

SUBJECT: Revising procedures relating to state agency procurement contracts

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

1 absent — Lucio

WITNESSES: For — (*Registered, but did not testify*: Jason Winborn, AT&T; CJ Tredway, IEC of Texas; Hope Osborn, Texas 2036; Mia McCord, Texas Conservative Coalition; Rod Bordelon, Texas Public Policy Foundation)

Against — (*Registered, but did not testify*: Sheila Clemmons)

BACKGROUND: Concerns have been raised that procedures for the procurement of goods and services by state agencies are unnecessarily complex and wasteful of tax dollars. Some have called for the Legislature to update these procedures in order to provide consistency in state agency procurement contracts, long-term costs savings, and the greatest benefit to the public.

DIGEST: HB 3658 would modify various statutes related to state agency contracts for the procurement of goods and services, including portions of the Government Code pertaining to individuals prohibited from representing or receiving compensation from certain persons, training requirements for contract managers, salary increases for state agency contract evaluators, and best value factors, among other provisions.

Prohibited representation, compensation. Under the bill, a person who for more than 30 days performed full-time or part-time work for a regulatory agency under contract or subcontract would be subject to the prohibition on representing or receiving compensation for services rendered on behalf of a person for a matter in which the person participated during a period of state service or employment.

Former state officers, former employees of regulatory agencies, and persons who for more than 30 days performed full-time or part-time work for a regulatory agency under a contract or subcontract could not represent any person or receive compensation for services rendered on behalf of any person regarding any procedure that began at the regulatory agency while the officer, employee, contractor, or subcontractor served, was employed by, or performed work for the agency.

These prohibitions would not apply to a rulemaking proceeding that was concluded more than six months before the officer's, employee's, contractor's, or subcontractor's service, employment, or contract ceased.

Each regulatory agency would have to include in any applicable contract a provision that referenced the section of the Government Code containing these provisions and its requirements.

Contract manager training. The required training for state agency contract managers would have to provide a contract manager with information on how to determine best value for the state through the exercise of informed business judgment based on price and non-price factors expected to result in best value.

Contract managers who participated in the procurement of a contract with a value of \$20 million or more would have to:

- participate in additional training specific to the category of goods or services to be procured; and
- develop a document to be retained with the records for the procurement that included a summary of the contract manager's qualifications and credentials and a written statement certified by the contract manager with certain information.

Contract managers would not have to comply with the training requirements before March 1, 2022.

Each health and human services agency and the Health and Human Services Commission (HHSC) would have to ensure the agency's contract managers completed the required training and complied with the requirements for certain contract managers, as applicable.

The contract management handbook published by HHSC would have to include instructions for ensuring that health and human services agency employees who were involved in implementing a specific procurement also were involved in evaluating and scoring the responses submitted to the solicitation for the procurement.

The bill would require the comptroller to consult with business and industry representatives, in addition to other parties under current law, to develop or periodically update its contract management guide for state agencies. In addition to existing required information, the guide would have to include information on how to:

- appoint as evaluators for procurements agency employees who served in agency divisions overseeing the implementation for the procurements; and
- ensure agency employees involved in the implementation of a specific procurement also were involved in the evaluation of vendor responses submitted to the solicitation for the procurement.

The comptroller would have to adopt rules and update the contract management handbook and contract management guide as soon as practicable after the bill's effective date.

Salary increase for agency contract evaluators. State agencies would have to establish a procedure and requirements for determining the eligibility of a salary increase of an agency employee who acted as an evaluator of an agency procurement through a decision, approval, disapproval, recommendation, advice, investigation, or similar action from the issuance of a solicitation through the award of the contract.

State agencies would have to adopt the procedure and requirements by

October 1, 2021.

Best value. For procurements in an amount up to \$20 million, the comptroller or other state agency could, subject to certain law, consider other relevant factors, including:

- required contract outcomes;
- best quality for economic value of the contract;
- timely performance under the contract;
- the impact of a purchase on the agency's administrative resources;
- indicators of probable vendor performance under the contract based on certain criteria;
- the impact on the agency's flexibility in developing alternative procurement and business relationships;
- the effect of a purchase on agency productivity;
- the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment;
- the encouragement of continued participation by quality contractors; and
- other factors relevant to determining the best value for the state in the context of a particular purchase.

For procurements in excess of \$20 million, the comptroller or other state agency would have to, subject to certain law, consider the factors listed for procurements less than that amount and the purchase price.

The bill would specify that, in determining the best value for the state in the purchase of goods and services, the purchase price and whether the goods and services met specifications would be principal considerations that would have to be balanced with other relevant factors.

Each determination of best value would have to include a total cost of ownership assessment that considered the cost of acquisition, cost of personnel, cost of operation, and total amount of money required for the

purchase during the expected performance period.

For a purchase made through competitive bidding, the comptroller or other state agency making the purchase would have to specify in the request for bids the proposal criteria the comptroller or agency would use when considering the factors other than price that would be considered in determining which bid offered the best value for the state.

Waiver contingency. If before implementing any provision of the bill a state agency determined that a waiver or authorization from a federal agency was necessary for implementation of that provision, the agency affected would have to request the waiver or authorization and could delay implementation of the provision until the exception was granted.

The bill would take effect September 1, 2021, and would apply only to a contract for which a state agency first advertised or otherwise solicited offers, bids, proposals, qualifications, or other applicable expressions of interest on or after that date.