

**SUBJECT:** Revising oversight of state agency contracting and procurement

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 12 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Raymond

**SENATE VOTE:** On final passage, March 20 — 31-0

**WITNESSES:** For — None

Against — None

On — (*Registered, but did not testify:* Amy Comeaux, Comptroller of Public Accounts; Hershel Becker, Department of Information Resources; Bart Broz, Health and Human Services Commission)

**BACKGROUND:** Government Code sec. 2054.158 requires the comptroller, state auditor, Legislative Budget Board, and the Department of Information Resources to create a Quality Assurance Team to develop and recommend policies and procedures to improve state agency information resources technology projects, including considerations for best value and return on investment, and provide annual training for state agency procurement and contract management staff on best practices and methodologies for information technology contracts.

Concerns have been raised that while contracting reforms were enacted in the previous two legislative sessions, serious contracting issues remain at state agencies. Some have suggested revising state procurement oversight on areas of highest risk and align statute and practice with the Statewide Procurement and Contract Management Guide.

**DIGEST:** CSSB 65 would revise oversight of state agency contracting and procurement processes.

**QAT duties.** The bill would revise and expand the duties of the Quality Assurance Team (QAT) to include:

- recommending policies and procedures to improve the development, implementation, and return on investment for state agency information resources technology projects;
- reviewing a state agency's business case prepared for a major information resources project under law and making recommendations to improve implementation of the project; and
- providing recommendations on the final negotiated terms of a contract for the development or implementation of a major information resources project with a value of at least \$10 million.

The bill also would require the QAT to provide by December 1 of each even-numbered year a report to the governor, lieutenant governor, House speaker, and presiding officers of certain legislative committees a report that included certain performance indicators and issues identified regarding major information resources projects and an appendix containing any justifications submitted to the QAT.

The QAT could waive the review of a state agency's business case for any major information resources project it determined would be appropriate because of the project's associated risk.

**Classification as major project.** The bill would increase from \$1 million to \$5 million the value of development costs that had to be exceeded for a project to classify as a major information resources project.

**Information resources technology report.** The bill no longer would require in the report on the use of information resources technology under certain law to examine major information resources projects completed in the previous state fiscal biennium or after the second anniversary of the project's completion.

**Major information resources project monitoring.** For each major information resources project, a state agency would have to provide the QAT any verification and validation report or quality assurance report related to the project no later than 10 days after the agency received a request. The QAT could request any information necessary to determine a project's potential risk.

**Review of contract.** For each contract for the development or implementation of a major information resources project with a value of at least \$10 million, a state agency would have to submit to the QAT the proposed contract terms before negotiations and the final negotiated unsigned contract for review.

After the QAT made recommendations on the final negotiated terms, a state agency would have to comply with the recommendations or submit a written explanation on why it was not applicable to the contract.

Before amending a contract, a state agency would have to notify the governor, lieutenant governor, House speaker, the presiding officers of certain legislative committees, and the QAT if the total value of the amended contract exceeded or would exceed the initial contract value by 10 percent or more or the amendment required the contractor to provide assistance in defining project scope or deliverables. A state agency would have to provide the team a justification for an amendment.

A state agency could not amend a contract subject to review if the contract was at least 10 percent over budget or the associated major information resources project was at least 10 percent behind schedule unless the agency conducted a cost-benefit analysis with respect to canceling or continuing the project and submitted the analysis to the QAT.

**Monitoring assessment by state auditor.** The bill would require the state auditor by July 1 of each year to assign one of the following ratings to each of the 25 largest state agencies in that state fiscal year as determined by the Legislative Budget Board (LBB):

- additional monitoring warranted;
- no additional monitoring warranted; or
- reduced monitoring warranted.

In assigning a rating, the state auditor would have to consider certain items listed in the bill, including results of certain audits, information reported by the QAT relating to the agency's major projects, information relating to reviews of the agency by LBB and the Sunset Advisory Commission, and agency self-reported improvements to contracting processes.

On or before September 1 of each year, the state auditor would have to submit to the comptroller and the Department of Information Resources (DIR) a report that listed each state agency that was assigned a rating and specified that additional or reduced monitoring was required during one or more contracting periods, including solicitation development, formation and award, or management and termination. The first report would be due by September 1, 2020.

The comptroller would have to consult with the Contract Advisory Team established under law to assist state agencies to improve contract management practices, and DIR would have to consult with the QAT to develop guidelines for the additional or reduced monitoring of a state agency during the contracting periods for a contract that fell under the monetary thresholds for review or monitoring by the advisory teams.

**Contract file.** Each state agency would be required to include in the file for each of its contracts a checklist to ensure compliance with state laws and rules relating to the acquisition of goods and services.

The comptroller would have to develop and periodically update a model contract file checklist and make it available for use by state agencies. The model checklist would have to address each stage of the procurement process and would include a description of procedures and documents required to be completed during the stages. A state agency could develop

its own contract file checklist provided that it was consistent with the model.

Before a state agency awarded a contract to a vendor for the purchase of goods and services, the agency's contract manager or procurement director would have to review the contract file to ensure all required documents were completed and certify that the review was completed.

**Business case analysis.** CSSB 64 would remove a requirement that a state agency provide a business case and statewide impact analysis for a major contract, instead requiring an agency only to provide the analysis for major information resources projects. The analysis also no longer would have to include the anticipated return on investment in terms of cost savings and efficiency.

If the agency was assigned a rating by the auditor, it would have to prepare a statewide impact analysis for each proposed project and a technical architectural assessment of the project if requested by the QAT.

After the QAT made a recommendation relating to a business case, a state agency would have to comply with the recommendation or submit a written explanation on why it was not applicable to the project.

**Project plans.** The bill would remove a requirement that a state agency develop a project plan for each major contract and a requirement that the agency file the plan with the QAT before the agency first issued a vendor solicitation for a major information resources project.

**Procurement plan.** Before issuing a solicitation for a contract for the development or implementation of a major information resources project with a value of at least \$10 million, a state agency would have to develop a procurement plan for each contractor consistent with any acquisition plan provided in a contract management guide.

**Vendor performance.** The bill would add an additional condition on the review of vendor performance currently required after a contract is

completed or otherwise terminated. If the value of a contract exceeded \$5 million, the state agency would have to review the vendor's performance at least once each year during the contract term and at each key milestone and report the results to the comptroller.

A state agency could not extend a vendor's contract until after the agency reported the results of each review of the vendor.

**Certification of vendor assessment process.** Before a state agency could award a contract to a vendor, the agency's procurement director would have to review the process and all documents used by the agency to assess each vendor who responded to the solicitation. The director would have to certify in writing that the agency assessed each vendor's response using certain evaluation criteria and the final calculation of scoring of responses was accurate.

A state agency would have to justify in writing any change in the scoring of a vendor that occurred following the initial assessment and scoring of responses. The justification would have to be reviewed by the agency's procurement director, and the director would certify in writing that the change in scoring was appropriate.

A state agency's procurement director could delegate to a person whose position was at least equal to the position of contract manager the certification authority under these provisions if the agency met certain conditions prescribed by the comptroller. A written certification or justification would have to be placed in the contract file.

If a state agency awarded a contract to a vendor who did not receive the highest score in an assessment process, the agency would have to state in writing in the contract file the reasons for making the award.

**Liability provisions.** Each state agency would have to include in the contract file for each of its contracts for goods or services a written explanation of the agency's decision to include or not include in the contract a provision for liquidated damages or another form of liability for

damages caused by the contractor. A contract file also would have to include a written justification for any provision that limited the liability of a contractor for damages.

If an extension of a state agency's contract modified a provision for liquidated damages or another provision relating to a contractor's liability for damages, the agency would have to amend the written justification.

**Approval for assignment of services contracts.** A vendor awarded a services contract by a state agency could not assign the vendor's rights under the contract to a third party unless approved by the agency. At least 14 days before a state agency rejected or approved a proposed assignment, the agency would have to notify LBB if the contract was for a major information resources project or involved storing, receiving, processing, transmitting, disposing of, or accessing sensitive personal information in a foreign country.

**Document retention.** CSSB 65 would require an electronic contract solicitation document to be retained by a state agency in its electronic form. A state agency could print and retain it in paper form only if the agency provided for the preservation, examination, and use of the electronic form in accordance with applicable state law.

**Other provisions.** Under the bill, provisions of law governing the Texas project delivery framework would apply only to major information resources projects. The bill would remove a requirement that DIR consult with LBB and the state auditor's office to develop and provide guidelines for documents required for the delivery framework.

Under the bill, only a state agency's executive director would have to approve documents and contract changes.

In conducting internal auditing, a state agency would have to consider methods for ensuring compliance with contract processes and controls and for monitoring agency contracts.

The bill would delegate to the Health and Human Services Commission the authority to procure goods and services related to a contract for a project to construct or expand a state hospital operated by a related agency or state supported living center or a deferred maintenance project for such health facilities.

A state agency that used the centralized accounting and payroll system authorized under law or an alternative computer software system for compliance requirements related to the procurement of goods and services could electronically submit to the comptroller a written justification, verification, notification, or acknowledgement required under the bill.

The bill would repeal certain provisions, including:

- those exempting the Teacher Retirement System of Texas from law governing state contracting standards and oversight and statewide contract management;
- one that allowed the QAT to review and analyze a major information resources project's risk to determine whether to approve it for the expenditure of funds;
- a requirement that a state agency proposing to spend appropriated funds for a major information resources project first conduct an execution capability assessment; and
- those governing certain publications in the Texas Register related to entering into or extending a major consulting services contract.

CSSB 65 generally would apply only to a contract an agency first advertised, that was extended or modified, or for which a change order was submitted on or after the bill's effective date.

The bill would take effect September 1, 2019.

**NOTES:**

According to the Legislative Budget Board, the fiscal implications of the bill's provisions related to the Teacher Retirement System could not be determined. No significant fiscal implication is anticipated for the bill's other provisions.

