

## **BILL ANALYSIS**

Senate Research Center

S.B. 20  
By: Nelson  
Finance  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of this bill is to reform state agency contracting by clarifying accountability, increasing transparency, and ensuring a fair competitive process.

As proposed, S.B. 20 amends current law relating to state agency contracting.

[**Note:** While the statutory reference in this bill is to the Texas Building and Procurement Commission (TBPC), the following amendments affect the comptroller of public accounts of the State of Texas, as the successor agency to TBPC for purchasing functions.]

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Building and Procurement Commission is modified in SECTION 3 (Section 2155.078, Government Code) of this bill.

Rulemaking authority is expressly granted to state agencies in SECTION 14 (Chapter 2261, Government Code) of this bill.

Rulemaking authority previously granted to The University of Texas M. D. Anderson Cancer Center is rescinded in SECTION 19 (Section 73.115, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter L, Chapter 441, Government Code, by adding Section 441.1855, as follows:

Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS BY STATE AGENCIES. Provides that, notwithstanding Section 441.185 (Record Retention Schedules) or 441.187 (Destruction of State Records), a state agency:

- (1) is required to retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and
- (2) is authorized to destroy the contract and documents only after the fourth anniversary of the date the contract is completed or expires.

SECTION 2. Amends Section 2151.002, Government Code, to redefine "state agency."

SECTION 3. Amends Section 2155.078, Government Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Requires the Texas Building and Procurement Commission (TBPC) to establish and administer a system of training, continuing education, and certification for state agency purchasing personnel. Requires that the training and continuing education for state agency purchasing personnel include ethics training. Authorizes TBPC to establish and offer appropriate training to vendors on a cost recovery basis. Authorizes TBPC to adopt rules to administer this section, including rules relating to monitoring a certified purchaser's compliance with the continuing education requirements of this section.

(a-1) Requires that the training, continuing education, and certification required under Subsection (a) include:

(1) training on the selection of an appropriate procurement method by project type; and

(2) training conducted by the Department of Information Resources on purchasing technologies.

(b) Requires all state agency purchasing personnel, including agencies exempted from the purchasing authority of TBPC, notwithstanding Subsection (n), rather than except as provided by Subsection (n), to receive the training and continuing education to the extent required by rule of TBPC. Requires that the training and continuing education include ethics training. Makes no further changes to this subsection.

SECTION 4. Amends Subchapter B, Chapter 2155, Government Code, by adding Sections 2155.089 and 2155.090, as follows:

Sec. 2155.089. REPORTING VENDOR PERFORMANCE. (a) Requires each state agency to review the vendor's performance under the contract after a contract is completed or otherwise terminated.

(b) Requires the state agency to report to the comptroller of public accounts of the State of Texas (comptroller), using the tracking system described by Section 2155.090, on the results of the review regarding a vendor's performance under a contract.

Sec. 2155.090. VENDOR PERFORMANCE TRACKING SYSTEM. (a) Requires the comptroller to evaluate a vendor's performance based on the information reported under Section 2155.089 and criteria established by the comptroller.

(b) Requires the comptroller to establish an evaluation process that allows vendors who receive an unfavorable performance review to protest any classification given by the comptroller.

(c) Requires the comptroller to include the performance reviews in a vendor performance tracking system.

(d) Requires a state agency to use the vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the database.

(e) Requires the comptroller to make the vendor performance tracking system accessible to the public on the comptroller's Internet website.

SECTION 5. Amends Section 2155.502, Government Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Prohibits TBPC from listing a multiple award contract on a schedule developed under Subsection (a) if the goods provided by that contract are available from only one vendor, or are commodity items as defined by Section 2157.068(a) (defining "commodity items" in this section), or have a value that exceeds \$1 million. Deletes existing text prohibiting TBPC from listing a multiple award contract on a schedule developed under Subsection (a) if the services provided by that contract are telecommunications services, facilities, or equipment, or are engineering services as described by Section 1001.003 (Practice of Engineering), Occupations Code, or architectural services as described by Section 1051.001 (Definitions), Occupations Code.

(c-1) Prohibits the list of multiple award contracts from including more than 35 percent of the number of vendors that competitively bid to provide a particular good under a multiple award contract.

SECTION 6. Amends Subchapter I, Chapter 2155, Government Code, by adding Section 2155.5035, as follows:

Sec. 2155.5035. USE OF SCHEDULE BY STATE AGENCY. (a) Requires a state agency purchasing goods under a contract listed on the schedule to:

(1) for a purchase with a value of \$50,000 or less, directly award a contract to a vendor included on the schedule without submission of a request for bids to other vendors on the list;

(2) for a purchase with a value of more than \$50,000 but not more than \$150,000, submit a request for proposals to at least three vendors included on the schedule in the category to which the purchase relates;

(3) for a purchase with a value of more than \$150,000 but not more than \$1 million, submit a request for proposals to at least six vendors included on the schedule in the category to which the purchase relates; and

(b) Provides that the price listed for a good under a multiple award contract is a maximum price. Authorizes a state agency to negotiate a lower price for goods under a contract listed on a schedule developed under this chapter.

SECTION 7. Amends Section 2155.504, Government Code, as follows:

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES. (a) Authorizes a local government to purchase goods directly from a vendor, rather than authorizes a state agency or local government to purchase goods or services directly from a vendor, under a contract listed on a schedule developed under this subchapter. Provides that a purchase authorized by this section satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Chapter 2157 (Purchasing: Purchase of Automated Information Systems).

(b) Makes conforming changes.

SECTION 8. Amends Section 2155.505(a)(3), Government Code, to redefine "veterans service agency."

SECTION 9. Amends Sections 2155.505(b) and (c), Government Code, as follows:

(b) Requires TBPC to strongly encourage each vendor with a contract listed on a schedule developed under this subchapter and who is not a historically underutilized business or small business to use historically underutilized or small businesses to sell goods, rather than sell or provide a service, under the contract. Authorizes TBPC to exclude the vendor from being listed on a schedule developed under this subchapter if a vendor does not make a good faith effort to use historically underutilized and small businesses under the contract.

(c) Makes conforming changes.

SECTION 10. Amends Section 2157.068, Government Code, by amending Subsection (a) and adding Subsections (e-1) and (e-2), as follows:

(a) Redefines "commodity items" in this section.

(e-1) Requires a state agency contracting to purchase a commodity item to use the list maintained as required by Subsection (e) as follows:

(1) for a contract with a value of \$50,000 or less, the agency is authorized to directly award the contract to a vendor included on the list without submission of a request for bids to other vendors on the list;

(2) for a contract with a value of more than \$50,000 but not more than \$150,000, the agency is required to submit a request for proposals to at least three vendors included on the list in the category to which the contract relates;

(3) for a contract with a value of more than \$150,000 but not more than \$1 million, the agency is required to submit a request for proposals to at least six vendors included on the list in the category to which the contract relates; and

(e-2) Prohibits a state agency from entering into a contract to purchase a commodity item if the value of the contract exceeds \$1 million.

SECTION 11. Amends Subchapter Z, Chapter 2252, Government Code, by adding Section 2252.9011, as follows:

Sec. 2252.9011. **CONTRACTS WITH FORMER OR RETIRED PRIVATE VENDOR EMPLOYEES.** Prohibits a state agency from entering into an employment contract, a professional services contract under Chapter 2254 (Professional and Consulting Services), or a consulting services contract under Chapter 2254 with an individual who is a former or retired employee of a private vendor under which the individual will perform services for the agency related to the individual's former duties for the vendor under a contract with the agency before the second anniversary of the last date on which the individual was employed by the private vendor.

SECTION 12. Amends Section 2254.021(6), Government Code, to redefine "state governmental entity."

SECTION 13. Amends Section 2261.001(a), Government Code, to provide that this chapter applies only to each procurement of goods or services made by a state agency that is neither made by the comptroller nor made under purchasing authority delegated to the agency under Section 2155.131 (Delegation of Authority to State Agencies) or 2155.132 (Purchases Less Than Specified Monetary Amount), rather than delegated to the agency by or under Section 51.9335 (Acquisition of Goods and Services) or 73.115 (Acquisition of Goods and Services), Education Code, or Section 2155.131 or 2155.132.

SECTION 14. Amends Chapter 2261, Government Code, by adding Subchapter F, as follows:

#### **SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR CERTAIN CONTRACTS**

Sec. 2261.251. **APPLICABILITY OF SUBCHAPTER.** Provides that Section 2261.001 (Applicability) does not apply to this subchapter.

Sec. 2261.252. **DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST; CERTAIN CONTRACTS PROHIBITED.** (a) Requires each state agency employee or official who is involved in procurement or in contract management for a state agency to disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.

(b) Prohibits a state agency from entering into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

(1) a member of the agency's governing body;

(2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or

(3) a family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

(c) Provides that a state agency employee or official has a financial interest in a person if the employee or official:

(1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or

(2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

(d) Provides that a financial interest prohibited by this section does not include a retirement plan, blind trust, insurance coverage, or ownership interest of less than one percent in a corporation.

Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS; ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) Requires each state agency, for each contract for the purchase of goods or services from a private vendor, to post on its Internet website a list of:

(1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed;

(2) the statutory or other authority under which a contract that is not competitively bid under Subdivision (1) is entered into without compliance with competitive bidding procedures; and

(3) the request for proposals related to a competitively bid contract included under Subdivision (1) until the contract expires or is completed.

(b) Authorizes a state agency monthly to post contracts described by Subsection (a) that are valued at less than \$15,000.

(c) Requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. Requires the agency's contract management office or procurement director to immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$1 MILLION. (a) Requires a state agency, for each contract for the purchase of goods or services that has a value exceeding \$1 million, to develop and implement contract reporting requirements that provide information on:

(1) compliance with financial provisions and delivery schedules under the contract;

(2) corrective action plans required under the contract and the status of any active corrective action plan; and

(3) any liquidated damages assessed or collected under the contract.

(b) Requires each state agency to verify:

(1) the accuracy of any information reported under Subsection (a) that is based on information provided by a contractor; and

(2) the delivery time of goods or services scheduled for delivery under the contract.

(c) Authorizes a state agency, except as provided by Subsection (d), to enter into a contract for the purchase of goods or services that has a value exceeding \$1 million only if:

(1) the governing body of the state agency approves the contract and the approved contract is signed by the presiding officer of the governing body; or

(2) for a state agency that is not governed by a multimember governing body, the officer who governs the agency approves and signs the contract.

(d) Authorizes the governing body or governing official of a state agency, as appropriate, to delegate to the executive director of the agency the approval and signature authority under Subsection (c).

Sec. 2261.255. **CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.** Requires the contract management office or procurement director of the agency, for each state agency contract for the purchase of goods or services that has a value exceeding \$5 million, to:

(1) verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy; and

(2) submit to the governing body of the agency, or governing official of the agency if the agency is not governed by a multimember governing body, information on any potential issue that may arise in the solicitation, purchasing, or contractor selection process.

Sec. 2261.256. **RISK ANALYSIS PROCEDURE; CONTRACT MANAGEMENT HANDBOOK; CONTRACT MANAGEMENT DATABASE.** (a) Requires each state agency to develop and comply with a risk analysis procedure. Requires that the procedure provide for:

(1) assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts; and

(2) identifying contracts that require enhanced contract monitoring.

(b) Requires each state agency to publish a contract management handbook that establishes consistent contracting policies and practices to be followed by the agency and that is consistent with the comptroller's contract management guide. Authorizes the agency handbook to include standard contract provisions and formats for the agency to incorporate in contracts.

(c) Requires each state agency to establish a central contract management database that identifies each contract made with the agency.

SECTION 15. Amends Section 2262.001(5), Government Code, to redefine "state agency."

SECTION 16. Reenacts and amends Sections 2262.101(a), (b), and (c), Government Code, as amended by Chapters 676 (H.B. 1965) and 1227 (S.B. 1681), Acts of the 83rd Legislature, Regular Session, 2013, as follows:

(a) Provides that the Contract Advisory Team (team) is created to assist state agencies in improving contract management practices by:

(1) reviewing solicitation documents and contract documents, rather than reviewing and making recommendations on the solicitation documents and contract documents, for contracts of state agencies that have a value of at least \$10 million, including the value of any amendment to or extension of the contract authorized in the contract that would increase the value of the contract;

(2)-(4) Makes no change to these subdivisions;

(5) Makes a conforming change;

(6) Redesignates existing Subdivision (4) as Subdivision (6). Makes no further change to this subdivision;

(7) Redesignates existing Subdivision (5) as Subdivision (7). Makes no further change to this subdivision; and

(8) Redesignates existing Subdivision (6) as Subdivision (8). Makes no further change to this subdivision;

(b) Requires that the risk assessment created and performed under Subsection (a)(8) include, rather than requires that the risk assessment created and performed reviewed under Subsection (a)(6) include but is not limited to, the following criteria:

(1) Makes no change to this subdivision;

(2) Makes a conforming change; and

(3) the impact of the functions and duties of the state agency on the health, safety, and well-being of residents, rather than residents citizens.

(c) Requires the comptroller to oversee the activities of the team, including ensuring that the team carries out its duties under Subsections (a)(1), (a)(5), and (a)(7), rather than under Subsection (a)(5).

SECTION 17. Amends Section 2262.102(a), Government Code, as follows:

Sec. 2262.102. MEMBERS. (a) Provides that the team consists of the following nine members, rather than six members:

(1)-(4) Makes no changes to these subdivisions;

(5)-(6) Makes conforming changes;

(7) one member from the Texas Department of Transportation (TxDOT);

(8) one member from the Texas Education Agency (TEA); and

(9) one member from the Texas Commission on Environmental Quality (TCEQ).

SECTION 18. Amends Subchapter C, Chapter 2262, Government Code, by adding Section 2262.105, as follows:

Sec. 2262.105. QUARTERLY REPORT TO LEGISLATIVE BUDGET BOARD. Requires the contract advisory team to submit a quarterly report to the Legislative Budget Board on:

- (1) the number of solicitation documents and contracts reviewed by the team in the preceding quarter;
- (2) the number of documents and contracts reviewed under Subdivision (1) compared to the total number of contracts entered into by state agencies, expressed as a percentage; and
- (3) whether state agencies accepted or rejected the team's recommendations and any reasons provided by the state agencies for rejecting the recommendations.

SECTION 19. Repealer: Section 51.9335(d) (providing that Subtitle D, Title 10, Government Code, and Subchapter B, Chapter 2254, Government Code, do not apply to the acquisition of goods and services under this section, except that an institution of higher education must comply with any provision of those laws, or a rule adopted under a provision of those laws, relating to contracting with historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities), Education Code.

Repealer: Section 73.115(d) (authorizing The University of Texas M. D. Anderson Cancer Center to adopt rules and procedures for the acquisition of goods or services), Education Code.

Repealer: Section 2155.448(d) (providing that this section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code), Government Code.

Repealer: Section 2155.502(d) (defining "telecommunications"), Government Code.

Repealer: Section 2261.001(d) (providing that this chapter does not apply to a procurement made by TxDOT or a procurement paid for by local or institutional funds of an institution of higher education), Government Code.

Repealer: Section 2262.002(a) (providing that this chapter does not apply to an institution of higher education as defined by Section 61.003, Education Code), Government Code.

SECTION 20. (a) Requires the executive directors of TxDOT, TEA, and TCEQ, as soon as is practicable after the effective date of this Act, to each appoint a member to the contract advisory team as required by Section 2262.102, Government Code, as amended by this Act.

(b) Requires the comptroller, and each affected state agency as necessary, as soon as is practicable after the effective date of this Act, to adopt the rules and procedures and take the actions necessary to implement the changes in law made by this Act.

SECTION 21. Provides that, to the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 22. Makes application of this Act prospective.

SECTION 23. Effective date: September 1, 2015.