Sec. 2157.001. DEFINITIONS. In this chapter:

(1) "Automated information system" includes:

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

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

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

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

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


Amended by:
For expiration of this section, see Section 2151.0041.

Sec. 2157.0011. 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. 1.19, eff. September 1, 2007.

Sec. 2157.0012. 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. 1.19, eff. September 1, 2007.

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

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

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

1. the purchase price;
2. the compatibility to facilitate the exchange of existing data;
3. the capacity for expanding and upgrading to more advanced levels of technology;
4. quantitative reliability factors;
(5) the level of training required to bring persons using the system to a stated level of proficiency;
(6) the technical support requirements for the maintenance of data across a network platform and the management of the network's hardware and software;
(7) the compliance with applicable department statewide standards validated by criteria adopted by the department by rule; and
(8) applicable factors listed in Sections 2155.074 and 2155.075.


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

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

Sec. 2157.006. PURCHASING METHODS. (a) The commission or other state agency shall purchase an automated information system using:

(1) the purchasing method described by Section 2157.068 for commodity items; or

(2) a purchasing method designated by the commission to obtain the best value for the state, including a request for offers method.

(b) A local government may purchase an automated information system using a method listed under Subsection (a). A local government that purchases an item using a method listed under Subsection (a) satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.
Sec. 2157.007. CONSIDERATION OF ADVANCED INTERNET-BASED COMPUTING SERVICE PURCHASE. (a) "Advanced Internet-based computing service" means a service that provides network access to a shared pool of configurable computing resources on demand, including networks, servers, storage, applications, or related technology services, that may be rapidly provisioned and released by the service provider with minimal effort and interaction. The term does not include telecommunications service or the act of hosting computing resources dedicated to a single purchaser.

(b) A state agency may consider advanced Internet-based computing service options, including any cost associated with purchasing those service options, when making purchases for a major information resources project under Section 2054.118.

(c) A state agency shall ensure that information resources projects that use advanced Internet-based computing service options meet or exceed required state standards for cybersecurity.

(d) Using existing resources, the department may review the process for the coordinated development, hosting, and management of computer software for state agencies that use advanced Internet-based computing services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1002 (H.B. 2422), Sec. 1, eff. June 14, 2013.

SUBCHAPTER B. COMMODITY ITEMS

Sec. 2157.068. PURCHASE OF INFORMATION TECHNOLOGY COMMODITY ITEMS. (a) In this section, "commodity items" means commercial software, hardware, or technology services, other than telecommunications services, that are generally available to businesses or the public and for which the department determines that a reasonable demand exists in two or more state agencies. The term includes seat management, through which a state agency
transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop in the state agency, including all necessary hardware, software, and support services.

(b) The department shall negotiate with vendors to obtain the best value for the state in the purchase of commodity items. When negotiating with a vendor, the department shall use information related to the state's historical spending levels on particular commodity items to secure the best value for the state. The department may consider strategic sourcing and other methodologies to select the vendor offering the best value on commodity items. The terms and conditions of a license agreement between a vendor and the department under this section may not be less favorable to the state than the terms of similar license agreements between the vendor and retail distributors. The department shall, to the greatest extent practicable, negotiate a specific price for commonly purchased commodity items. If the department selects a vendor based on the vendor's offer of a percentage discount from the list price of commodity items, the department shall document in writing how that arrangement obtains the best value for the state.

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

(d) The department may charge a reasonable administrative fee to a state agency, political subdivision of this state, or governmental entity of another state that purchases commodity items through the department in an amount that is sufficient to recover costs associated with the administration of this section. Revenue derived from the collection of fees imposed under this subsection may be appropriated to the department for:

(1) developing statewide information resources technology policies and planning under Chapters 2054 and 2059; and

(2) providing shared information resources technology services under Chapter 2054.
(e) The department shall compile and maintain a list of commodity items available for purchase through the department that have a lower price than the prices for commodity items otherwise available to state agencies under this chapter. The department shall make the list available on the world wide web or on a suitable successor to the world wide web if the technological developments involving the Internet make it advisable to do so.

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

1. the agency obtains:
   (A) an exemption from the department; or
   (B) express prior approval from the Legislative Budget Board for the expenditure necessary for the purchase; or
2. the department certifies in writing that the commodity item is not available for purchase under an existing contract developed by the department.

(f-1) Subject to Subsection (f-2), a state agency may purchase a commodity item through a contract developed by a local government purchasing cooperative under Chapter 791 if the department certifies in writing that the commodity item is not available for purchase under an existing contract developed by the department.

(f-2) A contract used by a state agency that purchases a commodity item through a contract described by Subsection (f-1) is subject to all provisions required by applicable law to be included in a state agency contract without regard to whether:

1. the provision appears on the face of the contract; or
2. the contract includes any provision to the contrary.

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

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

(i) Unless the agency has express statutory authority to employ a best value purchasing method other than a purchasing method designated by the commission under Section 2157.006(a)(2), a state agency shall use a purchasing method provided by Section 2157.006(a) when purchasing a commodity item if:

(1) the agency has obtained an exemption from the department or approval from the Legislative Budget Board under Subsection (f); or

(2) the agency is otherwise exempt from this section.


Amended by:

Acts 2005, 79th Leg., Ch. 1068 (H.B. 1516), Sec. 1.08, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1081 (H.B. 2918), Sec. 11, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 23.06, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 48 (H.B. 2472), Sec. 17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 151 (H.B. 1994), Sec. 1, eff. September 1, 2013.

Sec. 2157.069. CLEARING FUND ACCOUNT. The comptroller shall establish in the state treasury the clearing fund account. The account is a revolving fund account for the administration of Section 2157.068. The account is the depository
for all money received from entities served under that section. Money in the account may be used only to administer that section or for any other purpose specified by the legislature. Added by Acts 2013, 83rd Leg., R.S., Ch. 48 (H.B. 2472), Sec. 18, eff. September 1, 2013.

SUBCHAPTER C. REQUESTS FOR PROPOSALS PURCHASE METHOD

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

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

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


Amended by:

Acts 2005, 79th Leg., Ch. 1068 (H.B. 1516), Sec. 2.06, eff. September 1, 2005.

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

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

(2) give public notice of the request in the manner
provided for requests for bids under Subchapter B, Chapter 2156.
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997.

Sec. 2157.123. OPENING AND FILING PROPOSALS; PUBLIC
INSPECTION. (a) The commission or other state agency shall avoid
disclosing the contents of each proposal on opening the proposal
and during negotiations with competing offerors.
(b) The commission or other state agency shall file each
proposal in a register of proposals, which, after a contract is
awarded, is open for public inspection unless the register contains
information that is excepted from required disclosure under
Subchapter C, Chapter 552.
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997.

Sec. 2157.124. DISCUSSION AND REVISION OF PROPOSAL. (a) As
provided by a request for proposals and under commission rules, the
commission or other state agency may discuss an acceptable or
potentially acceptable proposal with an offeror to assess the
offeror's ability to meet the solicitation requirements. When the
commission is managing the request for proposals process, it shall
invite a requisitioning agency to participate in discussions
conducted under this section.
(b) After receiving a proposal but before making an award,
the commission or other state agency may permit an offeror to revise
a proposal to obtain the best final offer.
(c) The commission or other state agency may not disclose
information derived from a proposal submitted by a competing
offeror in conducting discussions under this section.
(d) The commission or other state agency shall provide each
offeror an equal opportunity to discuss and revise proposals.
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1206, Sec. 21, eff. Sept. 1, 1997.
Sec. 2157.125. CONTRACT AWARD; FACTORS CONSIDERED. (a) The commission or other state agency shall make a written award of a purchase or lease to the offeror whose proposal under this subchapter offers the best value for the state, considering price, past vendor performance, vendor experience or demonstrated capability, and the evaluation factors in the request for proposals.

(b) The commission or other state agency shall refuse all offers if no offer submitted is acceptable.

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

1. the installation cost;
2. the overall life of the system or equipment;
3. the cost of acquisition, operation, and maintenance of hardware included with, associated with, or required for the system or equipment during the state's ownership or lease;
4. the cost of acquisition, operation, and maintenance of software included with, associated with, or required for the system or equipment during the state's ownership or lease;
5. the estimated cost of other supplies needed because of the acquisition;
6. the estimated cost of employee training needed because of the acquisition;
7. the estimated cost of necessary additional permanent employees because of the acquisition; and
8. the estimated increase in employee productivity because of the acquisition.

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


Sec. 2157.126. RULES. The commission shall adopt rules
necessary or convenient to perform its responsibilities regarding requests for proposals under this subchapter and shall request assistance from other state agencies as needed.  
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. PREAPPROVED CONTRACT TERMS AND CONDITIONS

Sec. 2157.181. PREAPPROVED CONTRACT TERMS AND CONDITIONS.  
(a) The commission, with the concurrence of the department, may negotiate with vendors preapproved terms and conditions to be included in contracts relating to the purchase or lease of a telecommunication device, system, or service or an automated information system awarded to a vendor by a state agency.
(b) The commission and the department must agree to the wording of preapproved terms and conditions negotiated with a vendor.  
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.  
Amended by:  
Acts 2005, 79th Leg., Ch. 1068 (H.B. 1516), Sec. 2.07, eff. September 1, 2005.

Sec. 2157.182. VALIDITY OF PREAPPROVED TERMS AND CONDITIONS; RENEGOTIATION.  
(a) Preapproved terms and conditions to which a vendor, the commission, and the department agree are valid for two years after the date of the agreement and must provide that the terms and conditions are to be renegotiated before the end of the two years.  
(b) The commission and the department jointly shall establish procedures to ensure that terms and conditions are renegotiated before they expire in a contract between the vendor and a state agency.  
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.  
Amended by:  
Acts 2005, 79th Leg., Ch. 1068 (H.B. 1516), Sec. 2.08, eff. September 1, 2005.

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

(b) A preapproved term or condition that is changed remains valid for an existing contract of which it is part but must be renegotiated before it may be part of another or a renewed contract. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2157.184. NOTIFICATION OF STATE AGENCIES AND VENDORS. The commission and the department jointly shall establish procedures to notify state agencies and potential vendors of the provisions of this subchapter regarding preapproved terms and conditions. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 1068 (H.B. 1516), Sec. 2.09, eff. September 1, 2005.