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

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

For expiration of this section, see Section 2151.0041.

Sec. 2156.0011. TRANSFER OF DUTIES; REFERENCE. (a) The powers and duties of the commission under this chapter are transferred to the comptroller.

(b) In this chapter, a reference to the commission means the comptroller.

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.18, eff. September 1, 2007.

Sec. 2156.0012. AUTHORITY TO ADOPT RULES. The comptroller may adopt rules to efficiently and effectively administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

Added by Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.18, eff. September 1, 2007.

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

(b) The notice must:

(1) include a general description of the items to be
(2) state the location at which bid forms and specifications may be obtained; and
(3) state the time and place for opening bids.

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

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

(b) An invitation to bid on an item to be purchased may be sent electronically to a vendor on the bidders list who has expressed a desire to bid on that type of item.

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


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

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

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

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

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

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

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

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. 1705), Sec. 3.04, eff. September 1, 2009.

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

(b) The commission may waive this requirement if the failure to comply is beyond the bidder's control.

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

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

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

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

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

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

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

1. the quality and availability of the goods or contractual services and their adaptability to the use required;
2. the scope of conditions attached to the bid;
3. the bidder's ability, capacity, and skill to perform the contract or provide the service required;
4. the bidder's ability to perform the contract or provide the service promptly, or in the time required, without delay or interference;
5. the bidder's character, responsibility, integrity, and experience or demonstrated capability;
6. the quality of performance of previous contracts or services;
7. the bidder's previous and existing compliance with laws relating to the contract or service;
8. the bidder's previous or existing noncompliance with specification requirements relating to the time of submission of specified information, including samples, models, drawings, or certificates;
9. the sufficiency of the bidder's financial resources and ability to perform the contract or provide the
service; and

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

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

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

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

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

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

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

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

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

Sec. 2156.011. PERFORMANCE BOND. (a) The commission may
require a performance bond before executing a contract.

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

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

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

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

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

SUBCHAPTER B. OPEN MARKET PURCHASE PROCEDURE

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

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

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

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

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


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

(1) direct mail;

(2) telephone;

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

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

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

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

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

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

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

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


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

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

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

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


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

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

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

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Sec. 2156.123. OPENING AND FILING OF PROPOSALS; PUBLIC INSPECTION. (a) The commission or other state agency shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

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


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

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

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

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


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

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

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

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


Sec. 2156.126. ADOPTION OF RULES; STATE AGENCY ASSISTANCE. The commission may adopt rules and request assistance from other state agencies to perform its responsibilities under this subchapter.


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


SUBCHAPTER D. INTERSTATE COMPACTS PROCEDURE

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

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

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