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**STATE BOARD OF DENTAL EXAMINERS**  
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JUN 20 2005  
OPINION COMMITTEE

**RQ-D351-GA**

June 20, 2005

The Honorable Greg Abbott  
Texas Attorney General  
Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-44242-05  
I.D. # 044242

Re: Request for a Formal Legal Opinion Regarding the Effect of an Appropriations Rider on a State Agency's Ability to Make Delegated Purchases as Authorized Under General Law.

Dear General Abbott:

The State Board of Dental Examiners (SBDE) respectfully requests a legal opinion to determine the agency's duties and responsibilities with regard to an appropriations rider that was added to the 2006-2007 biennial appropriation to the SBDE in Senate Bill 1, passed by the 79<sup>th</sup> Legislature, Regular Session, 2005.

The "Competitive Bidding Processes" rider found on page VIII-18 of the Conference Committee Report on Senate Bill 1 states that:

- "a. It is the intent of the Legislature that none of the funds appropriated above may be used for entering into a contract or agreement or for amendment or extension of a contract or agreement or for administration or oversight of a contract or agreement of any kind or for direct payment to a vendor for goods or services including the administration of examinations unless the vendor is selected following competitive bidding procedures and openness in contracting including:
- (1) appropriate advertisement by the agency of the availability of the contract including using the internet and services available for the Texas Building and Procurement Commission;
  - (2) solicitation by the agency of requests for proposals;
  - (3) selection of a vendor based on the best value for the state;
  - (4) multiple bidders:

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Sherril Sanders, Interim Executive Director

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- (5) use of the master bidder list compiled by the Texas Building and Procurement Commission; and
  - (6) other good contracting principles.
- b. It is the intent of the Legislature that this rider apply to all contracts and agreements and to all amendments or extensions of a contract or agreement or for administration or oversight of any contract or agreement of any kind and for direct payment to a vendor for goods or services including the administration of examinations without regard to amount." [Underlined emphasis added]

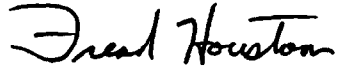
The SBDE is concerned that the terms of this appropriations rider may conflict with the competitive bidding requirements set out in general law under Government Code §2155.132(e) which states that "*Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed \$2,000, or a greater amount prescribed by commission rule.*" The Texas Building and Procurement Commission has by rule set the current prescribed amount at \$5,000 under Title 1 Texas Administrative Code §113.11(c).

Attorney General Opinion No. JC-0578 (2002) concludes that "A rider to the General Appropriations Act that attempts to enact, repeal, or amend general law is invalid for violating the "Unity-in-Subject" requirement of Texas Constitution, article III, section 35." Given what appears to be a possible conflict between the appropriations rider and Government Code §2155.132(e), the SBDE respectfully presents the following questions for consideration in order to clarify the legal effect of the appropriations rider of Senate Bill 1:

1. Do the terms of the rider contained in Senate Bill 1 conflict with the general law set out in Government Code §2155.132 with regard to delegated purchases and the competitive bidding requirement?
2. Do the terms of the rider contained in Senate Bill 1 merely direct the SBDE to continue to follow the contracting principles and requirements of law as set out in Government Code §2155.132?
3. Do the terms of the rider contained in Senate Bill 1 alter or amend the competitive bidding requirement of Government Code §2155.132(e) as it applies to the SBDE?
4. Do the terms of the rider contained in Senate Bill 1 violate Article III, Section 35 of the Texas Constitution?

Thank you for your consideration of these issues. If I can provide further information to assist in answering these questions, please do not hesitate to contact me.

Sincerely,



Fread Houston  
General Counsel  
State Board of Dental Examiners

**Attachments**

cc: Members, State Board of Dental Examiners  
Sherri Sanders, Interim Executive Director, State Board of Dental Examiners  
George Noelke, Assistant Attorney General, Administrative Law Division