency, the [The] commission shall allow each private
10 architect/engineer selected for an interview at least 30 days after
11 the date the commission notifies the architect/engineer to prepare
12 for the interview.

13 (d) In this section, an emergency is a situation that:

14 (1) presents an imminent peril to the public health,
15 safety, or welfare;

16 (2) presents an imminent peril to property;

17 (3) requires expeditious action to prevent a hazard to
18 life, health, safety, welfare, or property; or

19 (4) requires expeditious action to avoid undue
20 additional cost to a state agency or the state.

21 SECTION 28. Section 5.26, State Purchasing and General
22 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
23 amended by amending Subsection (b) and by adding Subsection (c) to
24 read as follows:

25 (b) The commission shall cause the uniform general
26 conditions of state building construction contracts to be reviewed
27 whenever in its opinion such review is desirable, but in no event

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1 less frequently than once every five years. The review shall be
 2 made by a committee appointed by the commission consisting of the
 3 director of facilities construction and space management, who shall
 4 serve ex officio as chairman of the committee and who shall vote
 5 only in the event of a tie; one person [two-persons] appointed by
 6 the commission from a list of nominees submitted to it by the
 7 President of the Texas Society of Architects; one person [two
 8 persons] appointed by the commission from a list of nominees
 9 submitted to it by the President of the Texas Society of
 10 Professional Engineers; one person [two-persons] appointed by the
 11 commission from a list of nominees submitted to it by the Chairman
 12 of the Executive Council of the Texas Associated General
 13 Contractors Chapters; one person [and-two-persons] appointed by the
 14 commission from the list of nominees submitted to it by the
 15 Executive Secretary of the Mechanical Contractors Associations of
 16 Texas, Incorporated; one person appointed by the commission from a
 17 list of nominees submitted to it by the Executive Secretary of the
 18 Texas Building and Construction Trades Council; one person
 19 appointed by the commission from a list of nominees submitted to it
 20 by the President of the Associated Builders and Contractors of
 21 Texas; one person appointed by the commission from a list of
 22 nominees submitted to it by the Executive Director of the National
 23 Association of Minority Contractors residing in Texas; one person
 24 appointed by the commission representing an institution of higher
 25 education, as defined by Section 61.003, Education Code; one person
 26 appointed by the commission representing a state agency that has a
 27 substantial ongoing construction program; and one person appointed

1 by the commission representing the attorney general's office.
 2 Members of any review committee appointed pursuant to this
 3 subsection shall serve without compensation but may be reimbursed
 4 for their necessary and actual expenses.

5 (c) Any contract covered by this section that is not
 6 excepted by Sections 5.13 and 5.14 shall be considered to have an
 7 arbitration clause as a part of the contract covering any dispute
 8 or claim arising out of the contract. A party to a contract with a
 9 claim or dispute against the other party shall give 30 days'
 10 written notice of the nature and extent of the claim or dispute.
 11 If the matters are not resolved within this notice period, either
 12 party may commence arbitration by giving the other a written
 13 request for arbitration and arbitrators shall be appointed. The
 14 arbitrators shall be selected as provided in the contract. If the
 15 contract does not provide for the selection of arbitrators, each
 16 party shall appoint one arbitrator. The two appointed arbitrators
 17 shall select a third arbitrator. All arbitrators shall be
 18 uninterested parties and have no affiliation with either party to
 19 the contract. The parties shall make their appointments within 10
 20 business days after a written request for arbitration is delivered
 21 from one party to another. The third arbitrator shall be appointed
 22 within 10 business days after the appointment of the party
 23 arbitrators. The arbitration shall be conducted within 20 business
 24 days after the appointments are made. The decision of the
 25 arbitrators shall be binding on the parties. The arbitration shall
 26 be governed by and may be compelled and enforced under the Texas
 27 General Arbitration Act (Article 224 et seq., Revised Statutes) or

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1 under the United States Arbitration Act (9 U.S.C. Section 1 et
2 seq.), if applicable. The arbitration award shall not include
3 punitive or exemplary damages nor attorney's fees. Arbitration may
4 not be requested after the first anniversary of the completion of
5 the work under the contract.

6 The Comptroller, with the assistance of the Center for Public
7 Policy Dispute Resolution of The University of Texas School of Law,
8 shall review the performance of the dispute resolution system
9 created herein and shall furnish a report to the 75th Legislature
10 in its Regular Session.

11 This subsection expires on September 1, 1995, except that the
12 subsection remains in effect for the limited purpose of governing
13 an arbitration proceeding that begins before that date. For the
14 purpose of the expiration date, an arbitration proceeding begins
15 before September 1, 1995, if the written request for arbitration is
16 sent on or before August 31, 1995.

17 SECTION 29. Section 5.32(b)(1), State Purchasing and General
18 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
19 amended to read as follows:

20 (1) "Solar energy" means [rediant] energy from the sun
21 that may be collected and converted into useful thermal,
22 mechanical, or electrical energy. The term includes biomass energy
23 that is created in living plants through photosynthesis, wind
24 energy, and other renewable energy resources.

25 SECTION 30. Section 5.32(c), State Purchasing and General
26 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
27 amended to read as follows:

1 (c) During the planning phase of the proposed construction
2 of a new state building, the commission or, if the construction is
3 included in the exceptions prescribed by Section 5.13 of this
4 article, the governing body of the appropriate agency or
5 institution shall verify in an open meeting [determine] the
6 economic feasibility of incorporating solar energy devices for
7 space heating, cooling, water heating, electrical loads, and
8 interior lighting into the building's design and proposed energy
9 system. Economic feasibility for each function shall be determined
10 by comparing the estimated cost of providing energy for the
11 function [procurement] using conventional design practices and
12 energy systems with the estimated cost of providing energy for the
13 function using solar energy devices during the economic life of the
14 proposed new building.

15 SECTION 31. Section 5.36, State Purchasing and General
16 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
17 amended to read as follows:

18 Sec. 5.36. PUBLIC WORKS CONTRACTS WITH CERTAIN BUSINESSES.
19 A state agency that enters into a contract for a project, including
20 a project constructed by or for an agency otherwise excepted under
21 Section 5.13 of this article, shall make a good faith effort to
22 assist historically underutilized [disadvantaged] businesses to
23 receive not less than 30 [~~at least 10~~] percent of the total value
24 of each construction contract award that the agency expects to make
25 in its fiscal year. Each agency shall estimate the expected total
26 value of contract awards under this article not later than the 60th
27 day of its fiscal year and may revise the estimate as new

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1 information requires.

2 SECTION 32. Article 5, State Purchasing and General Services
3 Act (Article 601b, Vernon's Texas Civil Statutes), is amended by
4 adding Section 5.37 to read as follows:

5 Sec. 5.37. SMALL CONTRACTOR PARTICIPATION ASSISTANCE
6 PROGRAM. (a) In this section:

7 (1) "Program" means the small contractor participation
8 assistance program created under this section.

9 (2) "Public works project" means a construction
10 project designed to serve the public necessity, use, or convenience
11 that is undertaken and carried out by the commission. The term
12 includes a project for the construction, alteration, or repair of a
13 public building.

14 (3) "Small business concern" has the meaning assigned
15 by the Small Business Act (15 U.S.C. Section 631 et seq.) and its
16 subsequent amendments.

17 (4) "Small contractor" means a contractor that
18 operates as a small business concern.

19 (b) This section applies only to a contract for a public
20 works project for which the estimated cost exceeds \$20 million.

21 (c) Not later than January 1, 1994, the commission shall
22 establish a small contractor participation assistance program to
23 ensure full opportunity for participation in public works projects
24 by small contractors. A program established under this section
25 must include:

26 (1) a system for the centralized purchase of any
27 necessary insurance coverage for the public works project that is

1 required under Subsection (d) of this section;

2 (2) a public outreach plan to provide public
3 information about the program and to encourage small contractors to
4 participate in the program;

5 (3) a technical assistance plan to aid small
6 contractors to develop the skills necessary to participate in the
7 program in accordance with Subsection (e) of this section; and

8 (4) a financing assistance plan to provide
9 administrative and other assistance to small contractors in
10 obtaining any necessary financing arrangements to make the
11 participation of those contractors possible.

12 (d) The commission shall provide for the centralized
13 purchasing of:

14 (1) workers' compensation insurance coverage;

15 (2) employer's liability insurance coverage;

16 (3) commercial general and excess liability coverage;

17 (4) payment and performance bonds; and

18 (5) any other analogous coverage the commission

19 considers necessary and reasonable for the particular public works
20 project.

21 (e) A technical assistance plan adopted by the commission
22 must include information on and assistance in:

23 (1) estimating bids, the bidding process, scheduling,
24 and understanding bid documents;

25 (2) reading construction drawings and other analogous
26 documents;

27 (3) business accounting, bonds, and bond requirements;

(4) negotiation with general contractors; and

(5) any other technical and administrative assistance considered appropriate and necessary given the complexity and scope of the particular public works project.

(f) The commission may negotiate contracts with persons or firms having expertise in the areas that must be included in the commission's technical assistance plan to provide the information and assistance.

SECTION 33. Section 6.01, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.01. DEFINITION. In this article, "space" means office space, warehouse space, laboratory space, storage space exceeding 1,000 gross square feet, or any combination thereof, but does not include aircraft hangar space, radio antenna space, boat storage space, vehicle parking space, residential space for a Texas Department of Mental Health and Mental Retardation program, residential space for a Texas Youth Commission program, or space to be utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or other similar purposes.

SECTION 34. Article 6, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 6.021 to read as follows:

Sec. 6.021. SPACE USE STUDY; LIMITATION ON ALLOCATION OF SPACE. (a) The commission periodically shall conduct a study to determine the space requirements of various state agencies that

occupy space under the commission's charge and control, including state-owned space and space leased from other sources.

(b) The commission shall use the results of the study to:

(1) determine the optimal amount of space required for various state agency uses; and

(2) allocate space to state agencies in the best and most efficient manner possible.

(c) The commission may not allocate space to a state agency as defined in Articles I and II of the General Appropriations Act that exceeds an average of 153 square feet for each agency employee for each agency site for usable office space as defined by the General Services Commission, with the exception of an agency site at which 15 or fewer employees are located, insofar as possible without sacrifice of critical public or client services by the end of the 1994-1995 biennium. This subsection does not apply to:

(1) warehouse space;

(2) laboratory space;

(3) storage space exceeding 1,000 gross square feet;

(4) library space;

(5) space for hearing rooms to conduct hearings required under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); or

(6) another type of space specified by commission rule, if the commission determines that it is not practical to apply this subsection to the specified space.

(d) The commission shall conduct a study under this section at least once during each state fiscal biennium.

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1 (e) This section does not apply to space that is not
2 occupied by a state agency as defined by Section 1.02 of this Act.

3 SECTION 35. Section 9.13, State Purchasing and General
4 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
5 amended to read as follows:

6 Sec. 9.13. EXEMPTION. For purposes of this article the
7 terms "surplus" and "salvage" shall not apply to products and
8 by-products of research, forestry, agricultural, livestock, and
9 industrial enterprises [~~in-excess-of--that--quantity--required--for~~
10 ~~consumption--by--the--producing--agency--when--such--agencies--have--a~~
11 ~~continuing--and--adequate--system--of--marketing--research--and--sales--the~~
12 ~~efficiency--of--which--shall--be--certified--to--the--commission--by--the~~
13 ~~state--auditor--A--qualifying--agency--shall--furnish--the--commission~~
14 ~~with--a--copy--of--the--rules--and--regulations--and--latest--revisions~~
15 ~~thereof--promulgated--by--the--policy-making--body--of--each--agency--or~~
16 ~~institution--for--the--guidance--and--administration--of--the--programs~~
17 ~~enumerated--herein--When--requested--by--such--agency--or--institution--to~~
18 ~~do--so--the--commission--shall--dispose--of--the--property--as--provided--for~~
19 ~~in--this--article].~~

20 SECTION 36. Section 10.02, State Purchasing and General
21 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
22 amended by amending Subsection (e) and adding Subsection (g) to
23 read as follows:

24 (e) The commission, Department of Information Resources, and
25 comptroller shall negotiate rates and execute contracts with
26 telecommunications service providers for services. Those entities
27 may acquire transmission facilities by purchase, lease, or

1 lease-purchase in accordance with Article 3 of this Act~~(r--which~~
2 ~~shall--be--done--on--a--competitive--bid-basis--if--possible).~~ Those
3 entities may develop, establish, and maintain carrier systems
4 necessary to the operation of the telecommunications system. The
5 commission may own, lease, or lease-purchase any or all of the
6 facilities or equipment necessary to provide telecommunications
7 services in accordance with Article 3 of this Act.

8 (g) A representative of the Central Education Agency and a
9 representative of the Texas Higher Education Coordinating Board
10 shall review and comment on telecommunications plans developed by
11 the commission, the Department of Information Resources, and the
12 comptroller under this section. The participation of the Central
13 Education Agency and the Texas Higher Education Coordinating Board
14 is for the limited purpose of coordinating the statewide
15 telecommunications system developed under this article with the
16 telecommunications systems of educational entities that are not
17 subject to this article. A representative of the Central Education
18 Agency or the Texas Higher Education Coordinating Board under this
19 section acts in an advisory capacity only and is not entitled to
20 vote on decisions made under this article.

21 SECTION 37. Section 10.05, State Purchasing and General
22 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
23 amended to read as follows:

24 Sec. 10.05. SHARING OF SERVICES OR FACILITIES.
25 Telecommunications facilities and services, to the extent feasible
26 and desirable, shall be provided on an integrated or shared basis,
27 or both, among and between entities authorized to use the

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1 consolidated telecommunications systems under this Article 10 to
2 avoid waste of state funds and manpower. Such sharing or
3 integrated use does not constitute the resale or carriage of
4 services and does not subject the system to regulation or reporting
5 under the Public Utility Regulatory Act (Article 1446c, Vernon's
6 Texas Civil Statutes).

7 SECTION 38. Section 10.09(d), State Purchasing and General
8 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
9 amended to read as follows:

10 (d) The commission shall prepare and issue a revised
11 centralized telephone service directory not later than March 31 [in
12 February] of each year.

13 SECTION 39. Section 14.01, State Purchasing and General
14 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
15 amended to read as follows:

16 Sec. 14.01. DIVISION. The travel division of the commission
17 is composed of the central travel office and the office of vehicle
18 fleet management [maintenance]. The commission shall adopt rules
19 to implement this article, including rules related to:

20 (1) the structure of travel agency contracts that the
21 commission makes;

22 (2) the procedures the commission uses in requesting
23 and evaluating bids or proposals for travel agency contracts from
24 providers; and

25 (3) the use of negotiated contract rates for travel
26 services by state agencies.

27 SECTION 40. Section 14.02(b), State Purchasing and General

1 Services Act (Article 601b, Vernon's Texas Civil Statutes), is
2 amended to read as follows:

3 (b) [~~The central travel office shall initially provide~~
4 ~~services to designated agencies located in Travis County and shall~~
5 ~~extend its services to all state agencies as it develops the~~
6 ~~capability to do so.] The office may negotiate contracts with
7 private travel agents, with travel and transportation providers,
8 and with credit card companies that provide travel services and
9 other benefits to the state. The commission shall make contracts
10 with more than one provider of travel agency services. Contracts
11 entered into under this section are not subject to the competitive
12 bidding requirements imposed under Article 3 of this Act. The
13 comptroller of public accounts shall audit for compliance of rules
14 adopted to enforce the provisions of this section.~~

15 SECTION 41. The State Purchasing and General Services Act
16 (Article 601b, Vernon's Texas Civil Statutes) is amended by adding
17 Article 15 to read as follows:

18 ARTICLE 15. COUNCIL ON COMPETITIVE GOVERNMENT

19 Sec. 15.01. DEFINITIONS. In this article:

20 (1) "Commercial activity" means an activity that
21 provides a product or service that is commonly available from a
22 private source.

23 (2) "Council" means the State Council on Competitive
24 Government.

25 (3) "Identified state service" means a service
26 provided by the state that the council has identified as a
27 commercially available service and brought under study by the

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1 council to determine whether the service may better be provided
2 through competition with private commercial sources.

3 (4) "State agency" has the meaning established by
4 Section 1.02(2) of this Act.

5 Sec. 15.02. STATE COUNCIL ON COMPETITIVE GOVERNMENT. The
6 State Council on Competitive Government is established. It is the
7 policy of this state that all state services be performed in the
8 most effective and efficient manner in order to be the best value
9 to the citizens of the state and the state recognizes competition
10 among service providers may improve the quality of service
11 provided. The state shall encourage competition, innovation, and
12 creativity among service providers.

13 Sec. 15.03. MEMBERSHIP. (a) The council consists of the
14 following persons or their designees:

- 15 (1) the governor;
- 16 (2) the lieutenant governor;
- 17 (3) the comptroller;
- 18 (4) the speaker of the house of representatives;
- 19 (5) the commission's presiding officer under Section

20 2.04(a) of this Act; and

21 (6) the commissioner of the Texas Employment
22 Commission representing labor.

23 (b) The governor is presiding officer of the board.

24 (c) If the speaker of the house of representatives is not
25 permitted by the constitution to serve as a voting member of the
26 board, the speaker serves as a nonvoting member.

27 Sec. 15.04. MEETINGS. The council shall meet as often as

1 necessary to perform its duties.

2 Sec. 15.05. DUTIES. The council shall identify commercially
3 available services currently being performed by state agencies and,
4 if the council determines that these services may better be
5 provided through competition with private commercial sources or
6 other state agency service providers, require a state agency to
7 engage in any process, including competitive bidding, developed by
8 the council to provide the service in competition with private
9 commercial sources or other state agency service providers.

10 Sec. 15.06. POWERS. In performing its duties under this
11 article, the council may:

- 12 (1) adopt rules governing any aspect of the council's
13 duties or responsibilities;
- 14 (2) hold public hearings or conduct studies;
- 15 (3) consult with private commercial sources;
- 16 (4) require a state agency to conduct an agency
17 in-house cost estimate, a management study, or any other hearing,
18 study, review, or cost estimate concerning any aspect of an
19 identified state service;
- 20 (5) develop and require for use by state agencies
21 methods to accurately and fairly estimate and account for the cost
22 of providing an identified state service;
- 23 (6) require that an identified state service be
24 submitted to competitive bidding or another process that creates
25 competition with private commercial sources;
- 26 (7) prescribe, in consultation with affected state
27 agencies, the specifications and conditions of purchase procedures

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1 that must be followed by the commission and a state agency or a
2 private commercial source engaged in competitive bidding to provide
3 an identified state service;

4 (8) award a contract to a state agency currently
5 providing the service, another state agency, a private commercial
6 source, or any combination of those entities, if the bidder
7 presents the best and most reasonable bid, which is not necessarily
8 the lowest bid; and

9 (9) determine the terms and conditions of a contract
10 for service or interagency contract to provide an identified state
11 service or other commercially available service.

12 Sec. 15.07. COST COMPARISON AND CONTRACT CONSIDERATIONS. In
13 comparisons of the cost of providing a service the council must
14 consider the cost of supervising the work of any private
15 contractor. All bids or contracts must include an analysis of
16 health care benefits, retirement, and workers' compensation
17 insurance for employees of the contractor which are reasonably
18 comparable to those of the state. The council must also consider
19 the total cost to the agency of that agency's performing a service,
20 such total cost to include all indirect costs related to that
21 agency including costs of such agencies as the comptroller, the
22 treasurer, the attorney general, and other such support agencies.

23 Sec. 15.08. DUTIES OF AFFECTED STATE AGENCIES. A state
24 agency shall perform any activities required by the council in the
25 performance of its duties or the exercise of its powers under this
26 article.

27 Sec. 15.09. EXEMPTION. Contracts made by the council and

1 decisions regarding whether an agency shall engage in competitive
2 bidding are exempt from all state laws regulating or limiting state
3 purchasing and purchasing decisions.

4 Sec. 15.10. OPEN MEETINGS AND OPEN RECORDS LAWS. The
5 council is subject to the open meetings law, Chapter 271, Acts of
6 the 60th Legislature, Regular Session, 1967 (Article 6252-17,
7 Vernon's Texas Civil Statutes), and its subsequent amendments, and
8 the open records law, Chapter 424, Acts of the 63rd Legislature,
9 Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil
10 Statutes), and its subsequent amendments.

11 SECTION 42. Section 2, Texas Public Finance Authority Act
12 (Article 601d, Vernon's Texas Civil Statutes), is amended to read
13 as follows:

14 Sec. 2. PURPOSE. (a) The purpose of this Act is to provide
15 a method of financing:

- 16 (1) for the acquisition or construction of buildings
17 in Travis County, Texas; and
- 18 (2) for the purchase or lease of equipment by state
19 agencies.

20 (b) In this section, "state agency" has the meaning assigned
21 by Section 1.02, State Purchasing and General Services Act (Article
22 601b, Vernon's Texas Civil Statutes).

23 SECTION 43. Subsection (a), Section 9A, Texas Public Finance
24 Authority Act (Article 601d, Vernon's Texas Civil Statutes), is
25 amended to read as follows:

26 (a) The authority may issue and sell obligations for the
27 financing of a lease or other agreement so long as the agreement

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1 concerns equipment that a state agency has purchased or leased or
 2 intends to purchase or lease. The authority's power to issue
 3 obligations includes the power to issue and sell obligations for
 4 the financing of a package of agreements involving one or more
 5 state agencies. In this subsection, "state agency" has the meaning
 6 assigned by Section 1.02, State Purchasing and General Services Act
 7 (Article 601b, Vernon's Texas Civil Statutes).

8 SECTION 44. Subsection (c), Section 24A, Texas Public
 9 Finance Authority Act (Article 601d, Vernon's Texas Civil
 10 Statutes), is amended to read as follows:

11 (c) Notwithstanding the limitations prescribed by Section 9
 12 of this Act relating to the location of buildings for which bonds
 13 may be issued, the authority may issue bonds under this Act to
 14 finance the renovation of West Building, G. J. Sutton State Office
 15 Complex in Bexar County, at an estimated cost of \$1,375,000; the
 16 construction or purchase and renovation of a building or buildings
 17 by the commission [State---Purchasing---and---Generat---Services
 18 Commission] in Tarrant County, at an estimated cost of \$10,000,000;
 19 [and] the construction or purchase and renovation of a building or
 20 buildings by the commission [State-Purchasing-and-Generat--Services
 21 Commission] in Harris County, at an estimated cost of \$20,000,000;
 22 and the purchase and renovation of a building or buildings by the
 23 commission in McLennan County, at an estimated cost of \$5,000,000.
 24 For purposes of this subsection regarding Tarrant and Harris
 25 counties, the commission [State--Purchasing-and-Generat-Services
 26 Commission] shall, prior to requesting the authority to issue
 27 bonds, prepare project analyses for the potential construction

1 projects and subsequent thereto perform an alternative purchase
 2 analysis pursuant to the provisions of Section 5.34, State
 3 Purchasing and General Services Act (Article 601b, Vernon's Texas
 4 Civil Statutes).

5 SECTION 45. Section 27, Texas Public Finance Authority Act
 6 (Article 601d, Vernon's Texas Civil Statutes), is amended to read
 7 as follows:

8 Sec. 27. PURCHASE AND RENOVATION OF TEXAS EMPLOYMENT
 9 COMMISSION PROPERTY. (a) The Texas Employment Commission shall
 10 sell to the commission office buildings and parking facilities in
 11 its possession in or near the Capitol Complex, and the commission
 12 shall purchase and renovate the buildings and parking facilities,
 13 at an estimated cost of \$46,000,000. The purchase and renovation
 14 is approved for financing in accordance with Section 9 of this Act
 15 and bonds may be issued to finance the purchase and renovation in
 16 accordance with Section 10 of this Act [a--sales-price-that-shall
 17 not--exceed--the--maximum--amount--of--funds--authorized--for--the
 18 acquisition--and--renovation--in--Chapter--780,--Acts--of--the--68th
 19 legislature--Regular-Session,--1983].

20 (b) After the office buildings have been acquired, the
 21 commission may, from funds made available by the authority,
 22 renovate the facilities as necessary for occupancy in accordance
 23 with the allocation of space within the building made under
 24 Subsection (c) of this section [by--other-state-agencies]. In
 25 negotiating the price for the Texas Employment Commission
 26 facilities, the commission shall consider the cost to the Texas
 27 Employment Commission of alternative space outside the Capitol

1 Complex. The commission shall also consider the price in the
2 context of the reasonable rates that might otherwise be paid by
3 prospective occupying state agencies for rent in comparable space.

4 (c) The space in the office buildings and parking facilities
5 is allocated to the legislature and legislative agencies for their
6 use. The presiding officers of each house of the legislature shall
7 jointly decide the allocation of the space within the buildings and
8 facilities.

9 SECTION 46. Section 4, Chapter 1203, Acts of the 71st
10 Legislature, Regular Session, 1989 (Article 601d-3, Vernon's Texas
11 Civil Statutes), is amended by adding Subsections (c) and (d) to
12 read as follows:

13 (c) The board may issue and sell revenue bonds in one or
14 more series in the name of the authority to finance the renovation
15 and furnishing of facilities for the Texas School for the Deaf.
16 The estimated cost of this renovations and furnishings project is
17 \$500,000.

18 (d) The board may issue and sell revenue bonds in one or
19 more series in the name of the authority to finance the renovation
20 and furnishing of facilities for the Texas School for the Blind and
21 Visually Impaired. The estimated cost of this renovations and
22 furnishings project is \$600,000.

23 SECTION 47. Section 5(b), Chapter 1203, Acts of the 71st
24 Legislature, Regular Session, 1989 (Article 601d-3, Vernon's Texas
25 Civil Statutes), is amended to read as follows:

26 (b) Once the funds are deposited and the comptroller has
27 certified that the funds are available, and after transfer of any

1 reserve funds or capitalized interest certified to be reasonably
2 required by the authority and payment of the costs of issuance of
3 the bonds based on a statement by the authority that specifies
4 those costs, the commission shall begin projects under this Act.
5 ~~The~~ ~~and~~ ~~the~~ funds from the issuance authorized under Section
6 4(a) of this Act are appropriated to the commission for that
7 purpose. The funds from the issuance authorized under Section 4(c)
8 or (d) of this Act may be appropriated by the legislature. The
9 appropriated funds may be used for those purposes and those
10 projects certified and adopted by rule of the Texas School for the
11 Deaf or the Texas School for the Blind and Visually Impaired, as
12 appropriate, consistent with this Act.

13 SECTION 48. Section 8, Chapter 1203, Acts of the 71st
14 Legislature, Regular Session, 1989 (Article 601d-3, Vernon's Texas
15 Civil Statutes), is amended to read as follows:

16 Sec. 8. AGREEMENTS; PAYMENTS. The Texas School for the
17 Deaf, the Texas School for the Blind and Visually Impaired, and the
18 commission, as appropriate, may enter into lease agreements or
19 execute deeds or other agreements under this Act as necessary to
20 carry out the purposes of this Act. The commission shall spend
21 funds appropriated by the legislature or received from any other
22 available source for the purpose of making lease payments under
23 this Act. The commission shall include in its biennial
24 appropriation request an amount sufficient to pay the principal of
25 and interest on outstanding bonds issued under this Act.

26 SECTION 49. Chapter 417, Government Code, is amended by
27 adding Section 417.0081 to read as follows:

1 Sec. 417.0081. INSPECTION OF CERTAIN STATE-OWNED BUILDINGS.
 2 The state fire marshal, at the commission's direction, shall
 3 periodically inspect public buildings under the charge and control
 4 of the General Services Commission and shall take any action
 5 authorized by the commission to protect the buildings and their
 6 occupants from an existing or threatened fire hazard.

7 SECTION 50. Section 1(3), Chapter 454, Acts of the 65th
 8 Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's
 9 Texas Civil Statutes), is amended to read as follows:

10 (3) "State agency" has the meaning assigned by Section
 11 1.02, State Purchasing and General Services Act (Article 601b,
 12 Vernon's Texas Civil Statutes) [means---a---state---department;
 13 commission;---board;---office;---institution;---facility;---or---other---agency
 14 the-jurisdiction-of-which-is-not-limited-to-a-geographical--portion
 15 of--the--state---The--term--includes--a--university--system-and-an
 16 institution-of-higher--education--as--defined--in--Section--64r083r
 17 Education--Code;---The--term--does--not--include--a--public--junior
 18 college].

19 SECTION 51. Section 2(c), Article 9102, Revised Statutes, is
 20 amended to read as follows:

21 (c) These standards and specifications shall be adhered to
 22 in all buildings leased or rented in whole or in part for use by a
 23 [the] state agency under any lease or rental agreement entered into
 24 on or after January 1, 1972. To such extent as is not
 25 contraindicated by federal law or beyond the power of the state's
 26 regulation, these standards shall also apply to buildings or
 27 facilities leased or rented for use by a [the] state agency through

1 partial or total use of federal funds. Facilities which are the
 2 subject of lease or rental agreements on January 1, 1972, will not
 3 be required to meet standards and specifications for the term of
 4 the existing lease or rental agreement but must be brought into
 5 compliance before a lease or rental agreement is renewed. Where it
 6 is determined by the governmental department, agency, or unit
 7 concerned that full compliance with any particular standard is
 8 impractical, the reasons for such determination shall be set forth
 9 in written form by those making the determination and forwarded to
 10 the department. If it is determined that full compliance is not
 11 practical, there shall be substantial compliance as determined by
 12 the department with the standard or specification to the maximum
 13 extent practical, and the file system maintained by the department
 14 shall include the written record of the determination that it is
 15 impractical to comply fully with a particular standard or
 16 specification and shall also set forth the extent to which an
 17 attempt will be made to comply substantially with the standard or
 18 specification. In this subsection, "state agency" has the meaning
 19 assigned by Section 1.02, State Purchasing and General Services Act
 20 (Article 601b, Vernon's Texas Civil Statutes).

21 SECTION 52. Subchapter A, Chapter 419, Government Code, is
 22 amended by adding Section 419.0081 to read as follows:

23 Sec. 419.0081. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS
 24 AGAINST FIRE HAZARDS. (a) The commission shall take any action
 25 necessary to protect a public building under the charge and control
 26 of the General Services Commission, and the building's occupants,
 27 against an existing or threatened fire hazard.

1 (b) The commission and the General Services Commission shall
2 make and each adopt by rule a memorandum of understanding that
3 coordinates the agency's duties under this section.

4 SECTION 53. Section 771.002, Government Code, is amended to
5 read as follows:

6 Sec. 771.002. DEFINITIONS. In this chapter:

7 (1) "Agency" includes:

8 (A) a department, board, bureau, commission,
9 court, office, authority, council, or institution;

10 (B) a university, college, or any service or
11 part of a state institution of higher education; and

12 (C) any statewide job or employment training
13 program for disadvantaged youth that is substantially financed by
14 federal funds and that was created by executive order not later
15 than December 30, 1986.

16 (2) [~~Commission~~ means the State Purchasing and
17 General Services Commission

18 [~~+~~] "Resources" means materials and [~~+~~] equipment [~~+~~
19 and supplies].

20 [~~3~~] [~~+~~4] "Services" means special or technical
21 services, including the services of employees.

22 SECTION 54. Section 771.004(a), Government Code, is amended
23 to read as follows:

24 (a) Before a state agency may provide [~~furnish~~] or receive a
25 service or resource under this chapter, the agency must have
26 entered into a written agreement or contract that has been approved
27 by the administrator of each agency that is a party to the

.1 agreement or contract [~~and-by-the-commission~~].

2 SECTION 55. Section 771.004, Government Code, is amended by
3 amending Subsection (c) and by adding Subsection (d) to read as
4 follows:

5 (c) A written agreement or contract is [~~and-advance-approval~~
6 ~~by-the-commission-are~~] not required:

7 (1) in an emergency for the defense or safety of the
8 civil population or in the planning and preparation for those
9 emergencies;

10 (2) in cooperative efforts, proposed by the governor,
11 for the economic development of the state; or

12 (3) in a situation in which the amount involved is
13 less than \$50,000 [~~\$27500~~].

14 (d) In an interagency exchange that is exempt from the
15 requirements of a written agreement or contract, the agencies
16 involved shall document the exchange through informal letters of
17 agreement or memoranda.

18 SECTION 56. Section 771.006, Government Code, is amended to
19 read as follows:

20 Sec. 771.006. [~~EQUIPMENT~~] PURCHASES AND SUBCONTRACTS OF
21 SERVICES AND RESOURCES. A contract under this chapter may
22 authorize an [~~permit-a-furnishing~~] agency providing services and
23 resources to subcontract and purchase the services and resources
24 [~~equipment-to-the-extent-considered-appropriate-by-the-commission~~].

25 SECTION 57. Section 9A(b), Information Resources Management
26 Act (Article 4413[32]), Revised Statutes), is amended to read as
27 follows:

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1 (b) The department, comptroller, and [State-Purchasing--and]
 2 General Services Commission shall develop a statewide
 3 telecommunications operating plan for all agencies that implements
 4 a statewide network and includes technical specifications that are
 5 binding on the managing and operating agency. A representative of
 6 the Central Education Agency and a representative of the Texas
 7 Higher Education Coordinating Board shall review and comment on the
 8 operating plan as part of the representatives' duties under Section
 9 10.02(g), State Purchasing and General Services Act (Article 601b,
 10 Vernon's Texas Civil Statutes).

11 SECTION 58. On the effective date of this Act, all powers,
 12 duties, and obligations relating to the protection of public
 13 buildings under the charge and control of the General Services
 14 Commission, and the buildings' occupants, against existing or
 15 threatened fire hazards are transferred from the General Services
 16 Commission to the Texas Commission on Fire Protection as provided
 17 by this Act. All property in the custody of the General Services
 18 Commission and the original or a copy of any record that relates to
 19 fire protection activity in the buildings are transferred to the
 20 Texas Commission on Fire Protection. All appropriations to the
 21 General Services Commission for fire protection activity in the
 22 buildings and all employees of the General Services Commission
 23 employed primarily to engage in fire protection activity in the
 24 buildings are transferred to the Texas Commission on Fire
 25 Protection. All investigations and all filed reports or complaints
 26 relating to fire protection in the buildings are transferred
 27 without change in status from the General Services Commission to

1 the Texas Commission on Fire Protection. All rules, standards, and
 2 specifications of the General Services Commission relating to fire
 3 protection in the buildings remain in effect as rules, standards,
 4 and specifications of the Texas Commission on Fire Protection
 5 unless superseded by proper authority of that commission:

6 SECTION 59. The General Services Commission shall establish
 7 the small contractor participation assistance program required by
 8 Section 5.37, State Purchasing and General Services Act (Article
 9 601b, Vernon's Texas Civil Statutes), as added by this Act, not
 10 later than January 1, 1994.

11 SECTION 60. The General Services Commission shall complete
 12 implementation of the changes in law made by Section 18 of this Act
 13 relating to the use of a centralized master bidders list by state
 14 agencies not later than September 1, 1995. During the transition
 15 period provided by this section, affected state agencies shall
 16 provide the General Services Commission with all records and
 17 information in the custody of the agencies that relate to the
 18 commission's preparation of the centralized master bidders list.

19 SECTION 61. (a) The General Services Commission shall
 20 appoint the new members added to the commission's construction
 21 contract review committee by Section 28 of this Act as soon as
 22 practicable after the effective date of this Act. The
 23 representatives of each society or association that has had its
 24 representation on the committee reduced from two members to one
 25 member shall determine by agreement or by lot which representative
 26 will remain on the committee.

27 (b) Until all removals and new appointments of members of

1 the commission's construction contract review committee have taken
2 place, a quorum of the committee is a majority of the number of
3 members serving at the time of a meeting.

4 SECTION 62. On the effective date of this Act, all powers,
5 duties, and obligations of the Office of Small Business Assistance
6 of the Texas Department of Commerce under Section 1.03, State
7 Purchasing and General Services Act (Article 601b, Vernon's Texas
8 Civil Statutes), are transferred to the General Services Commission
9 as prescribed by the changes to Section 1.03 made by this Act. All
10 records and property in the custody of the office that relate to a
11 function transferred by this Act are transferred to the commission.
12 All appropriations to the office for functions transferred by this
13 Act and all employees of the office employed primarily to engage in
14 those functions are transferred to the commission. An application
15 for certification as a historically underutilized business is
16 transferred without change in status from the office to the
17 commission. All rules, standards, and specifications of the office
18 relating to the functions transferred by this Act remain in effect
19 as rules, standards, and specifications of the commission unless
20 superseded by proper authority of the commission. All references
21 in a transferred application, rule, standard, or specification to
22 disadvantaged businesses is considered to be a reference to
23 historically underutilized businesses. A prior certification made
24 by the office that a business is a disadvantaged business is
25 considered to be a certification that a business is a historically
26 underutilized business.

27 SECTION 63. (a) The General Services Commission may,

1 subject to Subsection (e) of this section, purchase and renovate a
2 building or buildings and the related grounds and improvements in
3 McLennan County at an estimated cost of \$5 million to meet office
4 space needs for one or more state agencies in the county. The
5 commission shall finance the purchase and renovation through bonds
6 issued by the Texas Public Finance Authority.

7 (b) The proceeds of the bonds issued and sold by the Texas
8 Public Finance Authority to finance the purchase and renovation are
9 appropriated to the General Services Commission for the two-year
10 period beginning on the date that the comptroller certifies that
11 the proceeds are available.

12 (c) Any person from whom real property or any existing
13 buildings or other improvements are purchased under this section
14 shall provide to the General Services Commission the name and the
15 last known address of each person who:

16 (1) owns record legal title to the property,
17 buildings, or other improvements; or

18 (2) owns a beneficial interest in the property,
19 buildings, or other improvements through a trust, nominee, agent,
20 or any other legal entity.

21 (d) When a state agency vacates leased space to move into
22 space in a building purchased under this section or when the leased
23 space itself is purchased under this section, the money
24 specifically appropriated by the legislature or the money available
25 to and budgeted by the agency for lease payments for the leased
26 space for the remainder of the state fiscal biennium ending August
27 31, 1993, or for the state fiscal biennium ending August 31, 1995,

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1 may be used only for rental or installment payments for the
2 purchased space under Section 12(b), Texas Public Finance Authority
3 Act (Article 601d, Vernon's Texas Civil Statutes), and for the
4 payment of operating expenses for the purchased space that are
5 incurred by the General Services Commission. The comptroller may
6 adopt rules for the administration of this subsection.

7 (e) Before the General Services Commission may make the
8 purchase authorized by Subsection (a) of this section, and before
9 the commission may request the Texas Public Finance Authority to
10 issue bonds to finance the purchase and subsequent renovation, the
11 commission must determine that the sum of the rental or installment
12 payments for the purchased space under Section 12(b), Texas Public
13 Finance Authority Act (Article 601d, Vernon's Texas Civil
14 Statutes), plus the renovation and other operating expenses that
15 will be incurred for the purchased space will not exceed, over the
16 term of the bonded indebtedness, the amount of the lease payments
17 that the state would otherwise have to make to meet the space needs
18 that the purchase will satisfy.

19 SECTION 64. The change in law made by Section 5.26(c), State
20 Purchasing and General Services Act (Article 601b, Vernon's Texas
21 Civil Statutes), as added by this Act, applies only to a breach of
22 contract occurring on or after the effective date of this Act,
23 without regard to whether the contract was entered into before, on,
24 or after that date. A breach of contract occurring before the
25 effective date of this Act is governed by the law in effect at the
26 time the breach of contract occurred, and that law is continued in
27 effect for that purpose.

1 SECTION 65. (a) The progress of the implementation of the
2 historically underutilized business goals shall be monitored by a
3 joint committee appointed by the lieutenant governor and the
4 speaker of the house of representatives. The committee shall be
5 composed of five members of the senate and five members of the
6 house of representatives. The committee shall make recommendations
7 for any necessary legislative action or remedies for the next
8 regular session of the legislature.

9 (b) In order to monitor the implementation of this section,
10 the committee may review the records of state agencies related to
11 procurement practices. Each state agency shall cooperate fully
12 with the committee and shall submit information and reports to the
13 committee as requested by the committee.

14 (c) Not later than June 1, 1994, the comptroller shall
15 complete a disparity study regarding state contracting that meets
16 the requirements of City of Richmond v. J. A. Croson Co., 109 S.Ct.
17 706 (1989). Each state agency shall report as necessary to the
18 comptroller to assist in preparation of the study. The comptroller
19 shall distribute the study to all state agencies and to the
20 legislature. The General Services Commission shall, as soon as
21 practicable, adopt rules to take effect September 1, 1994, based on
22 the disparity study.

23 SECTION 66. (a) In addition to the duties prescribed in
24 Article 15, State Purchasing and General Services Act (Article
25 601b, Vernon's Texas Civil Statutes), as added by this Act, the
26 State Council on Competitive Government shall conduct a study by
27 December 1, 1993, or as soon as practicable after that date

1 evaluating services being performed by or for state agencies.
 2 Services involving information technology, information facilities
 3 management, collocation of field offices, mail, print services,
 4 travel management, telecommunications, and fleet management shall
 5 be evaluated to identify at least \$3 million in cost savings and
 6 enhanced revenue resulting from competition with private commercial
 7 sources or other state agency providers. Services to be evaluated
 8 shall also include the state's procurement practices to the extent
 9 the practices have been evaluated in any report on procurement
 10 practices in Texas state government.

11 (b) The council shall certify the estimate of potential
 12 savings or enhanced revenue amounts and forward the information to
 13 the Legislative Budget Board. After evaluating the information,
 14 the Legislative Budget Board shall identify general revenue fund
 15 appropriations of at least \$3 million to be reduced as a result of
 16 cost savings or enhanced revenue measures and shall forward that
 17 information to the comptroller. The Legislative Budget Board may
 18 request the council to identify additional cost savings or enhanced
 19 revenue measures to accomplish the \$3 million reduction.

20 (c) The comptroller shall reduce appropriations to the
 21 various agencies by the amounts approved by the Legislative Budget
 22 Board and transfer those amounts to the general revenue fund. Cost
 23 savings and enhanced revenues realized as a result of the study
 24 performed may be considered a part of the savings, spending
 25 reductions, or revenue enhancement plans required of all agencies
 26 by the General Appropriations Act for the 1994-1995 biennium.

27 (d) This section expires on September 1, 1995.

1 SECTION 67. (a) At the time that the comptroller vacates
 2 the comptroller's training center, located at 125 Lehmann Drive in
 3 Kerrville, possession, charge, and control of the building,
 4 property, and its grounds are transferred and committed to the
 5 Railroad Commission of Texas for the benefit of the State of Texas.
 6 The Railroad Commission may use the center for its purposes and may
 7 make the center available to other entities.

8 (b) The comptroller shall give reasonable notice to the
 9 Railroad Commission and to the General Services Commission of the
 10 date on which the comptroller intends to vacate the center, and on
 11 the date that the comptroller vacates the center the comptroller
 12 shall inform the two commissions of that fact. The comptroller,
 13 the General Services Commission, and any other appropriate state
 14 agency or officer shall take any action necessary to transfer
 15 charge and control of the center to the Railroad Commission as
 16 required by this Act.

17 SECTION 68. (a) The following laws are repealed:

- 18 (1) Section 771.005, Government Code;
 19 (2) Section 771.009, Government Code; and
 20 (3) Article 13, State Purchasing and General Services
 21 Act (Article 601b, Vernon's Texas Civil Statutes).

22 (b) The following law is repealed:

- 23 (1) Section 771.008(d), Government Code; or
 24 (2) Section 6(d), The Interagency Cooperation Act
 25 (Article 4413(32), Vernon's Texas Civil Statutes), as added by
 26 Section 30, Chapter 641, Acts of the 72nd Legislature, Regular
 27 Session, 1991.

1 (c) Subsection (b)(1) of this section takes effect only if a
 2 bill relating to nonsubstantive additions to and corrections in
 3 enacted codes, including the nonsubstantive codification of various
 4 laws omitted from enacted codes, and to conforming codifications
 5 enacted by the 72nd Legislature to other acts of that legislature,
 6 is enacted by the 73rd Legislature and becomes law. Subsection
 7 (b)(2) of this section takes effect only if the bill described by
 8 this subsection does not become law.

9 SECTION 69. This Act takes effect September 1, 1993.

10 SECTION 70. The importance of this legislation and the
 11 crowded condition of the calendars in both houses create an
 12 emergency and an imperative public necessity that the
 13 constitutional rule requiring bills to be read on three several
 14 days in each house be suspended, and this rule is hereby suspended.

President of the Senate

Speaker of the House

I certify that H.B. No. 2626 was passed by the House on April 29, 1993, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2626 on May 24, 1993, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Chief Clerk of the House

I certify that H.B. No. 2626 was passed by the Senate, with amendments, on May 19, 1993, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Secretary of the Senate

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H.B. No. 2626

I do hereby certify that the amounts appropriated in the herein H.B. No. 2626, Regular Session of the 73rd Legislature, are within amounts estimated to be available in the affected fund.

Certified _____

Comptroller of Public Accounts

APPROVED: _____

Date

Governor

APPENDIX B

TYPICAL LEGISLATIVE CODES FOR PROCUREMENT OF HIGHWAY IMPROVEMENTS

ARIZONA

COLORADO

ILLINOIS

MINNESOTA

VIRGINIA

WASHINGTON

WISCONSIN

ARIZONA REVISED STATUTES ANNOTATED
TITLE 18. HIGHWAYS AND BRIDGES
CHAPTER 2. COUNTY HIGHWAYS
ARTICLE 1. CONSTRUCTION, MAINTENANCE AND ABANDONMENT
COPR. (c) WEST 1993 No Claim to Orig. Govt. Works
Current through 1993 1st Reg. Sess. Ch. 259, & 1st through 4th Sp. Sess.

s 18-217. Bids for construction, reconstruction, equipment or supplies; procedure; bond; exception

A. Except as provided in subsection G of this section, in a county having a population of one hundred fifty thousand persons or over, bids for all items of construction or reconstruction involving an expenditure equal to or greater than the amount determined pursuant to subsection B of this section, all purchases or other acquisition of equipment involving an expenditure in excess of five thousand dollars, and all purchases of supplies and materials involving an expenditure of two thousand five hundred dollars or over shall be called for by advertising in a newspaper of general circulation published within the county for two consecutive insertions if it is a weekly newspaper, or for two insertions not less than six nor more than ten days apart, if it is a daily newspaper. The advertisement shall state specifically the character of the work to be done and the kind and quality of materials or supplies to be furnished.

B. Bids shall be called pursuant to subsection A of this section for all items of construction or reconstruction involving an expenditure of:

1. In fiscal year 1985-1986, thirty-five thousand dollars.

2. In fiscal year 1986-1987 and each fiscal year thereafter, the amount provided in paragraph 1 of this subsection adjusted by the annual percentage change in the GDP price deflator as defined in s 41-563, subsection E.

C. Should a bid satisfactory to the board of supervisors be received, it shall let a contract to the lowest responsible bidder, upon the contractor or supplier giving such bond or bonds as required under the provisions of title 34, chapter 2, article 2, [FN1] or the board may reject any or all bids and readvertise.

D. No board of supervisors, member thereof, or other official or agent of a county affected by this section shall segregate or divide into separate units a contiguous or continuous portion of highway construction or reconstruction, or divide into separate portions an item of equipment or generally recognized unit of supplies or material, in order to avoid the restrictions imposed by subsection A of this section.

E. After a contract has been awarded, the board authorized representative may if necessary authorize change orders to the contract in accordance with guidelines set by the board of supervisors. Such change order authority shall not be construed to permit the board authorized representative to act independently to award new contracts.

F. Notwithstanding the provisions of this section, from and after July 1, 1992, an action or proceeding shall not be maintained, continued, instituted or prosecuted under this section or s 34-203 and no order, judgment or injunction shall be entered or issued against any agent who performs public improvement work with the use of the agent's regularly employed personnel in dollar amounts exceeding the provisions of this section without advertising for bids.

G. Any building, structure, addition or alteration may be constructed without complying with the bidding requirements of this section if the construction, including construction of buildings or structures on public or private property, is required as a condition of development of private property and is authorized by s 9-463.01 or 11-806.01. For the purposes of this subsection, building does not include police, fire, school, library, or other public building.

ARIZONA REVISED STATUTES ANNOTATED
TITLE 34. PUBLIC BUILDINGS AND IMPROVEMENTS
CHAPTER 2. EMPLOYMENT OF CONTRACTORS
ARTICLE 1. BIDS AND ESTIMATES
COPR. (c) WEST 1993 No Claim to Orig. Govt. Works
Current through 1993 1st Reg. Sess. Ch. 259, & 1st through 4th Sp. Sess.

s 34-201. Notice of intention to receive bids and enter contract; procedure; doing work without advertising for bids; county compliance

A. Except as provided in subsections B, C and H of this section, every agent shall, upon acceptance and approval of the working drawings and specifications, publish a notice to contractors of intention to receive bids and contract for the proposed work, and stating:

1. The nature of the work required, the type, purpose and location of the proposed building, and where the plans, specifications and full information as to the proposed work may be obtained.

2. That contractors desiring to submit proposals may obtain copies of full or partial sets of plans and specifications for estimate on request or by appointment. The return of such plans and specifications shall be guaranteed by a deposit of a designated amount which shall be refunded on return of the plans and specifications in good order.

3. That every proposal shall be accompanied by a certified check, cashier's check or surety bond for ten per cent of the amount of the bid included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal in accordance with the plans and specifications. Notwithstanding the provisions of any other statute, the surety bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. [FN1] The surety bond shall not be executed by an individual surety or sureties, even if the requirements of s 7-101 are satisfied. The certified check, cashier's check or surety bond shall be returned to the contractors whose proposals are not accepted, and to the successful contractor upon the execution of a satisfactory bond and contract as provided in this article. The conditions and provisions of the surety bid bond regarding the surety's obligations shall follow the following form:

Now, therefore, if the obligee accepts the proposal of the principal and the principal enters into a contract with the obligee in accordance with the terms of the proposal and gives the bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the principal to enter into the contract and give the bonds and certificates of insurance, if the principal pays to the obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the obligee may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of s 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

4. That the right is reserved to reject any or all proposals or to withhold the award for any reason the agent determines.

B. If the agent believes that any construction, building addition or alteration contemplated at a public institution can be advantageously done by the inmates thereof and regularly employed help, the agent may cause the work to be done without advertising for bids.

C. Any building, structure, addition or alteration may be constructed either with or without the use of the agent's regularly employed personnel without advertising for bids provided that the total cost of the work, excluding materials and equipment previously acquired by bid, does not exceed:

1. In fiscal year 1985-1986, ten thousand five hundred dollars.

2. In fiscal year 1986-1987 and each fiscal year thereafter, the amount provided in paragraph 1 of this subsection adjusted by the annual percentage change in the GDP price deflator as defined in s 41-563, subsection E.

D. Any construction by a county under subsection C of this section shall comply with the uniform accounting system prescribed for counties by the auditor general under s 41-1279.21.

E. Any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions shall not use endangered tropical hardwood unless an exemption is granted by the director of the department of administration. The director shall only grant an exemption if the use of endangered tropical hardwood is deemed necessary for historical restoration or to repair existing facilities and the use of any substitute material is

not practical. Any lease-purchase agreement entered into by this state or its political subdivisions for construction shall specify that no endangered tropical hardwood may be used in the construction unless an exemption is granted by the director. As used in this subsection, "endangered tropical hardwood" includes ebony, lauan, mahogany or teak hardwood.

F. All bonds given by a contractor and surety pursuant to the provisions of this article, regardless of their actual form, will be deemed by law to be the form required and set forth in this article and no other.

G. Notwithstanding the provisions of this section, from and after July 1, 1992, an action or proceeding shall not be maintained, continued, instituted or prosecuted under this section or s 34-203 and no order, judgment or injunction shall be entered or issued against any agent who performs public improvement work with the use of the agent's regularly employed personnel in dollar amounts exceeding the provisions of this section without advertising for bids.

H. Any building, structure, addition or alteration may be constructed without complying with this article if the construction, including construction of buildings or structures on public or private property, is required as a condition of development of private property and is authorized by s 9-463.01 or 11-806.01. For the purposes of this subsection, building does not include police, fire, school, library, or other public building.

COLORADO STATUTES

TITLE 24. GOVERNMENT--STATE

PROCUREMENT CODE

ARTICLE 103. SOURCE SELECTION AND CONTRACT FORMATION

PART 2. METHODS OF SOURCE SELECTION

s 24-103-201. Methods of source selection

(1) Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding pursuant to section 24-103-202, except as provided in:

- (a) Section 24-103-203, concerning awards by competitive sealed proposals;
- (b) Section 24-103-204, concerning small purchases;
- (c) Section 24-103-205, concerning sole source procurements;
- (d) Section 24-103-206, concerning emergency procurements;
- (e) Part 14 of article 30 of this title, concerning architect, engineer, landscape architect, and land surveying services.

s 24-103-202. Competitive sealed bidding

(1) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 24-103-201.

(2) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(3) Adequate public notice of the invitation for bids shall be given a reasonable time, but in the case of construction at least fourteen days, prior to the date set forth therein for the opening of bids, pursuant to rules. Such notice may include publication in a newspaper of general circulation.

(4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record, and the record shall be open to public inspection. After the time of the award, all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 24-72-203 and 24-72-204.

(5) Bids shall be unconditionally accepted, except as authorized by subsection (7) of this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. No criteria may be used in the bid evaluation that are not set forth in the invitation for bids.

(6) Withdrawal of inadvertently erroneous bids before the award may be permitted pursuant to rules if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that an error was made. Except as otherwise provided by rules, all decisions to permit the withdrawal of bids based on such bid mistakes shall be supported by a written determination made by the state purchasing director or the head of a purchasing agency.

(7) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate and adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials.

(8) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(9) The provisions of subsections (4), (5), and (6) of this section shall also apply to construction and shall be in addition to any other requirements for competitive sealed bidding for construction as provided for in this title.

s 24-103-203. Competitive sealed proposals

(1) When, pursuant to rules, the state purchasing director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals may be used for the procurement of professional services whether or not the determination described by this subsection (1) has been made. The executive director may provide by rule that it is neither practicable nor advantageous to the state to procure specified types of supplies, services, or construction by competitive sealed bidding.

(2) Proposals shall be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals shall be given in the same manner as provided in section 24-103-202(3).

(4) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules and shall be open for public inspection after the contract award subject to the provisions of sections 24-72-203 and 24-72-204.

(5) The request for proposals shall state evaluation factors.

(6) As provided in the request for proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit

proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. A contract resulting from a competitive sealed proposal is not awarded until the time for protest or appeal has lapsed or the administrative appeals process has been completed. No property interest of any nature shall accrue until the contract is awarded and signed by both parties.

(8) The procurement officer shall negotiate, in the case of procurement of professional services, with the highest qualified offerors and in that negotiation shall take into account, in the following order of importance, the professional competence of the offerors, the technical merits of the offers, and the price for which the services are to be rendered.

s 24-103-205. Sole source procurement

A contract may be awarded for a supply, service, or construction item without competition when, under rules, the state purchasing director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing that there is only one source for the required supply, service, or construction item. Sole source procurement provisions shall not be used when the goods or services needed are available through the division of correctional industries unless the purchasing agency specifies the division of correctional industries as the sole source provider.

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 30. FINANCE
PURCHASES AND CONTRACTS
ACT 505. ILLINOIS PURCHASING ACT
COPR. (c) WEST 1993 No Claim to Orig. Govt. Works
Current through P.A. 88-1, approved 3-12-93

505/6. State agencies; competitive solicitation, selection and procurement procedures

s 6. State agencies may provide that prospective contractors be prequalified to determine their responsibility, as required by this Act. State agencies shall also provide, among other matters which are not in conflict with the policies and principles herein set forth:

a. That all purchases, contracts and expenditure of funds shall be awarded pursuant to a competitive selection procedure which may provide that contracts be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability, except as provided in paragraphs e, f, g and h of this Section.

However, a competitive selection procedure need not be followed in the following cases:

- (1) Where the goods or services to be procured are economically procurable from only one source, such as contracts for local exchange telephone service, electrical energy, and other public utility services, books, pamphlets and periodicals, and specially designed business and research equipment and related supplies.
- (2) Where the services required are for professional or artistic skills pursuant to a written contract.
- (3) In emergencies involving public health, public safety, or where immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage to State property, to prevent or minimize serious disruption in State services or to insure the integrity of State records.
- (4) In case of expenditures for personal services paid to employees or officers of a State agency. As used in this paragraph, "personal services" has the meaning ascribed to that term in Section 14 of the State Finance Act. [FN1]
- (5) Contracts for repairs, maintenance, remodeling, renovation, or construction of a single project involving an expenditure not to exceed \$10,000 and not involving a change or increase in the size, type or extent of an existing facility.
- (6) Contracts for repairs, maintenance, or any other services not specifically exempt from a competitive selection procedure under this Act where individual orders for such services do not exceed \$25,000.
- (7) Purchases of commodities and equipment where individual orders are less than \$25,000.
- (8) Contracts for the maintenance or servicing of, or provision of repair parts for equipment which are made with the manufacturers or authorized service agent of that equipment where the provision of parts, maintenance or servicing can best be performed by the manufacturer or authorized service agent or such a contract would otherwise be advantageous to the State, but the exception provided in this sub-paragraph (8) does not apply to the subdivisions of work listed in paragraph a-1-a of this Section.
- (9) Where the goods or services are procured from another governmental agency.
- (10) Purchases and contracts for the use, purchase, delivery, movement or installation of data processing equipment, software or services and telecommunications and inter-connect equipment, software and services.
- (11) Personal service contracts made by members, officers, committees, or commissions of the General Assembly.
- (12) Any contract for duplicating machines and supplies.
- (13) Any contract for the purchase of natural gas when the cost is less than that offered by a public utility.
- (14) Any contract for State Lottery tickets or shares or for other State Lottery game related services.
- (15) Purchases of and contracts for office equipment and associated supplies when such contracts provide for prices that are equal to or lower than Federal General Services Administration contracts and when such contracts or pricing result in economical advantage to the State.
- (16) Purchases and contracts by the Department of State Police for the use, purchase or installation of forensic science laboratory analytical equipment and analytical data processing equipment used for forensic science laboratory purposes only, including equipment which is microprocessor controlled or controllable, and its software. Prior to the purchase of or contract for such equipment, the Director of the Department of State Police shall certify to the Comptroller and the Auditor General that such equipment is necessary and an integral component of the Department of State Police's statutory investigatory duties and that competitive bidding will hamper such statutory duties. Such certification shall include the prices of and specifications of the equipment to be purchased or contracted for and the prices, specifications and reasons for rejection of comparative equipment by the Department of State Police. The

Comptroller shall file such certification with any purchase vouchers or files maintained for the purchase. The Auditor General shall require such certification to be noted in audits performed at his direction.

(17) Purchases and contracts by the Department of Nuclear Safety for the use, purchase or installation of radiochemistry laboratory equipment, instruments and equipment used to detect radiation or radioactivity, and data processing equipment used for purposes of detecting radiation or radioactivity. Prior to the purchase of or contract for such equipment, the Director of the Department of Nuclear Safety shall certify to the Comptroller that such equipment is necessary and an integral component of the Department of Nuclear Safety's emergency response or radiation monitoring programs and that competitive bidding will hamper such programs. Such certification shall include the prices of and specifications of the equipment to be purchased or contracted for and the prices, specifications and reasons for rejection of comparable equipment by the Department of Nuclear Safety. The Comptroller shall file such certification with any purchase vouchers or files maintained for the purchase.

a-1. In case of contracts for the construction of buildings, or for other construction work in or about buildings and grounds, where the entire estimated cost of such work exceeds \$25,000, state agencies may provide that prospective contractors, as well as architects and engineers employed in connection with such projects, be prequalified to determine their responsibility. Such prequalification may require, without limitation, that the applicant for prequalification list all public works contracts he has performed within 2 years of the date of application, or the 4 most recent public works contracts he has performed, whichever is fewer, and state whether he complied with the Illinois Wage Assignment Act [FN2] in performing such contracts. Such statement shall be made under oath or affirmation and if made falsely is punishable as perjury under Section 32-2 of the Criminal Code of 1961. [FN3]

a-1-a. Separate specifications shall be prepared, with the exception of the Cardinal Creek Housing project and 2 grade schools associated with the Scott Joint-Use Airport in St. Clair County which shall be permitted, as a one-time exclusion, to allow turn-key development of the required facilities on the basis of competitive quality, performance, and price, for all equipment, labor and materials in connection with the following 5 subdivisions of the work to be performed:

1. Plumbing.
2. Heating, piping, refrigeration and automatic temperature control systems, including the testing and balancing of such systems.
3. Ventilating and distribution systems for conditioned air, including the testing and balancing of such systems.
4. Electric wiring.
5. General contract work.

Such specifications may be so drawn as to permit separate and independent selection upon each of the above 5 subdivisions of work; provided, however, if the total estimated cost of all such work is less than \$100,000, such separate and independent specifications and selection shall not be required. All contracts awarded for any part thereof shall award the 5 subdivisions of such work separately to responsible and reliable persons, firms or corporations engaged in these classes of work. Such contracts, at the discretion of the awarding authority, may be assigned to the successful contractor on the general contract work, or to the successful contractor on the subdivision of work designated by the awarding authority prior to beginning the selection process as the prime subdivision of work; provided that all payments will be made directly to the contractors for the 5 subdivisions of such work upon compliance with the conditions of the contract. A contract may be let for one or more buildings in any project to the same contractor. The specifications shall require, however, that unless the buildings are identical, a separate price shall be submitted for each building. The contract may be awarded competitively for each or all of the buildings included in the specifications.

Whenever any contract entered into by a State agency for the repair, remodeling, renovation or construction of a building or structure or for the construction or maintenance of a highway, as those terms are defined in Article 2 of the Illinois Highway Code [FN4] or for the reclamation of abandoned lands as those terms are defined in Article I of the Abandoned Mined Lands and Water Reclamation Act [FN5] provides for retention of a percentage of the contract price until final completion and acceptance of the work, upon the request of the contractor and with the approval of the State agency the amount so retained may be deposited under a trust agreement with an Illinois bank of the contractor's choice and subject to the approval of the State agency. The contractor shall receive any interest thereon. Upon application by the contractor, the trust agreement must contain, as a minimum, the following provisions:

- A. the amount to be deposited subject to the trust;
- B. the terms and conditions of payment in case of default of the contractor;
- C. the termination of the trust agreement upon completion of the contract; and
- D. the contractor shall be responsible for obtaining the written consent of the bank trustee, and any costs or service fees shall be borne by the contractor.

The trust agreement may, at the discretion of the State agency and upon request of the contractor, become operative at the time of the first partial payment in accordance with existing statutes and the State agency procedures.

a-2. In case of contracts for the purchase of supplies, materials, commodities and equipment, wherever feasible proposals shall be required to be itemized as to kind and the solicitation for proposals shall state, with such degree of particularity as the nature of the case permits, the quantity of each item required.

a-3. That all contracts for the rental or lease of electronic data processing equipment shall include a clause that if more favorable terms are granted by the lessor, supplier, dealer, or manufacturer to any similar state or local governmental agency in any state in contemporaneous leases or rental agreements covering data processing equipment let under the same or similar financial terms and circumstances, the more favorable terms shall be applicable to all agreements or contracts made by any similar Illinois state agency for the rental or lease of comparable data processing equipment from the lessor, supplier, dealer, or manufacturer.

b. That competitive procurement procedures shall be in conformance with accepted business practices.

c. That proposals shall be publicly opened at the day and hour and at the place specified in the solicitations.

d. That any contractor may be suspended for not more than one year for violation of the competitive procurement procedures of any State agency or for failure to conform to specifications or terms of delivery.

e. When a public contract is to be awarded under competitive selection procedures, a resident contractor must be allowed a preference as against a non-resident bidder from any state which gives or requires a preference to contractors from that state. The preference is to be equal to the preference given or required by the state of the non-resident contractor. Further, if only non-resident contractors are under consideration, the purchasing agency is within its right to specify that Illinois labor and manufacturing locations be used as a part of the manufacturing process, if applicable. This specification may be negotiated, as part of the solicitation process.

f. "Resident contractor" as used in this Section means a person authorized to transact business in this State and having a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced, including a foreign corporation duly authorized to transact business in this State which has a bona fide establishment for transacting business within this State at which it was actually transacting business on the date when any competitive solicitation for a public contract is first advertised or announced.

g. Paragraphs e and f of this Section do not apply to any contract for any project as to which federal funds are available for expenditure when such paragraphs may be in conflict with federal law or federal regulation.

h. When a public contract is to be awarded under competitive procurement procedures, an otherwise qualified bidder who will fulfill the contract through the use of products made of recycled materials may, on a pilot basis or pursuant to a pilot study, be given preference over other contractors unable to do so, provided that the cost included in the proposal of products made of recycled materials is not more than 10% greater than the cost of such products not made of recycled materials.

i. That every contract for the provision of goods or services shall provide that the vendor or contractor shall maintain, for a minimum of 5 years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; that the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General; and that the contractor agrees to cooperate fully with any audit conducted by the Auditor General and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

MINNESOTA STATUTES
ADMINISTRATION
CHAPTER 16B. DEPARTMENT OF ADMINISTRATION
CONTRACTS AND PURCHASES

16B.07. Competitive bids

Subdivision 1. Application. Except as otherwise provided by this chapter, all contracts for construction or repairs and all purchases of and all contracts for supplies, materials, purchase or rental of equipment, and utility services must be based on competitive bids, and all sales of property must be to the highest responsible bidder after advertising for bids pursuant to this section.

Subd. 2. Requirement contracts. Standard requirement price contracts for supplies or services to be purchased by the state must be established by competitive bids as provided in subdivision 1. The standard requirement price contracts may contain escalation clauses and may provide for a negotiated price increase or decrease based upon a demonstrable industrywide or regional increase or decrease in the vendor's costs or for the addition of similar products or replacement items not significant to the total value of existing contracts. The term of these contracts may not exceed five years including all extensions.

Subd. 3. Publication of notice; expenditures over \$15,000 and requests for proposal. If the amount of an expenditure or sale is estimated to exceed \$15,000, sealed bids or requests for proposal as provided in section 16B.08, subdivision 4, clause (b), must be solicited by public notice inserted at least once in a newspaper or trade journal not less than seven days before the final date of submitting bids. The commissioner shall designate the newspaper or trade journal for that publication, and may designate different newspapers or journals according to the nature of the purchase or contract. The commissioner shall also solicit sealed bids by sending notices by mail to all prospective bidders known to the commissioner, and by posting notice on a public bulletin board in the commissioner's office at least five days before the final date of submitting bids. All bids must be sealed when they are received and must be opened in public at the hour stated in the notice. All original bids and all documents pertaining to the award of a contract must be retained and made a part of a permanent file or record and remain open to public inspection.

Subd. 4. Purchases, sales, or rentals; \$15,000 or less. All purchases or sales the amount of which is estimated to be \$15,000 or less may be made either upon competitive bids or in the open market, in the discretion of the commissioner. So far as practicable, however, they must be based on at least three competitive bids which must be permanently recorded.

Subd. 5. Standard specifications, security. Contracts and purchases must be based on the standard specifications prescribed and enforced by the commissioner under this chapter, unless otherwise expressly provided. Each bidder for a contract must furnish security approved by the commissioner to insure the making of the contract being bid for.

Subd. 6. Noncompetitive bids. Agencies are encouraged to purchase from small targeted group businesses designated under section 16B.19 when making purchases that are not subject to competitive bidding procedures.

16B.08. Bids not required

Subdivision 1. Utility services. Competitive bids are not required for utility services where no competition exists or where rates are fixed by law or ordinance.

Subd. 2. Single source of supply. Competitive bidding is not required for purchases clearly and legitimately limited to a single source of supply, and the purchase price may be best established by direct negotiation.

Subd. 3. Auction in lieu of bids. The commissioner, in lieu of advertising for bids, may sell buildings and other personal property owned by the state and not needed for public purposes at public auction to the highest responsible bidder. A sale under this subdivision may not be made until publication of notice of the sale in a newspaper of general circulation in the area where the property is located and any other advertising the commissioner directs. Any of the property may be withdrawn from the sale prior to the completion of the sale unless the auction has been announced to be without reserve. If the sale is made at public auction a duly licensed auctioneer must be retained to conduct the sale. The auctioneer's fees and other administrative costs of the auction must be paid from the proceeds from which an amount sufficient to pay them is appropriated.

Subd. 4. Negotiated contracts. (a) In lieu of any of the other requirements of this chapter, the commissioner may negotiate a contract for public work to be performed at a state-owned institution or installation if the cost does not exceed \$15,000 and if the head of the affected state agency requests the commissioner to do so. The commissioner shall have prepared whatever plans and specifications for the public work deemed necessary by the commissioner to protect the public interest. Contractor's bonds or security pursuant to chapter 574 are not required for contracts entered into pursuant to this subdivision.

(b) In lieu of the requirement for competitive bidding in section 16B.07, subdivision 1, purchases and contracts may be negotiated in those circumstances determined by the commissioner, and in any of those circumstances the commissioner shall advertise for a request for proposal as a basis for negotiation.

Subd. 5. Federal general services administration price schedules. Notwithstanding anything in this chapter to the contrary, the commissioner may, instead of soliciting bids, contract for purchases with suppliers who have published schedules of prices effective for sales to the General Services Administration of the United States. These contracts may be entered into, regardless of the amount of the purchase price, if the commissioner considers them advantageous and if the purchase price of all the commodities purchased under the contract do not exceed the price specified by the schedule.

Subd. 6. Emergency purchases. In emergencies the commissioner may, without calling for bids, contract directly for the repair, rehabilitation, and improvement of a state-owned structure or may authorize an agency to do so, and may purchase or may authorize an agency to purchase directly supplies, materials, equipment, or utility services for immediate use. An emergency for the purposes of this subdivision is an unforeseen occurrence or combination of circumstances which calls for immediate action in the public interest.

Subd. 7. Specific purchases. (a) The following may be purchased without regard to the competitive bidding requirements of this chapter:

- (1) merchandise for resale at state park refectories or facility operations;
 - (2) farm and garden products, which may be sold at the prevailing market price on the date of the sale;
 - (3) meat for other state institutions from the technical college maintained at Pipestone by independent school district No. 583; and
 - (4) products and services from the Minnesota correctional facilities.
- (b) Supplies, materials, equipment, and utility services for use by a community-based residential facility operated by the commissioner of human services may be purchased or rented without regard to the competitive bidding requirements of this chapter.
- (c) Supplies, materials, or equipment to be used in the operation of a hospital licensed under sections 144.50 to 144.56 that are purchased under a shared service purchasing arrangement whereby more than one hospital purchases supplies, materials, or equipment with one or more other hospitals, either through one of the hospitals or through another entity, may be purchased without regard to the competitive bidding requirements of this chapter if the following conditions are met:
- (1) the hospital's governing authority authorizes the arrangement;
 - (2) the shared services purchasing program purchases items available from more than one source on the basis of competitive bids or competitive quotations of prices; and
 - (3) the arrangement authorizes the hospital's governing authority or its representatives to review the purchasing procedures to determine compliance with these requirements

16B.09. Contracts and purchases, award

Subdivision 1. Lowest responsible bidder. All state contracts and purchases made by or under the supervision of the commissioner or an agency for which competitive bids are required must be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the call for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life cycle costing, where appropriate, in determining the lowest overall bid. As to contracts other than for purchases, the head of the interested agency shall make the decision, subject to the approval of the commissioner. Any or all bids may be rejected. In a case where competitive bids are required and where all bids are rejected, new bids if solicited, must be called for as in the first instance, unless otherwise provided by law.

Subd. 2. Alterations and erasures. A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected pursuant to this subdivision. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed in ink by the person signing the bid.

Subd. 3. Special circumstances. The commissioner may reject the bid of any bidder who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use negotiated procurement methods with the tied low bidders for that particular transaction, so long as the price paid does not exceed the low tied bid price. The commissioner may award contracts to more than one bidder in accordance with section 16B.09, subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

Subd. 4. Record. A record must be kept of all bids, including names of bidders, amounts of bids, and each successful bid. This record is open to public inspection.

Subd. 5. Cooperative agreements; purchasing revolving fund. The commissioner may enter into cooperative purchasing agreements under section 471.59 with cities, counties, towns, school districts, or other political subdivisions or instrumentalities of a governmental unit or any entity that is statutorily authorized to purchase materials and services through state contracts. The cooperative purchasing revolving fund is a separate account in the state treasury. The commissioner may charge a fee to cover the commissioner's administrative expenses to government units that have joint or cooperative purchasing agreements with the state under section 471.59. The fees collected must be deposited in the revolving fund established by this subdivision. Money in the fund is appropriated to the commissioner to administer the programs and services covered by this section.

CODE OF VIRGINIA

TITLE 11. CONTRACTS.

CHAPTER 7. VIRGINIA PUBLIC PROCUREMENT ACT.

ARTICLE 1. GENERAL PROVISIONS.

s 11-37 Definitions.

The words defined in this section shall have the meanings set forth below throughout this chapter.

"Competitive sealed bidding" is a method of contractor selection which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
2. Public notice of the Invitation to Bid at least ten days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.
3. Public opening and announcement of all bids received.
4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the Invitation to Bid, awards may be made to more than one bidder.
6. Competitive sealed bidding shall not be required for procurement of professional services.

"Competitive negotiation" is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.
2. Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors.
3. a. Procurement of professional services. -- The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.
- b. Procurement of other than professional services. -- Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering.

"Professional services" shall also include the services of an economist procured by the State Corporation Commission.

s 11-41 Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. 1. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in s 11-37. The basis for this determination shall be documented in writing.

2. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

(i) By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under s 11-41.2;

(ii) By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;

(iii) By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or

(iv) As otherwise provided in s 11-41.2:1.

D. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

E. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

F. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed \$15,000 and for contracts for microcomputers and related peripheral equipment and services not expected to exceed \$30,000; however, such small purchase procedures shall provide for competition wherever practicable.

G. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter, competitive sealed bidding not necessarily being required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

H. Upon a determination made in advance by the local governing body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

s 11-41.1 Competitive bidding on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of \$15,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subdivision 2 of subsection C of s 11-41. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter. A person or firm who has been engaged as an architect or engineer for the same project under a separate contract shall not be eligible to bid on or submit a proposal for any such contract or to have the contract awarded to him.

s 11-45 Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (s 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in s 15.1-1374 (d).

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in s 63.1-87, the fuel assistance program, community services boards as defined in s 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (s 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of s 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to s 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to ss 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. The Executive Director of the Virginia Health Services Cost Review Council may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, and evaluation of patient level data pursuant to Article 2 (s 9-166.1 et seq.) of Chapter 26 of Title 9, if the Executive Director has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination.

CODE OF WASHINGTON

TITLE 47. PUBLIC HIGHWAYS AND TRANSPORTATION

CHAPTER 47.28--CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

47.28.030. Contracts--State forces--Monetary limits--Small businesses, minority, and women contractors--Rules

A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right of way purposes may be repaired or renovated pending the use of such right of way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof is less than thirty thousand dollars: Provided, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than fifty thousand dollars. When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to effectively compete for highway department contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed fifty thousand dollars. The rules adopted under this section:

- (1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and
- (2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, materialmen, mechanics, and subcontractors from the previous partial payment; and
- (3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter 39.19 RCW.

47.28.090. Opening of bids and award of contract--Deposit

At the time and place named in the call for bids the department of transportation shall publicly open and read the final figure in each of the bid proposals that have been properly filed and read only the unit prices of the three lowest bids, and shall award the contract to the lowest responsible bidder unless the department has, for good cause, continued the date of opening bids to a day certain, or rejected that bid. Any bid may be rejected if the bidder has previously defaulted in the performance of and failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract. If the lowest responsible bidder fails to meet the provisions or specifications requiring compliance with chapter 39.19 RCW and the rules adopted to implement that chapter, the department may award the contract to the next lowest responsible bidder which does meet the provisions or specifications or may reject all bids and readvertise. All bids shall be under sealed cover and accompanied by deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the bid, and a bid shall not be considered unless the deposit is enclosed with it.

WISCONSIN STATUTES ANNOTATED
WEST'S WISCONSIN STATUTES ANNOTATED
CHAPTER 16. DEPARTMENT OF ADMINISTRATION
SUBCHAPTER V. ENGINEERING
COPR. (c) WEST 1993 No Claim to Orig. Govt. Works
Current through 1993 Act 15, published 8/13/93.

16.855. Construction project contracts

(1) The department shall let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$30,000, except as provided in sub. (10m) or s. 13.48(19). If a bidder is not a Wisconsin firm and the department determines that the state, foreign nation or subdivision thereof in which the bidder is domiciled grants a preference to bidders domiciled in that state, nation or subdivision in making governmental purchases, the department shall give a preference over that bidder to Wisconsin firms, if any, when awarding the contract, in the absence of compelling reasons to the contrary. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subsection.

(2) Whenever the estimated construction cost of a project exceeds \$30,000, or if less and in the best interest of the state, the department shall:

(a) Advertise for proposals by publication of a class 1 notice, under ch. 985, in the official state newspaper. Similar notices may be placed in publications likely to inform potential bidders of the project. The department may solicit bids from qualified contractors to insure adequate competition. All advertisements shall contain the following information:

1. Location of work and the name of the owner.
2. Scope of the work.
3. Amount of bid guarantee required.
4. Date, time and place of bid opening.
5. Date, and place where plans will be available.

(b) 1. Require that a guarantee of not less than 10% of the amount of the bid shall be included with each bid submitted guaranteeing the execution of the contract within 10 days of offering, if offered within 30 days after the date set for the opening thereof. The parties may agree to extend the time for offering of the contract beyond 30 days after the opening of bids.

2. If the federal government participates in a state project, the bid guarantee required in this paragraph controls, unless the federal government makes a specific provision for a different bid guarantee.

(c) Publicly open and read aloud, at the time and place specified in the notice, all bids. Within a reasonable time after opening, tabulations of all bids received shall be available for public inspection.

(d) Not allow or make any correction or alteration of a bid, except as provided in sub. (6).

(3) At any time prior to the published time of opening, a bid may be withdrawn on written request submitted to the department by the bidder or the bidder's agent, without prejudice to the right of the bidder to file a new bid.

(4) If a bid contains an error, omission or mistake, the bidder may limit liability to the amount of the bidder's bid guarantee by giving written notice of intent not to execute the contract to the department within 72 hours of the bid opening. The department of administration, with the approval of the attorney general, may settle and dispose of cases and issues arising under this subsection. However, if no such settlement is obtained, the bidder is not entitled to recover the bid guarantee unless the bidder proves in the circuit court for Dane county that in making the mistake, error or omission the bidder was free from negligence.

(5) Any or all bids may be rejected if, in the opinion of the department, it is in the best interest of the state. The reasons for rejection shall be given to the bidder or bidders in writing.

(6) Nothing contained in this section shall prevent the department from negotiating deductive changes in the lowest qualified bid.

(7) The department may issue contract change orders, if they are deemed to be in the best interests of the state.

(9) The department may require bidders to submit sworn statements as to financial ability, equipment and experience in construction and require such other information as may be necessary to determine their competency.

(10) When the department believes that it is in the best interests of the state to contract for certain articles or materials available from only one source, it may contract for said articles or materials without the usual statutory procedure, after a publication of a class 1 notice, under ch. 985, in the official state newspaper.

- (10m)(a) In awarding construction contracts the department shall attempt to ensure that 5% of the total amount expended in each fiscal year is awarded to contractors and subcontractors which are minority businesses, as defined under s. 16.75(3m)(a). The department may award any contract to a minority business that submits a qualified responsible bid that is no more than 5% higher than the apparent low bid.
- (b) Upon completion of any contract, the contractor shall report to the department any amount of the contract that was subcontracted to minority businesses.
- (c) The department shall maintain and annually publish data on contracts awarded to minority businesses under this subsection and ss. 16.87 and 84.075.
- (10p) For each proposed construction project, the department shall ensure that the specifications require the use of recovered materials and recycled materials, as defined under s. 16.70(11) and (12), to the extent that such use is technically and economically feasible.
- (11) A contractor shall be liable for any damages to another contractor working on the same project caused by reason of the former's default, act or nonperformance.
- (12) Nothing contained in this section shall be construed so as to make contracts let under this section subject to s. 66.29.
- (13)(a) A list of subcontractors shall not be required to be submitted with the bid. The department may require the successful bidder to submit in writing the names of prospective subcontractors for the department's approval before the award of a contract to the prime contractor.
- (b) All subcontractors must be approved in writing by the department prior to their employment. Requests for approval of prospective subcontractors shall be in writing.
- (c) Changes may be made in the list of subcontractors, with the agreement of the department and the prime contractor, when in the opinion of the department it is in the best interests of the state to require the change.
- (14)(a) On all construction projects requiring the taking of bids under sub. (2) the department shall take both single bids and separate bids on any division of the work it designates. Contracts shall be awarded according to the division of work selected for bidding and, except as provided in sub. (10m)(a), to the lowest qualified responsible bidder or bidders that result in the lowest total construction cost for the project.
- (b) The state is not liable to a prime contractor for damage from delay caused by another prime contractor if the department takes reasonable action to require the delaying prime contractor to comply with its contract. If the state is not liable under this paragraph, the delayed prime contractor may bring an action for damages against the delaying prime contractor.
- (15) The department shall promulgate rules to implement the advertising and award of contracts.
- (16)(a) This section does not apply to contracts between the state and federal government or any agency thereof, or with any political subdivision of the state. Subject to the approval of the governor, the requirements of this section may be waived in emergency situations involving the public health, welfare or safety or with respect to contracting with public utilities, but only when any such waiver is deemed by the governor to be in the best interests of the state.
- (b)1. In this paragraph, "agency" has the meaning given in s. 16.70(1).
2. In emergency situations, the governor may approve repairs and construction in lieu of building commission approval under s. 13.48(10), and for such purposes, may authorize the expenditure of up to \$250,000 from the state building trust fund or from other available moneys appropriated to an agency derived from any revenue source. The governor shall report any such authorization to the building commission at its next regular meeting following the authorization.
- (17) This section does not apply to any project on which the work is to be performed by inmates or patients in institutions under the jurisdiction of the department of corrections or the department of health and social services working under the supervision or with the assistance of state employees.
- (18) This section shall not apply to restoration or reconstruction of the state capitol building, historic structures at the old world Wisconsin site and at Heritage Hill state park when the department determines that a waiver of this section would serve the best interests of this state.
- (19) As the work progresses under any contract for construction the department, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which shall entitle the contractor to receive the amount thereof, less the retainage, from the proper fund. On all construction projects, the retainage shall be an amount equal to 10% of said estimate until 50% of the work has been completed. At 50% completion, no additional amounts shall be retained, and partial payments shall be made in full to the contractor unless the architect or engineer certifies that the job is not proceeding satisfactorily. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, an amount retained may be

paid to the contractor. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

(20) This section does not apply to construction work performed by university of Wisconsin system students when the construction work performed is a part of a curriculum and where the work is course-related for the student involved. Prior approval of the building commission must be obtained for all construction projects to be performed by university of Wisconsin system students.

(21) This section does not apply to contracts by the department of natural resources for construction work related to hazardous substance spill response under s. 144.76 or environmental repair under s. 144.442.

APPENDIX C

PROCEDURE FOR USING CATALOGS APPROVED BY GSC

**ATTACHMENT 1 FOR CATALOG PURCHASE PROCEDURES FOR
AUTOMATED INFORMATION SYSTEMS**

**ATTACHMENT 2 CLASSES AND ITEMS FOR AUTOMATED
INFORMATION SYSTEMS**

PROCEDURE FOR USING CATALOGS APPROVED BY GSC
December 8, 1993

Senate Bill 381 requires commodities or services identified by the Information Resources Management Act as automated information systems be purchased using catalog purchase procedures. A copy of the rule adopted by the GSC governing catalog purchase procedures is in Attachment No. 1.

Automated information systems is defined as "automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computer on which they are automated, including computer software...or any telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for the purpose of transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on that network."

A list of commodity classes which will require use of catalog purchase procedures is shown in Attachment No. 2.

All catalog purchases will be awarded on Form 134-B Non-Automated Contract Purchase Order with the words "CATALOG PURCHASE" prominently displayed at the top of the item description portion of the purchase order.

The following procedures shall be used to issue purchase orders for catalog purchases:

1. **For Purchases \$1000 And Under:** Select a HUB vendor, if possible, from the catalogs who has the needed item or service and place the order.
2. **For Purchases Over \$1000 but less than \$10,000:** Select a minimum of three catalog vendors who have the item(s) or service listed in their catalog, preferably two of them HUBS. Solicit bids (either verbal or written depending on the situation) from each based on quantity, any additional terms, conditions, delivery requirements, extended warranty, or other conditions. Without divulging competitor's bid, purchaser may request bidder to lower their catalog price or provide additional needs at no additional cost. Award to bidder who meets all requirements and is the best value to the department. Be sure the file is documented with file on responses received reason for award if awarded on the basis of other than lowest price.
3. **For Purchases Over \$10,000:** Prepare a written description of items or service required in Request for Proposal format including:
 - ◆ Mandatory requirements - must be met by the offeror;
 - ◆ Desired requirements - those that we may desire, but failure to provide will not disqualify offeror;
 - ◆ Optional requirements - those that we or the offeror may add to the offer.

The RFP shall include evaluation criteria by which each offer is evaluated based on requirements listed above.

RFP's are to be mailed to all approved Catalog Vendors for the Class and Item being bid.

Only those offers that meet the mandatory requirements will be considered. Purchaser will tally the offers according to the evaluation criteria. The purchaser can then select the offeror providing the best offer and negotiate additional requirements or lower cost. The file must be documented as to how the eventual vendor was selected.

4. **For Purchase of Information Resources Not Listed In Any Vendor's Catalog:** If an item of information resources is need that is not listed an any vendors catalog an attempt should be made to have an existing catalog vendor add the item to their catalog if time permits. Normally it takes about two weeks for an item to be added to a catalog by the General Services Commission.

If the need is such that the end user cannot wait until we can get a vendor to add an item to an existing catalog, or the purchaser is unable to entice a vendor to submit a catalog to the General Services Commission, the purchaser may purchase the item using another method of purchase available under Article 601b. The purchase file must be documented as to why catalog procedures were not used.

ATTACHMENT NO. 1

113.19 CATALOG PURCHASE PROCEDURES FOR AUTOMATED INFORMATION SYSTEMS

- (A) Upon registration on the GSC bid list, a vendor wishing to sell or lease automated information systems to eligible purchasers in accordance with this rule shall apply to the commission for designation as a qualified information systems vendor by submitting a written application on company letterhead detailing its:
- (1) abilities to satisfy the state's automation information systems needs;
 - (2) number of years in business;
 - (3) name, address, telephone number and point of contact for three business references; and
 - (4) signature of an authorized representative.
- (B) The following must accompany a vendor's application:
- (1) the vendor's catalog, describing:
 - (a) all products and services eligible for purchase or lease;
 - (b) the list price of each product or service;
 - (c) the state's discounted price for each product and service;
 - (d) a separate alphabetical index referencing the page number of all products offered in vendor's catalog; and
 - (e) licensing agreements or other contracts authorizing vendor to distribute each product listed in vendor's catalog.
 - (2) the vendor's maintenance, repair, and support plan for all eligible products and services;
 - (3) proof of the vendor's financial resources and ability to perform;
 - (4) a guarantee that the vendor will make available repair and replacement parts as well as technical information required for repair of products sold for at least three years from the date of a product's discontinuance;
 - (5) a statement detailing the geographic area in Texas to which the vendor desires to market catalog products and services;
 - (6) a statement certifying that:
 - (a) the vendor has reviewed the rules promulgated by the Department of Information Resources (DIR) and that all products and services offered in the vendor's catalog conform and comply with all applicable standards adopted by the DIR;
 - (b) the vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with catalog purchase transactions;
 - (c) the vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas under Chapter 171 TAX Code;
 - (d) the vendor assigns to purchaser any and all claims for overcharges associated with any catalog transaction which arise under the antitrust laws of the United States or the State of Texas; and
 - (e) the vendor will protect eligible purchasers from claims involving infringement of patents or copyrights.

(7) a statement acknowledging that any terms and conditions in the vendor's catalog that conflict with the Constitution or laws of the State of Texas shall not be enforceable and, therefore, will not be binding.

(C) The State of Texas is committed to assisting Historically Underutilized Businesses (HUBs) to receive at least 30% of the total value of all state business transactions. If the vendor is certified as a Texas HUB, the vendor shall provide its five-digit certification number in the application. If the vendor qualifies as a HUB, but is not certified by the State of Texas as such, the vendor should contact the GSC to obtain a certification application. Upon the request of eligible purchasers, the vendor will be required to detail the amount of expenditures that have been made to material suppliers and subcontractors that are Texas certified HUBs. A vendor that has demonstrated past HUB participation is still expected to provide documentation using the reporting forms provided by eligible purchasers to show its good faith effort in achieving the state's 30% goal.

(D) Upon receipt of a properly completed application, the Purchasing Director or the Director's designee shall give consideration to the following standards and criteria when deciding to designate a vendor as a qualified information systems vendor:

- (1) the technical adequacy and reliability of the vendor's products as demonstrated by conformity to all state and federal requirements, including but not limited to ANSI, FCC, NEMA, OSHA and UL standards;
- (2) all factors set forth in Section 3.11 (e) of Article 601b, Texas Civil Statutes;
- (3) the vendor's past and current status on the GSC bid list and any unresolved complaints on record; and
- (4) the ability of the vendor, as determined by the commission in its sole discretion, to provide adequate and reliable support and maintenance, currently and in the future, for all products and services detailed in the vendor's catalog for the geographic area in Texas to which the vendor desires to market products and services.

(E) A vendor designated as a qualified information systems vendor shall be notified in writing of the designation by the GSC. Once designated as a qualified information systems vendor, the vendor shall publish and maintain a catalog listing all eligible purchasers upon request.

(F) An application that is incomplete or that contains inaccurate information will be rejected and the vendor notified.

(G) Each catalog supplied by a vendor shall:

- (1) be printed on 8-1/2 by 11 inch recycled paper;
- (2) be hole punched for including in a three ring binder of catalogs;
- (3) list available products and services utilizing the five-digit class and item numbering structure of the commission's Commodity Code Book;
- (4) describe all products and services eligible for purchase;
- (5) include the list price of each product or service;

- (6) show the discounted price to the state for each product and service;
- (7) show discounted pricing for quantity discounts and specific terms for prompt payment discounts that may be earned;
- (8) bear its effective date;
- (9) detail the geographic area in Texas the vendor has been authorized by the GSC to cover;
- (10) provide necessary ordering information (vendor name, ordering address, points of contact, phone numbers, etc.); and
- (11) bear the statement: "This is a true and accurate copy of the catalog approved and on file with the General Services Commission."

(H) The vendor is encouraged to include an itemization in their catalogue or otherwise identify any and all automation information systems products which:

- (1) contain recycled or remanufactured parts, including the percentages of recycled material that is post consumer; and
- (2) possess energy-saving features.

(I) The vendor shall update its catalog as needed to reflect changes in price and the availability of products or services offered. Updates may be in the form of amendments to the current catalog or issuance of supplemental catalogs in compliance with subsection (G) above. Copies of updated catalogs shall be provided to the GSC and all eligible purchasers who have previously been provided catalogs.

(J) Each vendor is encouraged to make its catalog available to eligible purchasers using an electronic format to allow electronic data interchange.

(K) The vendor must provide the GSC with the following information to maintain its qualification status:

- (1) semiannual reports to the GSC, due by the 15th of every March and September, detailing the volumes and value of orders placed by each eligible purchaser during the preceding six calendar months, showing:
 - (a) the eligible purchaser's identity;
 - (b) the purchaser's requisition or purchase order number and its date;
 - (c) the class and item designations of the products and services ordered;
 - (d) a brief description of the items ordered;
 - (e) the quantity of each item ordered; and
 - (f) each item's unit cost and the order total; or semi-annual reports shall be provided indicating no orders placed with the vendor during the reporting period, if applicable.
- (2) immediate reports of any and all additional terms and conditions negotiated with eligible purchasers; such additional terms and conditions are subject to disclosure under the Texas Open Records Act.

(L) Failure of a vendor to provide required reports or failure to conform with any other GSC rules may result in suspension or removal from the GSC bid list. A vendor that has been suspended or removed may not market or sell products or services to the

State until the cause of the suspension or removal has been resolved and the vendor reinstated to the GSC bid list.

(M) The vendor shall retain all records related to any business transaction under the Catalog Purchase Procedure for Automated Information Systems for five years from the date of the purchase order. The records shall be provided on request to the GSC or the actual purchaser.

(N) State agencies covered by the Information Resources Management Act and local governments that have complied with the GSC's rules regarding participation in the Cooperative Purchasing Program may purchase or lease automated information systems products and services directly from a qualified information systems vendor, and may negotiate additional terms and conditions to be included in contracts for the purchase or lease, provided the purchase or lease represents the best value available and is in the state's best interest. Preference shall be given to qualified information systems vendors who sell or lease products or services pursuant to Section 3.20 of Article 601b. In this section, the best value available means the lowest overall cost of considering the following factors, as well as any other relevant factors:

- (1) the overall life cycle cost of the system or equipment, including the purchase price, installation costs and hardware costs;
- (2) estimated cost of employee training and estimated increase in employee productivity;
- (3) estimated software and maintenance costs;
- (4) compatibility to facilitate exchange of existing data;
- (5) capacity for expansion and upgrading to more advanced levels of technology;
- (6) quantitative reliability factors;
- (7) the level of training required to bring end-users to a stated level of proficiency;
- (8) the technical support requirements for maintenance of data across a network platform and management of the network's hardware and software; and
- (9) compliance with applicable statewide standards adopted by the DIR or a subsequent entity as validated by criteria established by administrative rule.

(O) Purchases of automated information systems shall be made using the catalog purchase procedure unless the commission or eligible purchaser determines that the best value available accrues from an alternative purchase method authorized by Article 601b, Texas Civil Statutes, in which case the purchase shall be made using that method of purchase.

Standards for Automated Information Systems

RULE	STANDARD	DOCUMENT SOURCE	COMPLIANT PRODUCT LIST
201.11 (f)	Open Systems Environment of the Application Portability Profile X/Open Portability Guide 3	NIST Special Publication 500-187 - NTIS ¹ X/Open ²	NIST Registers for: SQL, POSIX, and Languages ⁴ X/Open Branding
201.13 (a)	FIPS 173 Spatial Data Transfer Standard (Effective Feb 1994)	NTIS ¹	N/A
201.13 (b) (8)(D)(iii)	FIPS 112 Password Usage	NTIS ¹	N/A
(9)(B)	FIPS 46-1 Data Encryption Standard	NTIS ¹	N/A
201.13 (d)	FIPS 146-1 GOSIP Government Open Systems Interconnect Profile	NTIS ¹	NIST GOSIP Register
201.13 (d) Proposed	TCP/IP (RFC 1410) Transmission Control Protocol/Internet Protocol	SRI ³	N/A

The Department of Information Resources (DIR) Technical Information Center has copies of the referenced standards and procedures for accessing the current tested product registers. The DIR Technical Information Center is located in Austin at 300 West 15th Street, Suite 1300, and is open from 8-5 p.m. Monday through Friday. For additional information contact Martha Richardson at (512) 475-4728. Specific questions about standards can be addressed to Clyde Poole (512) 475-4792, or Jerry Johnson (512) 475-4756, or Internet E-Mail to statewide.planning@dir.texas.gov.

Notes:

¹ All FIPS can be obtained from the National Technology Information Service (NTIS) at (703) 487-4650.

² All X/Open documents (XPG and Branded Products Lists) can be ordered from the U.S. office at (703) 876-0044.

³ TCP/IP standards are documented in Request For Comments (RFC) and are available from SRI at (415) 859-6387 or electronic versions from mail-server@nisc.sri.com.

⁴ Additional tests are being developed by the Computer Systems Laboratory (CSL) of the National Institute for Standards and Technology (NIST). The CSL publishes a Validated Products List quarterly. The list can be ordered through the NTIS.

ATTACHMENT NO. 2
 CLASSES AND ITEMS OF AUTOMATED INFORMATION SYSTEMS
 December 8, 1993

<u>CLASS</u>	<u>ITEM</u>
285	90 Voltage Converter, Inverters, and Spike and Surge Controllers
287	12 Batteries (for Communications and Computers only)
287	54 Power Supplies (for Communications and Computers only)
287	70 Semiconductors, Microprocessors: CPU Chips, Memory, etc.
287	96 Wire & Cable (for communications and computers only)
476	All Items
477	All Items
478	All Items
479	All Items
480	All Items
481	All Items
482	All Items
483	All Items
484	All Items
525	90 Scanning Devices: Bar Code Reading Equipment, etc.
600	61 Facsimile Machines, All Types
600	64 Facsimile Supplies
610	56 Ribbons for Computers and Data Processing Systems
610	63 Ribbons, Teleprinters and Teletype Machines
840	45 Satellite Video Receiver Dish
840	76 Video Telecommunication and Teleconferencing Systems, Accessories, Component Parts, Etc.
840	80 Video Closed Circuit Equipment, Accessories, and Parts (Not Security)
906	20 Service to design communications systems, Telephone only,
906	84 Service to design telecommunication systems
915	05 Answering and Paging Services (Automated Information Systems Only)
915	28 Electronic Information Services
915	68 Optical Disk Services
915	77 Telecommunication Management and Support Services
915	78 Telephone Services, Local and Long Distance (Non-regulated)
915	95 Voice Mail Services
920	All Items
924	75 Training Services for Communications Personnel
924	76 Training Services for Data Processing Personnel
939	21 Computer Equipment Maintenance
939	61 Optical Disk Equipment Maintenance
939	68 Radio Equipment Maintenance (Including Fax's but not Towers or Test Equipment)
939	72 Telecommunication and Telephone Equipment Maintenance
962	46 Automated Information Systems Installation Services
962	56 Moving and Hauling Automated Information Systems
962	69 Records Management Services (using Automated Information Systems)
964	26 Computer Programming Personnel Services
964	30 Data Entry Personnel Services