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S.B. No. 664

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Department of
Information Resources.

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

SECTION 1. Section 572.054, Government Code, is amended by
adding Subsection (g-1) to read as follows:

(g-1) For purposes of this section, the Department of
Information Resources is a regulatory agency.

SECTION 2. Section 2054.005, Government Code, is amended to
read as follows:

Sec. 2054.005. SUNSET PROVISION. The Department of
Information Resources is subject to Chapter 325 (Texas Sunset Act).
Unless continued in existence as provided by that chapter, the
department is abolished and this chapter expires September 1, 2017
~~[2011]~~.

SECTION 3. Sections 2054.021(a), (c), (g), and (h),
Government Code, are amended to read as follows:

(a) The department is governed by a board composed of seven
voting members appointed by the governor with the advice and
consent of the senate. One member must be employed by an
institution of higher education as defined by Section 61.003,
Education Code. Each member must have expertise in at least one of
the following areas:

(1) business or financial management;

1 (2) information technology;
2 (3) telecommunications; or
3 (4) any other area necessary for policymaking and
4 oversight of the department.

5 (c) Three ~~[Two]~~ groups each composed of three ex officio
6 members serve on the board on a rotating basis. The ex officio
7 members serve as nonvoting members of the board. ~~[Only one group~~
8 ~~serves at a time.]~~ The first group is composed of the commissioner
9 of insurance, the executive commissioner of the Health and Human
10 Services Commission, and the executive director of a small state
11 agency ~~[the Texas Department of Transportation]~~. ~~[Members of the~~
12 ~~first group serve for two-year terms that begin February 1 of every~~
13 ~~other odd-numbered year and that expire on February 1 of the next~~
14 ~~odd-numbered year.]~~ The second group is composed of the executive
15 director of the Texas Department of Transportation, the
16 commissioner of education, and the executive director of a small
17 state agency. The third group is composed of the executive director
18 of the Texas Department of Criminal Justice, ~~[and]~~ the executive
19 director of the Parks and Wildlife Department, and the executive
20 director of a small state agency. Members of a ~~[the second]~~ group
21 serve on the board for two-year terms that begin February 1 of ~~[the]~~
22 ~~odd-numbered years [in which the terms of members of the first group~~
23 ~~expire]~~ and ~~[that]~~ expire on February 1 of the next odd-numbered
24 year. Only one group serves at a time. The governor shall appoint
25 the small state agency representative for each group. In this
26 subsection, "small state agency" means a state agency with fewer
27 than 100 employees.

(g) The training program must provide information to the person regarding:

(1) this chapter and the board [~~the enabling legislation that created the department and its policymaking body~~] to which the person is appointed to serve;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of the:

(A) open meetings law, Chapter 551;

(B) open records law, Chapter 552; and

(C) administrative procedure law, Chapter 2001;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; ~~and~~

(9) any applicable ethics policies adopted by the department or the Texas Ethics Commission; and

(10) contract management training.

(h) A person appointed to the board under Subsection (a) is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of the board.

SECTION 4. Section 2054.022(c), Government Code, is amended to read as follows:

(c) An employee of the department, other than the executive director, ~~+~~

~~[(1) may not participate in the department's bidding process, including the proposal development related to a contract and the negotiation of a contract, if:~~

~~[(A) the employee receives more than five percent of the employee's income from any likely bidder on the contract; or~~

~~[(B) the employee's spouse is employed by any likely bidder on the contract; and~~

~~[(2)]~~ may not:

(1) ~~[(A)]~~ be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry; or

(2) ~~[(B)]~~ be employed by a state agency as a consultant on information resources technologies.

SECTION 5. Section 2054.0285(b), Government Code, is amended to read as follows:

(b) The executive director has authority for certain ~~[all]~~ aspects of information technology for state agencies, including:

(1) the use of technology to support state goals;

(2) functional support to state agencies;

(3) ~~[technology purchases,~~

~~[(4)]~~ deployment of new technology;

(4) ~~[(5)]~~ delivery of technology services; and

1 (5) [~~(6)~~] provision of leadership on technology
2 issues.

3 SECTION 6. Subchapter B, Chapter 2054, Government Code, is
4 amended by adding Section 2054.0331 to read as follows:

5 Sec. 2054.0331. CUSTOMER ADVISORY COMMITTEE. (a) The
6 board shall appoint a customer advisory committee under Section
7 2054.033.

8 (b) The advisory committee is composed of customers who
9 receive services from each of the department's key programs,
10 including at least one member representing a state agency with
11 fewer than 100 employees.

12 (c) The advisory committee shall report to and advise the
13 board on the status of the department's delivery of critical
14 statewide services.

15 SECTION 7. Subchapter B, Chapter 2054, Government Code, is
16 amended by adding Sections 2054.0345 and 2054.0346 to read as
17 follows:

18 Sec. 2054.0345. DETERMINATION OF ADMINISTRATIVE FEES. (a)
19 The department shall adopt a process to determine the amount of the
20 administrative fee the department charges to administer any of its
21 programs, including fees charged for programs under Sections
22 2054.380 and 2170.057.

23 (b) The process must require that the amount of a fee
24 directly relate to the amount necessary for the department to
25 recover the cost of its operations, as determined by the
26 department's annual budget process.

27 (c) The department shall develop clear procedures directing

1 staff for each department program and the department's financial
2 staff to work together to determine the amount of administrative
3 fees. The procedures must require review and approval of all
4 administrative fees by the board, the executive director, and the
5 department's chief financial officer.

6 Sec. 2054.0346. REPORTING OF ADMINISTRATIVE FEES. (a) The
7 department shall report to the Legislative Budget Board all
8 administrative fees that the department sets under Section
9 2054.0345 each fiscal year. The report must include:

10 (1) the underlying analysis and methodology used to
11 determine the fee amounts; and

12 (2) the cost allocation charged to customers.

13 (b) The department shall post on the department's website
14 information about each administrative fee the department charges,
15 including a description of how the fee is determined. The
16 department must update this information when a contract amendment
17 or other action results in a major change to the costs incurred or
18 the price paid by the department or a customer of the department.

19 SECTION 8. Subchapter B, Chapter 2054, Government Code, is
20 amended by adding Section 2054.037 to read as follows:

21 Sec. 2054.037. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE
22 RESOLUTION. (a) The board shall develop and implement a policy to
23 encourage the use of:

24 (1) negotiated rulemaking procedures under Chapter
25 2008 for the adoption of department rules; and

26 (2) appropriate alternative dispute resolution
27 procedures under Chapter 2009 to assist in the resolution of

1 internal and external disputes under the department's
2 jurisdiction.

3 (b) The department's procedures relating to alternative
4 dispute resolution must conform, to the extent possible, to any
5 model guidelines issued by the State Office of Administrative
6 Hearings for the use of alternative dispute resolution by state
7 agencies.

8 (c) The department shall:

9 (1) coordinate the implementation of the policy
10 adopted under Subsection (a);

11 (2) provide training as needed to implement the
12 procedures for negotiated rulemaking or alternative dispute
13 resolution; and

14 (3) collect data concerning the effectiveness of those
15 procedures.

16 SECTION 9. Subchapter B, Chapter 2054, Government Code, is
17 amended by adding Sections 2054.038, 2054.039, and 2054.040 to read
18 as follows:

19 Sec. 2054.038. INTERNAL AUDITOR; POWERS AND DUTIES. (a)
20 The board shall:

21 (1) appoint an internal auditor who reports directly
22 to the board and serves at the will of the board; and

23 (2) provide staff and other resources to the internal
24 auditor as appropriate.

25 (b) The internal auditor shall prepare an annual audit plan
26 using risk assessment techniques to rank high-risk functions in the
27 department. The internal auditor shall submit the annual audit

plan to the board for consideration and approval. The board may change the plan as necessary or advisable.

(c) The internal auditor may bring before the board an issue outside of the annual audit plan that requires the immediate attention of the board.

(d) The internal auditor may not be assigned any operational or management responsibilities that impair the ability of the internal auditor to make an independent examination of the department's operations. The internal auditor may provide guidance or other advice before an operational or management decision is made but may not make the decision, approve the decision, or otherwise violate this subsection.

(e) The department shall give the internal auditor unrestricted access to the activities and records of the department unless restricted by other law.

Sec. 2054.039. OPEN MEETINGS EXCEPTION FOR INTERNAL AUDITOR. A meeting between the board and the department's internal auditor to discuss issues related to fraud, waste, or abuse is not required to be an open meeting under Chapter 551.

Sec. 2054.040. AUDIT SUBCOMMITTEE. (a) The board shall maintain an audit subcommittee of the board. The subcommittee shall oversee the department's internal auditor and any other audit issues that the board considers appropriate.

(b) The subcommittee shall evaluate whether the internal auditor has sufficient resources to perform the auditor's duties and ensure that sufficient resources are available.

SECTION 10. Subchapter B, Chapter 2054, Government Code, is

1 amended by adding Section 2054.041 to read as follows:

2 Sec. 2054.041. ADDITIONAL BOARD OVERSIGHT. (a) The board
3 shall adopt a policy describing the board's role in setting a
4 strategic direction for the department. The policy must address
5 the board's role in developing new initiatives for and service
6 offerings by the department, including requiring the board to
7 evaluate and approve new initiatives for, or categories of,
8 services offered by the department under the department's various
9 programs.

10 (b) The board shall regularly evaluate the extent to which
11 the department fulfills the department's information resources
12 technology mission by providing cost-effective services and
13 meeting customer needs.

14 (c) The board shall regularly evaluate department
15 operations, including an evaluation of analytical data and
16 information regarding trends in department revenue and expenses, as
17 well as performance information.

18 SECTION 11. Subchapter C, Chapter 2054, Government Code, is
19 amended by adding Section 2054.0525 to read as follows:

20 Sec. 2054.0525. ASSISTANCE TO STATE AGENCIES. The
21 department on request shall advise and provide technical assistance
22 to a state agency to determine the agency's information resources
23 technology needs and to solve the agency's information resources
24 technology problems.

25 SECTION 12. Section 2054.0565(a), Government Code, is
26 amended to read as follows:

27 (a) The comptroller [~~department~~] may include terms in a

1 procurement contract entered into by the comptroller ~~[department]~~,
2 including a contract entered into under Section 2157.068, that
3 allow the contract to be used by another state agency, a political
4 subdivision of this state, a governmental entity of another state,
5 or an assistance organization as defined by Section 2175.001.

6 SECTION 13. Section 2054.057, Government Code, is amended
7 to read as follows:

8 Sec. 2054.057. TRAINING IN CONTRACT NEGOTIATION. (a) The
9 ~~[department, with the cooperation of the]~~ comptroller and other
10 appropriate state agencies~~[,]~~ shall develop and implement a program
11 to train state agency personnel in effectively negotiating
12 contracts for the purchase of information resources technologies.

13 (b) The comptroller ~~[department]~~ shall make the training
14 available to state agency personnel who are directly or indirectly
15 involved in contract negotiations, such as senior or operational
16 management, purchasers, users of the purchased technologies, and
17 personnel with relevant technical, legal, or financial knowledge.

18 (c) The comptroller ~~[department]~~ shall include in the
19 training:

20 (1) information on developing a structured purchasing
21 method that meets an agency's needs;

22 (2) information drawn from the state's previous
23 procurement experience about what is or is not advantageous for the
24 state;

25 (3) the perspective of state agencies with oversight
26 responsibilities related to the state's procurement of information
27 resources technologies; and

1 (4) other information that the comptroller
2 [~~department~~] considers to be useful.

3 (d) The comptroller [~~department~~] may use its own staff or
4 contract with private entities or other state agencies to conduct
5 the training.

6 SECTION 14. Subchapter C, Chapter 2054, Government Code, is
7 amended by adding Section 2054.061 to read as follows:

8 Sec. 2054.061. USE OF CONSULTANTS AND OUTSIDE STAFF. (a)
9 The department shall develop clear criteria for the appropriate use
10 of consultants and outside staff by the department to temporarily
11 augment the department's existing staff.

12 (b) The department shall annually analyze:

13 (1) the department's staffing needs;

14 (2) the need for and cost-effectiveness of contracting
15 for consultants and outside staff;

16 (3) whether the department could use department staff
17 to accomplish tasks proposed for the consultants and outside staff;
18 and

19 (4) whether and what type of training or additional
20 resources are necessary for the department to use the department's
21 own staff to accomplish tasks proposed for the consultants or
22 outside staff.

23 (c) In conjunction with the budget process, the department
24 shall provide the analysis to the board for approval. The
25 department may not hire or train any consultants or outside staff
26 unless it has been approved during this budget process.

27 SECTION 15. Subchapter C, Chapter 2054, Government Code, is

amended by adding Section 2054.062 to read as follows:

Sec. 2054.062. INFORMATION RESOURCES TECHNOLOGIES CONSOLIDATION. (a) The department shall develop a consistent and clear method of measuring the costs and progress of an information resources technology consolidation initiative, including a consolidation under Subchapter L.

(b) The department shall work with any entity involved in an information resources technology consolidation to develop an agreed on methodology for collecting and validating data to determine a baseline assessment of costs. The department shall use the data both in the department's initial cost projections and in any later cost comparison. The department shall coordinate with the internal auditor for guidance, subject to Section 2054.038(d), on developing a methodology that provides an objective assessment of costs and project status.

(c) Using the methodology agreed on under Subsection (b), the department shall evaluate actual costs and cost savings related to the consolidation. The department shall also evaluate the progress of the department's information resources consolidation projects compared to the initially projected timelines for implementation. The evaluation results must break out the information on both statewide and individual entity levels.

(d) The department shall annually report the evaluation results to:

(1) the board;

(2) the Legislative Budget Board; and

(3) customers involved in the consolidation.

1 (e) The department shall post on the department's website
2 the report required by this section.

3 SECTION 16. Sections 2054.1015(b), (c), (d), and (e),
4 Government Code, are amended to read as follows:

5 (b) The comptroller [~~department~~] may require a state agency
6 to provide [~~to the department~~] a planned procurement schedule for
7 commodity items if the comptroller [~~department~~] determines that the
8 information in the schedule can be used to provide a benefit to the
9 state. If required by the comptroller [~~department~~], a state agency
10 must provide a planned procurement schedule for commodity items to
11 the comptroller and the department before the agency's operating
12 plan may be approved under Section 2054.102.

13 (c) The comptroller [~~department~~] shall use information
14 contained in the schedules to plan future vendor solicitations of
15 commodity items or for any other activity that provides a benefit to
16 the state.

17 (d) A state agency shall notify the comptroller
18 [~~department~~], the Legislative Budget Board, and the state auditor's
19 office if the agency makes a substantive change to a planned
20 procurement schedule for commodity items.

21 (e) The comptroller [~~department~~] shall specify hardware
22 configurations for state commodity items in its instructions for
23 the preparation of planned procurement schedules.

24 SECTION 17. Section 2054.122, Government Code, is amended
25 to read as follows:

26 Sec. 2054.122. COORDINATED TECHNOLOGY TRAINING. A state
27 agency each calendar quarter shall coordinate agency training for

the use of information resources technologies with training offered or coordinated by the department or comptroller. The agency shall use training offered or coordinated by the department or comptroller if it meets agency requirements and is cost-competitive.

SECTION 18. Section 2054.124, Government Code, is amended to read as follows:

Sec. 2054.124. POWER MANAGEMENT SOFTWARE. (a) After researching the software available, the comptroller [~~department~~] shall by competitive bid select power management software to be used, if technically feasible, by state agencies to reduce the amount of energy required to operate state computer networks and networked personal computers.

(b) [~~(c)~~] An institution of higher education shall purchase, lease, or otherwise acquire and use power management software only if the comptroller [~~department~~], in consultation with the Information Technology Council for Higher Education, determines that the institution of higher education's use of power management software would provide cost savings to this state. In making a determination under this subsection, the comptroller [~~department~~] must perform the analysis described by Section 2054.121(c) in the same manner as the department under that subsection. The analysis must include an assessment of how the use of power management software affects the security of electronic data, including data protected from public disclosure by state or federal law.

SECTION 19. Subchapter L, Chapter 2054, Government Code, is

amended by adding Section 2054.392 to read as follows:

Sec. 2054.392. STATEWIDE TECHNOLOGY ACCOUNT. The comptroller shall establish in the state treasury the statewide technology account. The account is a revolving fund account for the administration of this subchapter. The account is the depository for all money received from entities served under this subchapter. Money in the account may be used only for the operation and management of a statewide technology center or for any other purpose specified by the legislature.

SECTION 20. Chapter 2054, Government Code, is amended by adding Subchapters N and O to read as follows:

SUBCHAPTER N. MAJOR OUTSOURCED CONTRACTS

Sec. 2054.501. MAJOR OUTSOURCED CONTRACT DEFINED; RULE. The board by rule shall define what constitutes a major outsourced contract with regard to contracts the department executes with entities other than this state or a political subdivision of this state. The definition must include as a major outsourced contract:

(1) outsourced contracts entered into under Subchapter I, Subchapter L, or Chapter 2170; and

(2) contracts that exceed a monetary threshold, other than those described by Subdivision (1).

Sec. 2054.502. BOARD APPROVAL AND OVERSIGHT OF MAJOR OUTSOURCED CONTRACTS. (a) The department must receive approval from the board before:

(1) entering into a major outsourced contract; or

(2) amending any major outsourced contract, if the amendment has significant statewide impact.

1 (b) The board shall establish one or more subcommittees to
2 monitor the department's major outsourced contracts.

3 Sec. 2054.503. MANAGEMENT PLANS FOR MAJOR OUTSOURCED
4 CONTRACTS. (a) The department shall specify procedures for
5 administering, monitoring, and overseeing each major outsourced
6 contract by creating a management plan for each contract. In each
7 management plan, the department shall specify the department's
8 approach to managing and mitigating the risks inherent in each
9 contract.

10 (b) Department staff who perform contract administration
11 and program duties shall jointly develop the management plans with
12 input from executive management and the board. Each management plan
13 must be approved by the executive director.

14 (c) Each management plan must establish clear lines of
15 accountability and coordination of contract activities. The plan
16 must provide details about implementing the program that is the
17 subject of the contract as well as procedures for monitoring
18 contractor performance, identifying and mitigating risks related
19 to the contract, and involving and communicating with customers who
20 will be served by any programs implemented through the contract. As
21 appropriate, the plan must define an approach for transitioning
22 from one major outsourced contract to another major outsourced
23 contract.

24 (d) The department shall revise each management plan:

25 (1) as necessary to keep current during the
26 contracting process; and

27 (2) when the department renews, amends, or resolicits

1 a major outsourced contract to ensure the plan remains updated and
2 incorporates any changes resulting from a new contract.

3 Sec. 2054.504. CUSTOMER INVOLVEMENT IN MAJOR OUTSOURCED
4 CONTRACTS. The department shall establish formal procedures to
5 ensure customer involvement in decision making regarding each of
6 the department's major outsourced contracts, including initial
7 analysis, solicitation development, and contract award and
8 implementation, that affect those customers.

9 SUBCHAPTER O. ADDITIONAL PROVISIONS ON CONTRACTING

10 Sec. 2054.531. DEFINITION. In this subchapter, "contract
11 management guide" means the guide developed under this subchapter.

12 Sec. 2054.532. RULES. In addition to the rules adopted
13 under Subchapter N for major outsourced contracts, the board by
14 rule shall establish approval requirements for all other contracts,
15 including a monetary threshold above which board approval is
16 required before the contract may be executed.

17 Sec. 2054.533. CONFLICT OF INTEREST IN CONTRACTING. (a) A
18 department employee may not:

19 (1) have an interest in, or in any manner be connected
20 with, a contract or bid for a purchase of goods or services by the
21 department; or

22 (2) in any manner, including by rebate or gift,
23 directly or indirectly accept or receive from a person to whom a
24 contract may be awarded anything of value or a promise, obligation,
25 or contract for future reward or compensation.

26 (b) A department employee who violates Subsection (a)(2) is
27 subject to dismissal.

1 (c) The board shall adopt rules to implement this section.

2 (d) The department shall train staff in the requirements of
3 this section and Section 572.054 and incorporate the requirements
4 into the contract management guide and the department's internal
5 policies, including employee manuals.

6 Sec. 2054.534. CONTRACT MANAGEMENT TRAINING POLICY. (a)
7 The department shall develop a policy for training department staff
8 in contract management.

9 (b) The policy must establish contract management training
10 requirements for all staff involved in contract management,
11 including contract managers, program staff, and executive
12 management.

13 (c) The policy must specify the department's overall
14 approach to procuring and managing contracts, as well as
15 contract-specific procedures developed in the contract management
16 guide and under Subchapter N.

17 Sec. 2054.535. CONTRACT MANAGEMENT GUIDE; RULES. (a) The
18 department shall develop and periodically update a contract
19 management guide to provide an overall, consistent approach on
20 procurement and management of major outsourced contracts under
21 Subchapter N and other contracts. In updating the guide, the
22 department shall make changes based on contract experiences and
23 account for changing conditions to guide the updates.

24 (b) The department shall coordinate with the department's
25 internal auditor, subject to Section 2054.038(d), as needed for
26 assistance and guidance in developing procedures in the contract
27 management guide for monitoring contracts and individual

1 contractors.

2 (c) The board may adopt rules necessary to develop or update
3 the contract management guide.

4 (d) The contract management guide must provide information
5 regarding the department's:

6 (1) general approach to business case analysis,
7 procurement planning, contract solicitation, contract execution,
8 and contract monitoring and oversight;

9 (2) ethics standards and policies, including those
10 required by Section 2054.533; and

11 (3) approach to changing a program's internal
12 structure or model for delivering services to customers.

13 (e) The contract management guide must:

14 (1) establish clear lines of accountability, staff
15 roles and responsibilities, and decision-making authority for
16 program staff, contract management staff, executive management,
17 customers, and the board;

18 (2) include the procedures established under Section
19 2054.504 regarding customer involvement; and

20 (3) establish the department's process for evaluating
21 and managing risk during each stage of contract procurement,
22 implementation, and management.

23 (f) The contract management guide must describe the
24 expectations and standards for obtaining and using customer input
25 during all contract management phases.

26 SECTION 21. Sections 2155.502(a), (b), and (c), Government
27 Code, are amended to read as follows:

1 (a) The comptroller [~~commission~~] shall develop a schedule
2 of multiple award contracts that have been previously awarded using
3 a competitive process by:

4 (1) the federal government, including the federal
5 General Services Administration; or

6 (2) any other governmental entity in any state.

7 (b) In developing a schedule under Subsection (a) [~~or (e)~~],
8 the comptroller [~~commission or department, as appropriate,~~] shall
9 modify any contractual terms, with the agreement of the parties to
10 the contract, as necessary to comply with any federal or state
11 requirements, including rules adopted under this subchapter.

12 (c) The comptroller [~~commission~~] may not list a multiple
13 award contract on a schedule developed under Subsection (a) if the
14 goods or services provided by that contract:

15 (1) are available from only one vendor; or

16 (2) are telecommunications services, facilities, or
17 equipment [~~, or~~

18 [~~(3) are commodity items as defined by Section~~
19 ~~2157.068(a)~~].

20 SECTION 22. Section 2155.503, Government Code, is amended
21 to read as follows:

22 Sec. 2155.503. RULES. (a) The comptroller [~~and the~~
23 ~~department~~] shall adopt rules to implement this subchapter. The
24 rules must:

25 (1) establish standard terms for contracts listed on a
26 schedule; and

27 (2) maintain consistency with existing purchasing

1 standards.

2 (b) The comptroller [~~and the department~~] shall consult with
3 the attorney general in developing rules under this section.

4 SECTION 23. Section 2157.004, Government Code, is amended
5 to read as follows:

6 Sec. 2157.004. TRANSFERS AND LOANS. A state agency that
7 acquires a telecommunications device, system, or service or an
8 automated information system by interagency transfer, contract, or
9 loan, or by public loan, shall comply with the requirements that
10 apply to that acquisition under [~~of~~] Chapter 2054 and this chapter.

11 SECTION 24. Section 2157.068, Government Code, is amended
12 to read as follows:

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

24 (b) The comptroller [~~department~~] shall negotiate with
25 vendors to attempt to obtain a favorable price for all of state
26 government on licenses for commodity items, based on the aggregate
27 volume of purchases expected to be made by the state. The terms and

1 conditions of a license agreement between a vendor and the
2 comptroller ~~[department]~~ under this section may not be less
3 favorable to the state than the terms of similar license agreements
4 between the vendor and retail distributors.

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

11 (d) The comptroller ~~[department]~~ may charge a reasonable
12 administrative fee to a state agency, political subdivision of this
13 state, or governmental entity of another state that purchases
14 commodity items through the comptroller ~~[department]~~ in an amount
15 that is sufficient to recover costs associated with the
16 administration of this section. The comptroller shall develop a
17 clear procedure for calculating the fee under this subsection,
18 including procedures for review and approval of the fee.

19 (e) The comptroller ~~[department]~~ shall compile and maintain
20 a list of commodity items available for purchase through the
21 comptroller ~~[department]~~ that have a lower price than the prices
22 for commodity items otherwise available to state agencies under
23 this chapter. The comptroller ~~[department]~~ shall make the list
24 available on the comptroller's website ~~[world wide web or on a~~
25 ~~suitable successor to the world wide web if the technological~~
26 ~~developments involving the Internet make it advisable to do so]~~.

27 (f) The comptroller ~~[department]~~ may adopt rules regulating

1 a purchase by a state agency of a commodity item under this section,
2 including a requirement that, notwithstanding other provisions of
3 this chapter, the agency must make the purchase in accordance with a
4 contract developed by the comptroller [~~department~~] unless the
5 agency obtains:

- 6 (1) an exemption from the comptroller [~~department~~]; or
- 7 (2) express prior approval from the Legislative Budget
8 Board for the expenditure necessary for the purchase.

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

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

20 (i) Unless the agency has express statutory authority to
21 employ a best value purchasing method other than a purchasing
22 method designated by the comptroller [~~commission~~] under Section
23 2157.006(a)(2), a state agency shall use a purchasing method
24 provided by Section 2157.006(a) when purchasing a commodity item
25 if:

- 26 (1) the agency has obtained an exemption from the
27 comptroller [~~department~~] or approval from the Legislative Budget

1 Board under Subsection (f); or

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

3 SECTION 25. Subchapter B, Chapter 2157, Government Code, is
4 amended by adding Section 2157.0685 to read as follows:

5 Sec. 2157.0685. REPORTING OF ADMINISTRATIVE FEES FOR
6 COMMODITY ITEMS. (a) The comptroller shall report to the
7 Legislative Budget Board any administrative fee the comptroller
8 sets under Section 2157.068 for each fiscal year. The report must
9 include the underlying analysis and methodology used to determine
10 the fee amounts.

11 (b) The comptroller shall post on the comptroller's website
12 information about the fee, including a description of how the fee is
13 determined. The comptroller must update this information when a
14 contract amendment or other action results in a major change to the
15 costs incurred or the price paid by the comptroller or a customer of
16 the comptroller.

17 SECTION 26. Subchapter B, Chapter 2157, Government Code, is
18 amended by adding Section 2157.069 to read as follows:

19 Sec. 2157.069. CLEARING FUND ACCOUNT. The comptroller
20 shall establish in the state treasury the clearing fund account.
21 The account is a revolving fund account for the administration of
22 Section 2157.068. The account is the depository for all money
23 received from entities served under that section. Money in the
24 account may be used only to administer that section or for any other
25 purpose specified by the legislature.

26 SECTION 27. Section 2157.121, Government Code, is amended
27 to read as follows:

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

8 (b) A state agency, other than the department under
9 Subsection (c), shall send its proposal specifications and criteria
10 to the comptroller [~~commission~~] for approval or request the
11 comptroller [~~commission~~] to develop the proposal specifications
12 and criteria.

13 (c) The department may acquire a telecommunications device,
14 system, or service [~~or an automated information system~~] by using
15 competitive sealed proposals without regard to whether the
16 comptroller [~~commission~~] makes the determination required under
17 Subsection (a) for other state agencies. This subsection applies
18 only to an acquisition under Subchapter H, Chapter 2054, or under
19 Chapter 2170.

20 SECTION 28. Section 2157.181(a), Government Code, is
21 amended to read as follows:

22 (a) The comptroller [~~commission, with the concurrence of~~
23 ~~the department,~~] may negotiate with vendors preapproved terms and
24 conditions to be included in contracts relating to the purchase or
25 lease of [~~a telecommunication device, system, or service or~~] an
26 automated information system awarded to a vendor by a state agency.

27 SECTION 29. Section 2157.182, Government Code, is amended

1 to read as follows:

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

8 (b) The comptroller [~~commission and the department jointly~~]
9 shall establish procedures to ensure that terms and conditions are
10 renegotiated before they expire in a contract between the vendor
11 and a state agency.

12 SECTION 30. Section 2157.184, Government Code, is amended
13 to read as follows:

14 Sec. 2157.184. NOTIFICATION OF STATE AGENCIES AND VENDORS.
15 The comptroller [~~commission and the department jointly~~] shall
16 establish procedures to notify state agencies and potential vendors
17 of the provisions of this subchapter regarding preapproved terms
18 and conditions.

19 SECTION 31. Sections 2054.024(c), 2155.501(1),
20 2155.502(e), 2157.0611, and 2157.181(b), Government Code, are
21 repealed.

22 SECTION 32. (a) Not later than September 1, 2011, the
23 governor shall appoint the initial members of the governing board
24 of the Department of Information Resources under Section 2054.021,
25 Government Code, as amended by this Act. The governor shall
26 appoint:

27 (1) two members whose terms expire February 1, 2013;

1 (2) two members whose terms expire February 1, 2015;
2 and

3 (3) three members whose terms expire February 1, 2017.

4 (b) The terms of the current members of the board expire
5 September 1, 2011.

6 SECTION 33. (a) Not later than September 1, 2011, the first
7 group of ex officio members shall begin serving or be appointed
8 under Section 2054.021(c), Government Code, as amended by this Act.

9 (b) The governor shall appoint to the first group an ex
10 officio member from a state agency with 100 or fewer employees under
11 Section 2054.021(c), Government Code, as amended by this Act. When
12 that member is appointed, the term of the executive director of the
13 Texas Department of Transportation expires.

14 (c) The commissioner of insurance and the executive
15 commissioner of the Health and Human Services Commission shall
16 continue to serve in the first group under Section 2054.021(c),
17 Government Code, as amended by this Act, until February 1, 2013.

18 SECTION 34. (a) In this section, "department" means the
19 Department of Information Resources.

20 (b) On the effective date of this Act, the powers and duties
21 of the department under Section 2157.068, Government Code, or other
22 law relating to information and communications technology
23 cooperative contracts are transferred to the comptroller.

24 (c) A rule, form, policy, procedure, or decision of the
25 department that is related to a power or duty transferred under
26 Subsection (b) of this section continues in effect as a rule, form,
27 policy, procedure, or decision of the comptroller until superseded

1 by an act of the comptroller.

2 (d) A court case, administrative proceeding, contract
3 negotiation, or other proceeding involving the department that is
4 related to a power or duty transferred under Subsection (b) of this
5 section is transferred without change in status to the comptroller,
6 and the comptroller assumes, without a change in status, the
7 position of the department in a negotiation or proceeding relating
8 to a power or duty transferred under Subsection (b) of this section
9 to which the department is a party.

10 (e) All money, contracts, memoranda of understanding,
11 records, leases, and rights of the department related to a power or
12 duty transferred under Subsection (b) of this section are
13 transferred to the comptroller.

14 SECTION 35. Sections 2054.502 and 2054.533, Government
15 Code, as added by this Act, apply only to a contract for which a
16 solicitation of bids or proposals or similar expressions of
17 interest is published on or after September 1, 2011. A contract for
18 which a solicitation of bids or proposals or similar expressions of
19 interest is published before September 1, 2011, is governed by the
20 law in effect on the date the state agency first publishes the
21 solicitation of bids or proposals or similar expressions of
22 interest, and the former law is continued in effect for that
23 purpose.

24 SECTION 36. This Act takes effect September 1, 2011.