

BILL ANALYSIS

C.S.H.B. 3241
By: Price
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested observers maintain that state government has made a shift over the past few decades from directly delivering services to contracting for the delivery of many of those services. These interested observers point to the increasing percentage of the state's budget that is spent through contracts, ranging in amounts from hundreds of dollars to billions of dollars. There are concerns that adequate accountability and oversight mechanisms have not been put in place to monitor the contracts.

Recent news coverage and reports from various state agencies have outlined many problems with the way state government contracts for goods and services, highlighting the need for stronger contracting solicitation safeguards, improved contract management practices, and reporting and oversight of the contracts across state government agencies.

In an effort to address these needs, C.S.H.B. 3241 seeks to enhance solicitation safeguards and contract oversight and reporting requirements, strengthen conflict of interest controls, and increase transparency and accountability so that there is knowledge about and confidence in the way state government is spending tax dollars.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to each applicable state agency in SECTION 16 of this bill and to the board of regents of each institution of higher education in SECTION 21 of this bill.

ANALYSIS

C.S.H.B. 3241 amends the Government Code to require the state auditor, in devising the state audit plan, to consider the performance of audits on contracts entered into by the Health and Human Services Commission (HHSC) that exceed \$100 million in annual value, including a contract between HHSC and a managed care organization. The bill requires the state auditor to collaborate with the financial managers in the Medicaid/CHIP division of HHSC in performing such an audit, authorizes the audit to be limited in scope to target an area of the contract that the state auditor determines poses the highest financial risk to the state, requires the audit to determine whether the entity contracting with HHSC has spent state money in accordance with the purposes authorized in the contract, and authorizes the state auditor to contract with a private auditor to perform the audit.

C.S.H.B. 3241 requires the comptroller of public accounts, in cooperation with the governor's budget and policy staff, to conduct a study examining the feasibility and practicality of consolidating state purchasing functions into fewer state agencies or one state agency. The bill requires the study to examine the cost savings to the state that may be achieved through abolishing offices or departments of state agencies that have a dedicated office or department for purchasing and through consolidating or reducing the number of vendors authorized to contract with the state to allow the state to better leverage its purchasing power. The bill requires the comptroller, not later than December 31, 2016, to prepare and deliver to the governor, the lieutenant governor, and each member of the legislature a report on the findings of the study and sets out information to be included in the report. The bill requires the comptroller to post the report on the comptroller's website by the same deadline. The bill's provisions relating to the study expire January 1, 2018.

C.S.H.B. 3241 requires a state agency, as that term is defined in statutory provisions relating to the preservation and management of state records and other historical resources, to retain in its records each contract entered into by the agency and all contract solicitation documents related to that contract and authorizes a state agency to destroy the contract and documents only after the fourth anniversary of the date the contract is completed or expires.

C.S.H.B. 3241 makes it a Class A misdemeanor offense for a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person to accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased. This offense applies only to a state officer or employee whose service or employment with a state agency ceases on or after the bill's effective date.

C.S.H.B. 3241, in a provision specifying that the definition of "enterprise resource planning" as the term relates to state accounting procedures includes the administration of a state agency's purchasing, clarifies that purchasing includes solicitations and contracting. The bill requires state agencies to report contract and purchasing information in the uniform manner required by the comptroller. The bill authorizes a state agency in the legislative branch to elect to participate in the enterprise resource planning system developed under statutory provisions governing state agency internal accounting systems.

C.S.H.B. 3241 requires the system of training and continuing education established for state agency purchasing personnel and administered by the comptroller to include ethics training and requires the system of training, continuing education, and certification for such personnel to include training on the selection of an appropriate procurement method by project type and training conducted by the Department of Information Resources (DIR) on purchasing technologies. The bill specifies that the training and continuing education that must be received to the extent required by comptroller rule by all state agency purchasing personnel, including agencies exempted from the comptroller's purchasing authority, must include ethics training.

C.S.H.B. 3241 requires each state agency, after a contract is completed or otherwise terminated, to review the vendor's performance under the contract and requires the agency, using the vendor performance tracking system described under the bill's provisions, to report to the comptroller on the results of the review. The bill exempts from this requirement an enrollment contract described by a certain provision of the Texas Administrative Code as it exists on September 1, 2015. The bill requires the comptroller to evaluate a vendor's performance based on the information reported by the agency and criteria established by the comptroller. The bill 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. The bill requires the comptroller to include the performance reviews in a vendor performance tracking system and authorizes state agencies to use the vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the database. The bill requires the

comptroller to make the vendor performance tracking system accessible to the public on the comptroller's website.

C.S.H.B. 3241 removes the authorization for a state agency to purchase goods or services directly from a vendor under a contract listed on the multiple award contract schedule developed by the comptroller and instead authorizes a state agency purchasing goods or services under such a contract, for a purchase with a value of \$50,000 or less, to directly award a contract to a vendor included on the schedule without submission of a request for pricing to other vendors on the list; requires the agency, for a purchase with a value of more than \$50,000 but not more than \$150,000, to submit a request for pricing to at least three vendors included on the schedule in the category to which the purchase relates; and requires the agency, for a purchase with a value of more than \$150,000 but not more than \$1 million, to submit a request for pricing to at least six vendors included on the schedule in the category to which the purchase relates or all vendors on the schedule if the category has fewer than six vendors. The bill prohibits a state agency purchasing goods or services under such a contract from purchasing goods or services that have a total value exceeding \$1 million. The bill specifies that the price listed for a good or service under a multiple award contract is a maximum price and authorizes a state agency to negotiate a lower price for goods or services under a contract listed on the schedule.

C.S.H.B. 3241 requires a state agency contracting to purchase an information technology commodity item to use the list compiled and maintained by DIR of such commodity items available for purchase through DIR that have a lower price than the prices for such commodity items otherwise available to state agencies as follows: for a contract with a value of \$50,000 or less, the agency may directly award the contract to a vendor included on the list without submission of a request for pricing to other vendors on the list; for a contract with a value of more than \$50,000 but not more than \$150,000, the agency must submit a request for pricing to at least three vendors included on the list in the category to which the contract relates; and, for a contract with a value of more than \$150,000 but not more than \$1 million, the agency must submit a request for pricing to at least six vendors included on the list in the category to which the contract relates or all vendors on the schedule if the category has fewer than six vendors. The bill prohibits a state agency from entering into a contract to purchase a commodity item if the value of the contract exceeds \$1 million.

C.S.H.B. 3241 requires a state agency, for a contract awarded by DIR under statutory provisions governing the purchase of information technology commodity items that requires the agency to develop and execute a statement of work to initiate service under the contract, to consult with DIR before submission of the statement of work to a vendor and to post each statement entered into by the agency on the agency's website in the manner required by DIR rule. The bill defines "statement of work" to mean a document that states the requirements for a contract specific to the vendor under that contract that are not specified in a contract awarded by DIR for contracts more than \$50,000. The bill specifies that a statement of work executed by a state agency under such a contract 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.

C.S.H.B. 3241 prohibits a state agency from hiring, or entering into an employment contract, a professional services contract, or a consulting services contract 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 for which the vendor contracted with the agency before the second anniversary of the last date on which the individual was employed by the vendor.

C.S.H.B. 3241 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. The bill 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: a member of the agency's governing body; the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or a family member related to such an employee or official within the second degree by affinity or consanguinity. The bill establishes that a state agency employee or official has a financial interest in a person, defined in statute as a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity, if the employee or official 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 if the employee or official could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official. The bill establishes that such a prohibited financial interest does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

C.S.H.B. 3241 requires each state agency, for each contract for the purchase of goods or services from a private vendor, to post on its website 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; the statutory or other authority under which a contract that is not competitively bid is entered into without compliance with competitive bidding procedures; and the request for proposals related to a competitively bid contract included on the website until the contract expires or is completed. The bill authorizes a state agency to monthly post the previously described contracts that are valued at less than \$15,000. The bill requires each state agency by rule to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and to 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. The bill requires an 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 provision. The bill establishes that these requirements relating to required posting of certain contracts and enhanced contract and performance monitoring do not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

C.S.H.B. 3241 requires a state agency to develop and implement, for each contract for the purchase of goods or services that has a value exceeding \$1 million, contract reporting requirements that provide information on compliance with financial provisions and delivery schedules under the contract, corrective action plans required under the contract and the status of any active corrective action plan, and any liquidated damages assessed or collected under the contract. The bill requires each state agency to verify the accuracy of any reported information that is based on information provided by a contractor and the delivery time of goods or services scheduled for delivery under the contract. The bill authorizes a state agency to enter into a contract for the purchase of goods or services that has a value exceeding \$1 million only if 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 if, for a state agency that is not governed by a multimember governing body, the officer who governs the agency approves and signs the contract. The bill 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. The bill establishes that a highway construction or maintenance contract that is awarded by the Texas Department of Transportation (TxDOT) by competitive bid is not required to be signed by a member of the Texas Transportation Commission or the executive director of TxDOT but specifies that this exception does not apply to an expedited highway improvement contract, a comprehensive development agreement, a design-build contract, or any other contract entered into by TxDOT.

C.S.H.B. 3241 requires the contract management office or procurement director of a state

agency, for each state agency contract for the purchase of goods or services that has a value exceeding \$5 million, to verify in writing that the solicitation and purchasing methods and contractor selection process comply with state law and agency policy and to 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.

C.S.H.B. 3241 requires each state agency to develop and comply with a risk analysis procedure that must provide for 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 for identifying contracts that require enhanced contract monitoring. The bill 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. The bill specifies that the agency handbook may include standard contract provisions and formats for the agency to incorporate in contracts.

C.S.H.B. 3241 requires each state agency that becomes a participant in the centralized accounting and payroll systems to use the system to identify and record each contract entered into by the agency as specified by the rules, policies, or procedures developed by the comptroller. The bill requires the comptroller to provide as necessary information and state agency contract data contained in the systems to other state agencies with oversight duties, including the Legislative Budget Board (LBB), the state auditor's office, and DIR.

C.S.H.B. 3241 excepts the bill's provisions establishing ethics, reporting, and approval requirements for certain contracts from the specification that statutory provisions relating to state contracting standards and oversight apply only to each procurement of goods or services made by a state agency that is neither made by the comptroller nor made under certain purchasing authority delegated to the agency. The bill establishes that those bill provisions apply to TxDOT and to an institution of higher education acquiring goods or services under specified Education Code provisions.

C.S.H.B. 3241 provides for the Contract Advisory Team, after being notified by a state agency of a change order, contract amendment, contract renewal or extension, or other proposed action that would result in a change to the monetary value of a contract reviewed by the team that has a value of at least \$10 million by more than 20 percent, to review the justification for the change order, contract amendment, contract renewal or extension, or other proposed action, as applicable, to determine whether the justification is reasonable considering the circumstances. The bill also provides for the team, if the team determines the justification is not reasonable, to contact the agency for additional justification, and if not satisfactory, forward the contract to the comptroller. The bill requires a state agency that notifies the team of a change order, contract amendment, contract renewal or extension, or other proposed action to include with the notification a justification for the proposed action in the form and containing the information specified by the team. The bill requires the comptroller, for each contract forwarded by the team, to notify the governing body of the agency or the single state officer who governs the agency, the LBB, and each member of the senate and house of representatives.

C.S.H.B. 3241 increases the membership of the Contract Advisory Team from six to nine members by adding to the team one member from TxDOT, one member from the Texas Education Agency, and one member from the Texas Commission on Environmental Quality and requires the respective executive directors of those agencies to each appoint a member of the team, as appropriate, as soon as is practicable after the bill's effective date. The bill requires the team to submit a quarterly report to the LBB on the number of solicitation documents and contracts reviewed by the team in the preceding quarter and whether state agencies accepted or rejected the team's recommendations and any reasons provided by the state agencies for rejecting the recommendations.

C.S.H.B. 3241 amends the Education Code to require the board of regents of an institution of higher education by rule to establish for each institution under the management and control of the board a code of ethics for the institution's officers and employees, including provisions governing officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts; policies for the internal investigation of suspected defalcation, misappropriation, and other fiscal irregularities and an institutional or systemwide compliance program designed to promote ethical behavior and ensure compliance with all applicable policies, laws, and rules governing higher education, including research and health care to the extent applicable; a contract management handbook that provides consistent contracting policies and practices and contract review procedures, including a risk analysis procedure; contracting delegation guidelines; training for officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, including training in ethics, selection of appropriate procurement methods, and information resources purchasing technologies; and internal audit protocols. The bill sets out required contents of the code of ethics governing an institution of higher education. The bill requires an institution of higher education to establish contract review procedures and a contract review checklist that must be reviewed and approved by the institution's legal counsel before implementation and sets out required contents of the review procedures and checklist.

C.S.H.B. 3241 requires an institution of higher education's policies governing contracting authority to clearly specify the types and values of contracts that must be approved by the board of regents and the types and values of contracts for which contracting authority is delegated by the board to the chief executive officer and by the chief executive officer to other officers and employees of the institution. The bill prohibits an officer or employee from executing a document for the board unless the officer or employee has authority to act for the board and the authority is exercised in compliance with applicable conditions and restrictions. The bill prohibits an institution of higher education from entering into a contract with a value of more than \$1 million, including any amendment, extension, or renewal of the contract that increases the value of the original contract to more than \$1 million, unless the institution's board of regents approves the contract, expressly delegates authority to exceed that amount, or expressly adopts an exception for that contract. The bill requires the board to approve any amendment, extension, or renewal of a contract with a value that exceeds 25 percent of the value of the original contract approved by the board unless the authority to exceed the approved amount is expressly delegated by the board or an exception is expressly adopted by the board for that contract.

C.S.H.B. 3241 requires the board of regents of an institution of higher education to adopt standards for internal audits conducted by the institution to provide a systematic, disciplined approach to evaluate and improve the effectiveness of the institution's risk management, control, and governance processes related to contracts and to require risk-based testing of contract administration. The bill requires the internal auditor to have full and unrestricted access to all institutional property, personnel, and records and requires an internal auditor to report directly to the board of regents in accordance with the Texas Internal Auditing Act. The bill requires the chief auditor of an institution of higher education to annually assess whether the institution has adopted the rules and policies required by the bill's provisions and to submit a report of findings to the state auditor. The bill requires the state auditor, in auditing the purchase of goods and services by the institution, to determine whether an institution has adopted the required rules and policies.

C.S.H.B. 3241 requires the state auditor, if the auditor determines that an institution of higher education has failed to adopt the required rules and policies, to report that failure to the legislature and to the institution's board of regents and, in consultation with the institution, to adopt a remediation plan to bring the institution into compliance. The bill requires the auditor, if the institution fails to comply within the time established by the state auditor, to find the institution to be in noncompliance and report that finding to the legislature and comptroller. The bill establishes that, in accordance with a schedule adopted by the state auditor in consultation

with the comptroller, the authority of an institution of higher education to acquire goods and services under certain Education Code provisions is suspended if the institution fails to comply with the remediation plan within the time established by the state auditor. The bill establishes that, as a result of the suspension, the laws governing acquisition of goods and services by state agencies from which the institution is otherwise exempt shall apply to the institution's acquisition of goods and services.

C.S.H.B. 3241 prohibits an institution of higher education from exercising the acquisition authority granted by certain Education Code provisions unless the institution complies with the bill's provisions establishing required standards for purchasing by institutions of higher education and establishes that an institution that is determined to not be in compliance is subject to the laws governing acquisition of goods and services by state agencies.

C.S.H.B. 3241 requires the comptroller and each affected state agency as necessary, as soon as is practicable after the bill's effective date, to adopt the rules and procedures and take the actions necessary to implement the bill's provisions.

C.S.H.B. 3241 repeals Section 2155.502(d), Government Code, providing for the definition of "telecommunications" for purposes of statutory provisions governing the development of the multiple award contract schedule.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3241 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

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 321.013, Government Code, is amended by adding Subsections (k) and (l) to read as follows:

(k) In devising the audit plan under Subsection (c), the State Auditor shall consider the performance of audits on contracts entered into by the Health and Human Services Commission that exceed \$100 million in annual value, including a contract between the commission and a managed care organization. The State Auditor shall collaborate with the financial managers in the Medicaid/CHIP Division of the commission in performing an audit described by this subsection. An audit described by this subsection:

(1) may be limited in scope to target an area of the contract that the State Auditor determines poses the highest financial risk to this state; and

(2) must determine whether the entity contracting with the commission has spent

state money in accordance with the purposes authorized in the contract.

(l) The State Auditor may contract with a private auditor to audit a contract under Subsection (k).

No equivalent provision.

SECTION 2. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.03057 to read as follows:

Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY. (a) The comptroller, in cooperation with the governor's budget and policy staff, shall conduct a study examining the feasibility and practicality of consolidating state purchasing functions into fewer state agencies or one state agency. The study must examine the cost savings to this state that may be achieved through:

(1) abolishing offices or departments of state agencies that have a dedicated office or department for purchasing; and

(2) consolidating or reducing the number of vendors authorized to contract with this state to allow this state to better leverage its purchasing power.

(b) The comptroller shall prepare and deliver to the governor, the lieutenant governor, and each member of the legislature a report on the findings of the study conducted under Subsection (a), including:

(1) a detailed projection of expected savings or costs to this state in consolidating state purchasing;

(2) a report on the process for the legislature or the executive branch to implement the consolidation of state purchasing;

(3) a list of state agencies, including dedicated offices or departments in those agencies, with purchasing responsibilities; and

(4) the total cost to this state of the purchasing responsibilities for each state agency, including the dedicated office or department in the agency with purchasing responsibility.

(c) The comptroller shall prepare, deliver, and post on the comptroller's Internet website the report required by this section not later than December 31, 2016.

(d) This section expires January 1, 2018.

SECTION 1. Subchapter L, Chapter 441, Government Code, is amended.

SECTION 2. Section 2151.002, Government Code, is amended to read as follows:

Sec. 2151.002. DEFINITION. Except as otherwise provided by this subtitle, in this subtitle, "state agency" means:

- (1) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;
- (2) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or
- (3) a university system or an institution of higher education as defined by Section 61.003, Education Code~~[, except a public junior college]~~.

No equivalent provision.

No equivalent provision.

SECTION 3. Same as introduced version.

No equivalent provision.

SECTION 4. Subchapter C, Chapter 572, Government Code, is amended by adding Section 572.069 to read as follows:

Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED; CRIMINAL PENALTY. (a) A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased. (b) An individual commits an offense if the individual violates this section. An offense under this subsection is a Class A misdemeanor.

SECTION 5. Section 2101.001(1), Government Code, is amended to read as follows:

- (1) "Enterprise resource planning" includes the administration of a state agency's:
 - (A) general ledger;
 - (B) accounts payable;
 - (C) accounts receivable;
 - (D) budgeting;
 - (E) inventory;

- (F) asset management;
- (G) billing;
- (H) payroll;
- (I) projects;
- (J) grants;
- (K) human resources, including administration of performance measures, time spent on tasks, and other personnel and labor issues; and
- (L) purchasing, including solicitations and contracting.

No equivalent provision.

SECTION 6. Section 2101.035, Government Code, is amended by adding Subsection (i) to read as follows:

(i) State agencies shall report contract and purchasing information in the uniform manner required by the comptroller.

No equivalent provision.

SECTION 7. Section 2101.036, Government Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Subsection (d), a state agency in the legislative branch may elect to participate in the enterprise resource planning system developed under this section.

SECTION 3. Section 2155.078, Government Code, is amended.

SECTION 8. Same as introduced version.

SECTION 4. Subchapter B, Chapter 2155, Government Code, is amended by adding Sections 2155.089 and 2155.090 to read as follows:

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

(b) The state agency shall report to the 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.

SECTION 9. Subchapter B, Chapter 2155, Government Code, is amended by adding Sections 2155.089 and 2155.090 to read as follows:

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

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

(c) This section does not apply to an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015.

Sec. 2155.090. VENDOR PERFORMANCE TRACKING SYSTEM.

(a) The comptroller shall evaluate a vendor's performance based on the information reported under Section 2155.089 and criteria established by the comptroller.

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

(c) The comptroller shall include the performance reviews in a vendor performance tracking system.

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

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

(a) The comptroller shall evaluate a vendor's performance based on the information reported under Section 2155.089 and criteria established by the comptroller.

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

(c) The comptroller shall include the performance reviews in a vendor performance tracking system.

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

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

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

(c) The commission may not list a multiple award contract on a schedule developed under Subsection (a) if the goods [~~or services~~] provided by that contract:

(1) are available from only one vendor; or

(2) [~~are telecommunications services, facilities, or equipment;~~

~~(3)] are commodity items as defined by Section 2157.068(a); or~~

(3) have a value that exceeds \$1 million [~~(4) are engineering services as described by Section 1001.003, Occupations Code, or architectural services as described by Section 1051.001, Occupations Code].~~

(c-1) The list of multiple award contracts may not include more than 35 percent of the number of vendors that competitively bid to provide a particular good under a multiple award contract.

No equivalent provision.

SECTION 6. Subchapter I, Chapter 2155, Government Code, is amended by adding Section 2155.5035 to read as follows:

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

SECTION 10. Subchapter I, Chapter 2155, Government Code, is amended by adding Section 2155.5035 to read as follows:

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

(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) The price listed for a good under a multiple award contract is a maximum price. A state agency may negotiate a lower price for goods under a contract listed on a schedule developed under this chapter.

SECTION 7. Section 2155.504, Government Code, is amended to read as follows:

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES. (a) A ~~[state agency or]~~ local government may purchase goods ~~[or services]~~ directly from a vendor under a contract listed on a schedule developed under this subchapter. 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.

(b) The price listed for a good ~~[or service]~~ under a multiple award contract is a maximum price. A ~~[An agency or]~~ local government may negotiate a lower price for goods ~~[or services]~~ under a contract listed on a schedule developed under this subchapter.

SECTION 8. Section 2155.505(a)(3), Government Code, is amended to read as follows:

(3) "Veterans service agency" means a

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

(2) for a purchase with a value of more than \$50,000 but not more than \$150,000, ~~shall~~ submit a request for pricing 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, ~~shall~~ submit a request for pricing to at least six vendors included on the schedule in the category to which the purchase relates ~~or all vendors on the schedule if the category has fewer than six vendors; and~~

(4) ~~may not purchase under the contract goods or services that have a total value exceeding \$1 million.~~

(b) The price listed for a good ~~or service~~ under a multiple award contract is a maximum price. A state agency may negotiate a lower price for goods ~~or services~~ under a contract listed on a schedule developed under this chapter.

SECTION 11. Section 2155.504, Government Code, is amended to read as follows:

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES. (a) A ~~[state agency or]~~ local government may purchase goods ~~or services~~ directly from a vendor under a contract listed on a schedule developed under this subchapter. 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.

(b) The price listed for a good ~~or service~~ under a multiple award contract is a maximum price. A ~~[An agency or]~~ local government may negotiate a lower price for goods ~~or services~~ under a contract listed on a schedule developed under this subchapter.

~~No equivalent provision.~~

community-based organization that:

(A) is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described in Section 501(c)(3) of that code;

(B) has as its principal purpose to provide housing, substance abuse treatment, case management services, and employment training to low-income veterans, disabled veterans, and homeless veterans and their families; and

(C) employs veterans to provide at least 75 percent of the hours of direct labor by individuals required to produce goods [~~or provide services~~] required under a contract entered into under this section.

SECTION 9. Sections 2155.505(b) and (c), Government Code, are amended to read as follows:

(b) The commission shall 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 [~~or provide a service~~] under the contract. If a vendor does not make a good faith effort to use historically underutilized and small businesses under the contract, the commission may exclude the vendor from being listed on a schedule developed under this subchapter.

(c) A historically underutilized business or small business may sell goods [~~or provide a service~~] under another vendor's contract listed on a schedule developed under this subchapter if:

- (1) the contract is on a schedule developed under Section 2155.502;
- (2) the vendor for the contract authorizes in writing the historically underutilized business or small business to sell goods [~~or provide a service~~] under that contract; and
- (3) the historically underutilized business or small business provides that written authorization to the commission.

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

No equivalent provision.

SECTION 12. Section 2157.068, Government Code, is amended by adding Subsections (e-1) and (e-2) 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.

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

No equivalent provision.

(e-1) A state agency contracting to purchase a commodity item shall 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 may directly award the contract to a vendor included on the list without submission of a request for pricing 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 must submit a request for pricing to at least three vendors included on the list in the category to which the contract relates; and

(3) for a contract with a value of more than \$150,000 but not more than \$1 million, the agency must submit a request for pricing to at least six vendors included on the list in the category to which the contract relates or all vendors on the schedule if the category has fewer than six vendors.

(e-2) A state agency may not enter into a contract to purchase a commodity item if the value of the contract exceeds \$1 million.

SECTION 13. 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 that states the requirements for a contract, including deliverables, performance specifications, and other requirements, specific to the vendor under that contract that are not specified in a contract awarded by the department under Section 2157.068 for

contracts more than \$50,000.

(b) 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.

(c) 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 11. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.9011 to read as follows:

Sec. 2252.9011. CONTRACTS WITH FORMER OR RETIRED PRIVATE VENDOR EMPLOYEES.

A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, 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. Section 2254.021(6), Government Code, is amended to read as follows:

(6) "State governmental entity" means a state department, commission, board, office, institution, facility, or other agency the jurisdiction of which is not limited to a geographical portion of the state. The term includes a university system and an institution of higher education[, other than a

SECTION 14. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.9011 to read as follows:

Sec. 2252.9011. EMPLOYMENT OF OR CONTRACTS WITH FORMER OR RETIRED PRIVATE VENDOR EMPLOYEES.

A state agency may not hire, or enter into an employment contract, a professional services contract under Chapter 2254, 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 for which the vendor contracted with the agency before the second anniversary of the last date on which the individual was employed by the private vendor.

No equivalent provision.

~~public junior college,~~] as defined by Section 61.003, Education Code. The term does not include a political subdivision.

SECTION 13. Section 2261.001(a), Government Code, is amended to read as follows:

(a) 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 ~~[by or]~~ under ~~[Section 51.9335 or 73.115, Education Code, or]~~ Section 2155.131 or 2155.132.

SECTION 14. Chapter 2261, Government Code, is amended by adding Subchapter F to read as follows:

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

Sec. 2261.251. APPLICABILITY OF SUBCHAPTER. Section 2261.001 does not apply to this subchapter.

Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST; CERTAIN CONTRACTS PROHIBITED.

Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS; ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each contract for the purchase of goods or services from a private vendor, each state agency shall 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

SECTION 15. Section 2261.001(a), Government Code, is amended to read as follows:

(a) This chapter, ~~other than Subchapter F,~~ 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 by or under Section 51.9335 or 73.115, Education Code, or Section 2155.131 or 2155.132.

SECTION 16. Chapter 2261, Government Code, is amended by adding Subchapter F to read as follows:

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

Sec. 2261.251. APPLICABILITY OF SUBCHAPTER. Notwithstanding Section 2261.001, this subchapter applies to the Texas Department of Transportation and to an institution of higher education acquiring goods or services under Section 51.9335 or 73.115, Education Code.

Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST; CERTAIN CONTRACTS PROHIBITED.

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

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

(c) Each state agency by rule shall 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. The agency's contract management office or procurement director shall 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) For each contract for the purchase of goods or services that has a value exceeding \$1 million, a state agency shall 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) Each state agency shall 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) Except as provided by Subsection (d), a state agency may 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

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

(c) Each state agency by rule shall 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. The agency's contract management office or procurement director shall 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.

(d) This section does not apply to a memoranda of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$1 MILLION. (a) For each contract for the purchase of goods or services that has a value exceeding \$1 million, a state agency shall 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) Each state agency shall 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) Except as provided by Subsection (d), a state agency may 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) The governing body or governing official of a state agency, as appropriate, may delegate to the executive director of the agency the approval and signature authority under Subsection (c).

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

(e) A highway construction or maintenance contract that is awarded by the Texas Department of Transportation under Subchapter A, Chapter 223, Transportation Code, is not required to be signed by a member of the Texas Transportation Commission or the executive director of the department. This exception does not apply to expedited highway improvement contracts under Subchapter C, Chapter 223, Transportation Code, a comprehensive development agreement entered into under Subchapter E, Chapter 223, Transportation Code, a design-build contract entered into under Subchapter F, Chapter 223, Transportation Code, or any other contract entered into by the Texas Department of Transportation.

Sec. 2261.255. CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.

Sec. 2261.255. CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.

Sec. 2261.256. RISK ANALYSIS PROCEDURE; CONTRACT MANAGEMENT HANDBOOK; CONTRACT MANAGEMENT DATABASE. (a) Each state agency shall develop and comply with a risk analysis procedure. The procedure must 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) Each state agency shall 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. The agency handbook may include standard contract provisions and formats for the agency to

Sec. 2261.256. RISK ANALYSIS PROCEDURE; CONTRACT MANAGEMENT HANDBOOK.
(a) Each state agency shall develop and comply with a risk analysis procedure. The procedure must 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) Each state agency shall 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. The agency handbook may include standard contract provisions and formats for the agency to

incorporate in contracts.

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

SECTION 15. Section 2262.001(5), Government Code, is amended to read as follows:

(5) "State agency" has the meaning provided by Section 2056.001, except that the term includes a university system or an institution of higher education as defined by Section 61.003, Education Code.

SECTION 16. 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, are reenacted and amended to read as follows:

(a) The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

(1) 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) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide;

incorporate in contracts.

Sec. 2261.257. CONTRACT DATABASE.

(a) Each state agency that becomes a participant in the centralized accounting and payroll systems as authorized by Sections 2101.035 and 2101.036 shall use the system to identify and record each contract entered into by the agency as specified by the rules, policies, or procedures developed by the comptroller.

(b) The comptroller shall provide as necessary information and state agency contract data contained in the centralized accounting and payroll systems to other state agencies with oversight duties, including the Legislative Budget Board, the state auditor's office, and the Department of Information Resources.

No equivalent provision.

SECTION 17. Section 2262.101, Government Code, as amended by Chapters 676 (H.B. 1965) and 1227 (S.B. 1681), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

Sec. 2262.101. CREATION; DUTIES.

(a) The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

(1) 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;

(2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide;

- (3) providing recommendations to the comptroller regarding:
 - (A) the development of the contract management guide; and
 - (B) the training under Section 2262.053;
- (4) providing recommendations and assistance to state agency personnel throughout the contract management process;
- (5) coordinating and consulting with the quality assurance team established under Section 2054.158 on all contracts relating to a major information resources project; ~~and~~
- ~~(6) [(4)]~~ developing and recommending policies and procedures to improve state agency contract management practices;
- ~~(7) [(5)]~~ developing and recommending procedures to improve state agency contracting practices by including consideration for best value; and
- ~~(8) [(6)]~~ creating and periodically performing a risk assessment to determine the appropriate level of management and oversight of contracts by state agencies.

- (b) The risk assessment created and performed ~~[reviewed]~~ under Subsection ~~(a)(8)~~ ~~[(a)(6)]~~ must include~~[-, but is not limited to]~~ the following criteria:
 - (1) the amount of appropriations to the agency;
 - (2) total contract value as a percentage of appropriations to the agency; ~~and~~ ~~[or]~~
 - (3) the impact of the functions and duties of the state agency on the health, safety, and well-being of residents ~~[citizens]~~.
- (c) The comptroller shall oversee the

- (3) providing recommendations to the comptroller regarding:
 - (A) the development of the contract management guide; and
 - (B) the training under Section 2262.053;
- (4) providing recommendations and assistance to state agency personnel throughout the contract management process;
- (5) coordinating and consulting with the quality assurance team established under Section 2054.158 on all contracts relating to a major information resources project; ~~and~~
- ~~(6) [(4)]~~ developing and recommending policies and procedures to improve state agency contract management practices;
- ~~(7) [(5)]~~ developing and recommending procedures to improve state agency contracting practices by including consideration for best value; ~~and~~
- ~~(8) [(6)]~~ creating and periodically performing a risk assessment to determine the appropriate level of management and oversight of contracts by state agencies; ~~and~~
- (9) after being notified by a state agency of a change order, contract amendment, contract renewal or extension, or other proposed action that would result in a change to the monetary value of a contract reviewed under Subdivision (1) by more than 20 percent, reviewing the justification for the change order, contract amendment, contract renewal or extension, or other proposed action, as applicable, to:
 - (A) determine whether the justification is reasonable considering the circumstances; and
 - (B) if the team determines the justification is not reasonable, contact the state agency for additional justification, and if not satisfactory, forward the contract to the comptroller for notification under Subsection (h).
- (b) The risk assessment created and performed ~~[reviewed]~~ under Subsection ~~(a)(8)~~ ~~[(a)(6)]~~ must include~~[-, but is not limited to]~~ the following criteria:
 - (1) the amount of appropriations to the agency;
 - (2) total contract value as a percentage of appropriations to the agency; ~~and~~ ~~[or]~~
 - (3) the impact of the functions and duties of the state agency on the health, safety, and well-being of residents ~~[citizens]~~.
- (c) The comptroller shall oversee the

activities of the team, including ensuring that the team carries out its duties under Subsections (a)(1), [Subsection] (a)(5), and (a)(7).

activities of the team, including ensuring that the team carries out its duties under Subsections (a)(1), [Subsection] (a)(5), and (a)(7).

(d) A state agency shall:

(1) comply with a recommendation made under Subsection (a)(1); or

(2) submit a written explanation regarding why the recommendation is not applicable to the contract under review.

(e) The team may review documents under Subsection (a)(1) only for compliance with contract management and best practices principles and may not make a recommendation regarding the purpose or subject of the contract.

(f) The team may develop an expedited process for reviewing solicitations under Subsection (a)(1) for contracts:

(1) that the team identifies as posing a low risk of loss to the state; or

(2) for which templates will be used more than once by a state agency.

(g) A state agency that notifies the team of a change order, contract amendment, contract renewal or extension, or other proposed action under Subsection (a)(9) must include with the notification a justification for the proposed action in the form and containing the information specified by the team.

(h) The comptroller shall, for each contract of a state agency forwarded under Subsection (a)(9), notify:

(1) the governing body of the agency or the single state officer who governs the agency;

(2) the Legislative Budget Board; and

(3) each member of the senate and house of representatives.

SECTION 17. Section 2262.102(a), Government Code, is amended.

SECTION 18. Same as introduced version.

SECTION 18. Subchapter C, Chapter 2262, Government Code, is amended by adding Section 2262.105 to read as follows:

SECTION 19. Subchapter C, Chapter 2262, Government Code, is amended by adding Section 2262.105 to read as follows:

Sec. 2262.105. QUARTERLY REPORT TO LEGISLATIVE BUDGET BOARD.

Sec. 2262.105. QUARTERLY REPORT TO LEGISLATIVE BUDGET BOARD.

The contract advisory team shall submit a quarterly report to the Legislative Budget Board on:

The contract advisory team shall submit a quarterly report to the Legislative Budget Board on:

(1) the number of solicitation documents and contracts reviewed by the team in the

(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.

No equivalent provision.

No equivalent provision.

preceding quarter; and
(2) whether state agencies accepted or rejected the team's recommendations and any reasons provided by the state agencies for rejecting the recommendations.

SECTION 20. Section 51.9335(d), Education Code, is amended to read as follows:

(d) Subject to Section 51.9337, 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. An institution of higher education may, but is not required to, acquire goods or services as provided by Subtitle D, Title 10, Government Code.

SECTION 21. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9337 to read as follows:

Sec. 51.9337. PURCHASING AUTHORITY CONDITIONAL; REQUIRED STANDARDS. (a) An institution of higher education may not exercise the acquisition authority granted by Section 51.9335 or 73.115 unless the institution complies with this section. An institution that is determined under Subsection (j) to not be in compliance with this section is subject to the laws governing acquisition of goods and services by state agencies, including Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code.

(b) The board of regents of an institution of higher education by rule shall establish for each institution under the management and control of the board:

(1) a code of ethics for the institution's officers and employees, including provisions governing officers and

employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, subject to Subsection (c);

(2) policies for the internal investigation of suspected defalcation, misappropriation, and other fiscal irregularities and an institutional or systemwide compliance program designed to promote ethical behavior and ensure compliance with all applicable policies, laws, and rules governing higher education, including research and health care to the extent applicable;

(3) a contract management handbook that provides consistent contracting policies and practices and contract review procedures, including a risk analysis procedure, subject to Subsection (d);

(4) contracting delegation guidelines, subject to Subsections (e) and (f);

(5) training for officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, including training in ethics, selection of appropriate procurement methods, and information resources purchasing technologies; and

(6) internal audit protocols, subject to Subsection (g).

(c) The code of ethics governing an institution of higher education must include:

(1) general standards of conduct and a statement that each officer or employee is expected to obey all federal, state, and local laws and is subject to disciplinary action for a violation of those laws;

(2) policies governing conflicts of interest, conflicts of commitment, and outside activities, ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position;

(3) a conflict of interest policy that prohibits employees from having a direct or indirect financial or other interest, engaging in a business transaction or professional activity, or incurring any obligation that is in substantial conflict with the proper discharge of the employee's duties related to the public interest;

(4) a conflict of commitment policy that prohibits an employee's activities outside the institution from interfering with the employee's duties and responsibilities to the institution;

(5) a policy governing an officer's or employee's outside activities, including compensated employment and board service, that clearly delineates the nature and amount of permissible outside activities and that includes processes for disclosing the outside activities and for obtaining and documenting institutional approval to perform the activities;

(6) a policy that prohibits an officer or employee from acting as an agent for another person in the negotiation of the terms of an agreement relating to the provision of money, services, or property to the institution;

(7) a policy governing the use of institutional resources; and

(8) a policy providing for the regular training of officers and employees on the policies described by this subsection.

(d) An institution of higher education shall establish contract review procedures and a contract review checklist that must be reviewed and approved by the institution's legal counsel before implementation. The review procedures and checklist must include:

(1) a description of each step of the procedure that an institution must use to evaluate and process contracts;

(2) a checklist that describes each process that must be completed before contract execution; and

(3) a value threshold that initiates the required review by the institution's legal counsel unless the contract is a standard contract previously approved by the counsel.

(e) An institution of higher education's policies governing contracting authority must clearly specify the types and values of contracts that must be approved by the board of regents and the types and values of contracts for which contracting authority is delegated by the board to the chief executive officer and by the chief executive officer to other officers and employees of the institution. An officer or employee may not execute a document for the board unless the officer or employee has authority to act for the board and the authority is exercised in compliance with applicable conditions and restrictions.

(f) An institution of higher education may not enter into a contract with a value of

more than \$1 million, including any amendment, extension, or renewal of the contract that increases the value of the original contract to more than \$1 million, unless the institution's board of regents approves the contract, expressly delegates authority to exceed that amount, or expressly adopts an exception for that contract. The board must approve any amendment, extension, or renewal of a contract with a value that exceeds 25 percent of the value of the original contract approved by the board unless the authority to exceed the approved amount is expressly delegated by the board or an exception is expressly adopted by the board for that contract.

(g) The board of regents of an institution of higher education shall adopt standards for internal audits conducted by the institution to provide a systematic, disciplined approach to evaluate and improve the effectiveness of the institution's risk management, control, and governance processes related to contracts and to require risk-based testing of contract administration. The internal auditor must have full and unrestricted access to all institutional property, personnel, and records. An internal auditor must report directly to the board of regents in accordance with Chapter 2102, Government Code.

(h) The chief auditor of an institution of higher education shall annually assess whether the institution has adopted the rules and policies required by this section and shall submit a report of findings to the state auditor. In auditing the purchase of goods and services by the institution, the state auditor shall determine whether an institution has adopted the required rules and policies.

(i) If the state auditor determines that an institution of higher education has failed to adopt the required rules and policies, the auditor shall report that failure to the legislature and to the institution's board of regents and shall, in consultation with the institution, adopt a remediation plan to bring the institution into compliance. If the institution fails to comply within the time established by the state auditor, the auditor shall find the institution to be in noncompliance and report that finding to the legislature and comptroller.

(j) In accordance with a schedule adopted by the state auditor in consultation with the comptroller, the authority of an institution of higher education to acquire goods and services as provided by Section 51.9335 or 73.115 is suspended if the institution fails to comply with the remediation plan under Subsection (i) within the time established by the state auditor. As a result of the suspension, the laws, including Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code, governing acquisition of goods and services by state agencies from which the institution is otherwise exempt, shall apply to the institution's acquisition of goods and services.

No equivalent provision.

SECTION 22. Sections 73.115(e) and (f), Education Code, are amended to read as follows:

(e) To the extent of any conflict, this section prevails over any other law relating to the purchasing of goods and services other than Section 51.9337 and [except] a law relating to contracting with historically underutilized businesses.

(f) Except as otherwise provided by this section and Section 51.9337, Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code, do not apply to purchases of goods and services made under this section.

SECTION 19. The following provisions are repealed:

(1) Sections 51.9335(d) and 73.115(d), Education Code; and

(2) Sections 2155.448(d), 2155.502(d), 2261.001(d), and 2262.002(a), Government Code.

SECTION 23. Section 2155.502(d), Government Code, is repealed.

SECTION 20. (a) As soon as is practicable after the effective date of this Act, the executive directors of the Texas Department of Transportation, the Texas Education Agency, and the Texas Commission on Environmental Quality shall each appoint a member to the contract advisory team as required by Section 2262.102, Government Code, as amended by this Act.

(b) As soon as is practicable after the

SECTION 24. Same as introduced version.

effective date of this Act, the comptroller of public accounts, and each affected state agency as necessary, shall adopt the rules and procedures and take the actions necessary to implement the changes in law made by this Act.

SECTION 21. 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.

No equivalent provision.

SECTION 22. The changes in law made by this Act apply only to a contract entered into on or after the effective date of this Act. A contract entered into before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 23. This Act takes effect September 1, 2015.

SECTION 25. Same as introduced version.

SECTION 26. Section 572.069, Government Code, as added by this Act, applies only to a state officer or employee whose service or employment with a state agency ceases on or after the effective date of this Act.

SECTION 27. Same as introduced version.

SECTION 28. Same as introduced version.