

BILL ANALYSIS

C.S.H.B. 15
By: Otto
Government Transparency & Operation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent reports have indicated that there may be widespread abuse in certain state government contracting and interested parties assert that legislative action to provide increased oversight and management over state contracts would be beneficial. C.S.H.B. 15 seeks to address this concern by increasing oversight of certain high-risk state contracts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 15 amends the Government Code to require the Legislative Budget Board (LBB) to establish a Contract Management and Oversight Team to develop criteria for identifying high-risk factors in contracts, consult with state agencies on and approve an action related to a high-risk contract, provide recommendations and assistance to state agency personnel throughout the contract management process, and coordinate and consult with the quality assurance team created by the state auditor, the LBB, and the Department of Information Resources (DIR) on all high-risk contracts relating to a major information resources project, as defined under the Information Resources Management Act. The bill defines "high-risk contract" as a state agency contract or purchase order that has a value of at least \$10 million; has a value of less than \$10 million, but has high-risk factors as identified by the Contract Management and Oversight Team; is entered into with an entity that is incorporated outside of the United States; is entered into with an entity that, during the five-year period preceding the date of the purchase or award of the contract, has had a contract with a state agency or federal governmental entity terminated or canceled for specified reasons; or meets other criteria that may be established by the team.

C.S.H.B. 15 requires each state agency to provide written notice to the team not later than the 30th day before the date the agency publicly releases solicitation documents for a high-risk contract. The bill requires each state agency to receive a separate prior approval from the team before spending money under an executed high-risk contract and to make a payment or a series of payments that exceeds half of the high-risk contract value. The bill authorizes the team, in determining whether to approve such expenditures, to review related documentation to ensure that potential risks related to the high-risk contract have been identified and mitigated and requires the team to disapprove the action if the potential risks cannot be sufficiently mitigated. The bill authorizes the team to adopt criteria for waiving these consultation and approval requirements.

C.S.H.B. 15 authorizes the team, after review of and comment on the matter by the LBB, to recommend that a state agency cancel a solicitation or a contract during the review process if a proposed contract would place the state at an unacceptable risk if executed or if an executed contract is experiencing performance failure or payment irregularities. The bill requires the team, if a state agency does not implement a recommendation, to provide notice of that failure to the comptroller of public accounts and prohibits the comptroller from authorizing the expenditure of funds for the contract. The bill applies its provisions relating to the establishment of the team to contracts of the Texas Department of Transportation that do not relate to highway construction or highway engineering or that are not subject to a Transportation Code provision relating to the informal resolution of certain contract claims.

C.S.H.B. 15 repeals provisions regarding the Contract Advisory Team created under statutory provisions regarding statewide contract management and abolishes the advisory team. The bill establishes that the validity of an action taken by the advisory team before the abolishment is not affected by the abolition. The bill transfers all powers and duties of the advisory team to the Contract Management and Oversight Team and specifies that a rule, form, policy, procedure, or decision of the advisory team continues in effect as a rule, form, policy, procedure, or decision of the management and oversight team until superseded by an act of the management and oversight team. The bill transfers without change in status any action or proceeding involving the advisory team to the management and oversight team and establishes that the management and oversight team assumes, without a change in status, the position of the advisory team in a negotiation or proceeding to which the advisory team is a party. The bill establishes that a reference in law to the Contract Advisory Team means the Contract Management and Oversight Team.

C.S.H.B. 15 prohibits a state agency from entering into a contract to purchase an information technology commodity item if the value of the contract exceeds \$1 million and requires a state agency that enters into such a contract to obtain at least three competitive offers from vendors selected by DIR if at least three vendors selected by DIR offer the item. The bill requires a state agency, for a contract with a value of more than \$50,000 for the purchase of information technology commodity items that is awarded by DIR and that requires the state agency to develop and execute a statement of work to initiate services under the contract, to consult with DIR before submission of the statement of work to a vendor and to post each statement of work entered into by the agency on the agency's website in a manner required by DIR rule. The bill establishes that a statement of work executed by a state agency under a contract awarded by DIR for the purchase of an information technology commodity item is not valid and prohibits money from being paid to the vendor under the terms of the statement of work unless DIR first signs the statement of work. The bill defines "statement of work" as a document stating the requirements for a contract that are specific to the vendor under contract and that are not specified in a contract awarded by DIR for the purchase of information technology commodity items. The bill increases from \$14,000 to \$50,000 the minimum threshold amount of certain construction projects, professional services, and consulting services contracts that triggers the requirement that a certain written notification be provided to the LBB.

C.S.H.B. 15 repeals Subchapter C, Chapter 2262, Government Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 15 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 825.103(g), Government Code, is amended.

SECTION 2. Section 2054.065(a)(2), Government Code, is amended.

SECTION 3. Section 2157.068(a), Government Code, is amended to read as follows:

(a) In this section, "commodity items" means commercial software ~~or~~ hardware, ~~or technology services, other than telecommunications services,~~ that ~~is~~ ~~are~~ generally available to businesses or the public and for which the department determines that a reasonable demand exists in two or more state agencies. The term includes seat management, through which a state agency transfers its personal computer equipment and service responsibilities to a private vendor to manage the personal computing needs for each desktop in the state agency, including all necessary hardware, software, and support services.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Section 2157.068, Government Code, is amended by adding Subsections (b-1) and (j) to read as follows:

(b-1) A state agency may not enter into a contract to purchase a commodity item if the value of the contract exceeds \$1 million.

(j) A state agency that enters into a contract for a commodity item under this section must obtain at least three competitive offers from vendors selected by the department under Subsection (b) if at least three vendors selected by the department offer the item.

SECTION 4. Subchapter B, Chapter 2157, Government Code, is amended by adding Section 2157.0685 to read as follows:

Sec. 2157.0685. CONTRACT REQUIREMENTS FOR CERTAIN SERVICES. (a) In this section, "statement of work" means a document stating the requirements for a contract that are specific to the vendor under the contract, including deliverables, performance specifications, and other requirements, and that are not specified in a contract awarded by the department under Section 2157.068.

(b) This section only applies to a contract with a value of more than \$50,000.

(c) For a contract awarded by the department under Section 2157.068 that requires a state agency to develop and execute a statement of work to initiate

services under the contract, the state agency must:

(1) consult with the department before submission of the statement of work to a vendor; and

(2) post each statement of work entered into by the agency on the agency's Internet website in the manner required by department rule.

(d) A statement of work executed by a state agency under a contract awarded by the department under Section 2157.068 is not valid and money may not be paid to the vendor under the terms of the statement of work unless the department first signs the statement of work.

SECTION 4. Sections 2165.356(a) and (b), Government Code, are amended.

SECTION 5. Same as introduced version.

SECTION 5. Section 2166.2551, Government Code, is amended.

SECTION 6. Same as introduced version.

SECTION 6. Section 2254.006, Government Code, is amended.

SECTION 7. Same as introduced version.

SECTION 7. Section 2254.0301(a), Government Code, is amended.

SECTION 8. Same as introduced version.

SECTION 8. Section 2262.001(1), Government Code, is amended.

SECTION 9. Same as introduced version.

SECTION 9. Section 2262.0015, Government Code, is amended.

SECTION 10. Same as introduced version.

SECTION 10. Section 2262.002, Government Code, is amended to read as follows:

SECTION 11. Section 2262.002(b), Government Code, is amended to read as follows:

Sec. 2262.002. EXEMPTIONS. (a) Except as otherwise provided by this chapter, this [This] chapter does not apply to an institution of higher education as defined by Section 61.003, Education Code.

(b) Except as otherwise provided by this chapter, this [This] chapter does not apply to contracts of the Texas Department of Transportation that:

- (1) relate to highway construction or highway engineering; or
- (2) are subject to Section 201.112, Transportation Code.

(b) Except as otherwise provided by this chapter, this [This] chapter does not apply to contracts of the Texas Department of Transportation that:

- (1) relate to highway construction or highway engineering; or
- (2) are subject to Section 201.112, Transportation Code.

SECTION 11. Chapter 2262, Government Code, is amended by adding Subchapter E to read as follows:

SECTION 12. Chapter 2262, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CONTRACT MANAGEMENT AND OVERSIGHT TEAM

Sec. 2262.201. DEFINITIONS.

Sec. 2262.202. APPLICATION OF SUBCHAPTER TO TEXAS DEPARTMENT OF TRANSPORTATION AND INSTITUTIONS OF HIGHER EDUCATION. This subchapter applies to contracts of:

(1) the Texas Department of Transportation that:

(A) do not relate to highway construction or highway engineering; or

(B) are not subject to Section 201.112, Transportation Code; and

(2) institutions of higher education as defined by Section 61.003, Education Code.

Sec. 2262.203. ESTABLISHMENT; GENERAL DUTIES.

Sec. 2262.204. NOTICE AND APPROVAL; WAIVER.

Sec. 2262.205. SOLICITATION AND CONTRACT CANCELLATION.

SECTION 12. Subchapter C, Chapter 2262, Government Code, is repealed.

SECTION 13. (a) The Contract Advisory Team is abolished.

SECTION 14. Section 2157.068(a), Government Code, as amended by this Act, and Subchapter E, Chapter 2262, Government Code, as added by this Act, apply only in relation to a contract:

(1) for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act;

(2) that is extended or modified on or after the effective date of this Act; or

(3) for which a change order is submitted on or after the effective date of this Act.

SECTION 15. Sections 2166.2551, 2254.006, and 2254.0301(a), Government Code, as amended by this Act, apply only to a state agency contract for which the agency is required to provide notice to the Legislative Budget Board that is entered

SUBCHAPTER E. CONTRACT MANAGEMENT AND OVERSIGHT TEAM

Sec. 2262.201. DEFINITIONS.

Sec. 2262.202. APPLICATION OF SUBCHAPTER TO TEXAS DEPARTMENT OF TRANSPORTATION.

This subchapter applies to contracts of the Texas Department of Transportation that:

(1) do not relate to highway construction or highway engineering; or

(2) are not subject to Section 201.112, Transportation Code.

Sec. 2262.203. ESTABLISHMENT; GENERAL DUTIES.

Sec. 2262.204. NOTICE AND APPROVAL; WAIVER.

Sec. 2262.205. SOLICITATION AND CONTRACT CANCELLATION.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Section 2157.068, Government Code, as amended by this Act, and Subchapter E, Chapter 2262, Government Code, as added by this Act, apply only in relation to a contract:

(1) for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act;

(2) that is extended or modified on or after the effective date of this Act; or

(3) for which a change order is submitted on or after the effective date of this Act.

SECTION 16. Same as introduced version.

into on or after the effective date of this Act.

SECTION 16. This Act takes effect
September 1, 2015.

SECTION 17. Same as introduced version.