

SUBJECT: Requirements, oversight of state agency contracting and procurement

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Zerwas, Longoria, G. Bonnen, Capriglione, Cospers, S. Davis, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Phelan, Raney, Roberts, J. Rodriguez, Rose, Sheffield, Simmons, VanDeaver, Wu

0 nays

4 absent — Ashby, Dukes, Perez, Walle

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

WITNESSES: *On House companion bill, HB 3659:*
For — Nora Belcher; Texas e-Health Alliance; Caroline Joiner, TechNet

Against — None

On — Todd Kimbriel, Department of Information Resources; Bobby Pounds, Comptroller of Public Accounts

BACKGROUND: Government Code, sec. 2054.158 establishes the quality assurance team composed of the state auditor, the Legislative Budget Board, and the Department of Information Resources. The team is required to develop and recommend policies and procedures to improve state agency information resources technology projects and to improve the implementation of those projects.

Government Code, ch. 2262 governs statewide contract management. Sec. 2262.101 creates the state's Contract Advisory Team to assist state agencies in improving contract management practices. The team reviews solicitation documents and contract documents for contracts of at least \$10 million and reviews findings or recommendations from the state auditor about an agency's compliance with the state's contract

management guide. The six-member team is composed of representatives from certain state agencies and the offices of the comptroller and the governor. Government Code, sec. 2262.051 governs the development of a contract management guide for state agencies and requires agencies to comply with it.

DIGEST: SB 533 would revise statutes related to state contracting and oversight of those contracts.

Chief procurement officer. The comptroller would be required to employ a chief procurement officer for the state. The officer would have authority over state agency procurement, including analyzing purchasing data to leverage state purchasing power and providing support and training to state agencies. The officer also could review major contract solicitations for information technology projects monitored by the quality assurance team (QAT) and would be required to make recommendations to the comptroller and Legislature based on the review. The officer also could review solicitations for major contracts reviewed by the Contract Advisory Team (CAT) and delegate to state agencies authority to contract for purchases in an amount specified by comptroller rule.

Department of Information Resources, legislative oversight. At the direction of the governor, lieutenant governor, or House speaker, the Department of Information Resources (DIR) would provide additional oversight of major information resource projects. The QAT's authority to recommend major projects for department oversight would be eliminated. DIR would receive authority to contract with a vendor to provide necessary oversight.

Quality assurance team. The bill would add the comptroller to the QAT and change the role of the state auditor to that of an advisor. The QAT would be required to create an automated project review system, and its duties would be expanded to include providing annual training for state agency procurement and contract management staff on contracting best practices.

CAT reviews, membership. SB 533 would lower from \$10 million or more to \$5 million or more the threshold for the value of contracts for which the CAT reviews and makes recommendations on solicitation and contract documents.

The chief procurement officer established by the bill would be able to add members from state agencies to the CAT.

DIR cooperative contracts program. SB 533 would raise the cap on purchases of IT hardware, software, and services that agencies could obtain through DIR's cooperative contract program from \$1 million to \$5 million.

The bill would revise the thresholds used to trigger the number of requests for pricing that agencies would have to obtain from vendors on DIR's cooperative contract list. Requests for prices from at least three vendors would be required on contracts that were valued at more than \$50,000 through \$1 million, rather than up to \$150,000 under current law. The bill would require requests for prices from at least six vendors on contracts that were valued at more than \$1 million through \$5 million, rather than more than \$150,000 through \$1 million under current law. Agencies could continue to award contracts of \$50,000 or less to a vendor on DIR's list without asking for other bids.

Vendor, employee interaction. The bill would require the comptroller to update the contract management guide with policies for interactions between state employees and vendors. It would not prohibit the exchange of information between agencies and vendors about future contracts or in monitoring current contracts.

Conflicts of interest. The current requirement for state employees and officials involved in procurement or contract management to disclose potential conflicts of interest specified by law or agency policy would apply to potential conflicts of interest that occurred any time during the procurement process or the term of the contract. Contracts of \$25,000 or less solicited through purchase orders would be exempt from these

conflict of interest provisions.

Posting requirements. The bill would exempt contracts posted on the Legislative Budget Board's major contracts database from the current requirement that information about state agency contracts be posted on the internet. If an agency did post a contract on its website, it could not post information made confidential by law, information the attorney general determined was exempt from the Public Information Act, or Social Security numbers.

Other provisions. The bill would add other provisions related to state contracting.

Architectural assessment. State agencies would be required to prepare a technical architectural assessment for each proposed major information resources project or major contract.

Project plans. State agency contracts for major information resources projects would have to comply with the comptroller's contract management guide.

Interstate purchasing. The comptroller would be authorized to enter into agreements to allow other state agencies and political subdivisions of other states to buy goods or services through comptroller contracts.

TEA, regional education service centers. The Texas Education Agency would be required to follow the state contract management guide for contracts with regional education service centers.

The bill would take effect September 1, 2017, and would apply only to contracts for which a state agency first advertised or otherwise solicited bids, proposals, offers, or qualifications on or after that date.

SUPPORTERS
SAY:

SB 533 would strengthen and clarify revisions to state contracting enacted by the 84th Legislature through SB 20 by Nelson. The bill would address issues that have come to light as SB 20 has been implemented and would

help ensure that state contracting was transparent, accountable, and competitive.

The bill would establish the position of state procurement officer to help the comptroller continue to coordinate agency contracting and ensure the state obtained the best value when state agencies used contracts. The position would not expand the comptroller's contracting authority but rather would outline the office's current authority under one position. It would not alter the role of DIR or other agencies over certain types of contracts.

SB 533 would address concerns from state agencies and vendors that the current cap on the purchase of software, hardware, and technology services through DIR's cooperative contract program is too low and hinders the ability to use the program. Under cooperative contracts, DIR negotiates with vendors to obtain the best value for the state and maintains a list from which agencies make purchases. With the current cap at \$1 million, some routine contracts such as word processing software for employees at a large agency can exceed the cap and require the agency to undertake the full competitive contract process for the purchase. In some cases, agencies might decide to make a purchase through another type of contract that has less oversight, such as a time and materials contract. By raising the cap from \$1 million to \$5 million, the bill would allow and encourage the use of cooperative contracts, which are subject to a high degree of oversight and offer good value for the state.

This change in the cap would be coupled with a lowering of the oversight threshold for contracts that the CAT reviews from \$10 million to \$5 million, closing a gap in oversight that exists under current law.

SB 533 would address a problem that arose after the 2015 contracting revisions, which led some state agencies to interpret the rules on interacting with vendors differently than other state agencies. The bill would make clear that the exchange of information between agencies and vendors was allowed and would establish uniform guidelines for all agencies by requiring the comptroller to update the contract management

guide with polices to guide those interactions.

Other changes in SB 533 would ensure that the governor, lieutenant governor, and House speaker could direct oversight of major information resource projects and that best practices were followed by state agencies. The bill would prohibit the posting of sensitive information online, require the observance of conflict-of-interest provisions throughout a contract, and facilitate better tracking of the progress of major information technology projects through technical assessments.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would cost \$574,000 in general revenue related funds in fiscal 2018-19 through the addition of three FTEs in the comptroller's office.

A companion bill, HB 3659 by Geren, was left pending following a public hearing in the House Appropriations Committee on April 17.