

## **BILL ANALYSIS**

C.S.S.B. 543  
By: Zaffirini  
Government Transparency & Operation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It is generally held that the manner in which state agencies engage and administer contracts with vendors is of vital concern for the state because it directly affects the use of state-appropriated financial resources. Interested parties assert that all stages of contract solicitation, negotiation, and management must be skillfully managed to mitigate risk, contain costs, and ensure high quality and that the state would benefit from greater uniformity in state contracting management processes to ensure the best value for each dollar spent. These parties assert that improving the training processes for employees involved in contracting, improving contract reporting and oversight mechanisms at state agencies, and addressing contract amendments, modifications, renewals, or extensions, among other things, would consequently improve the processes by which the state solicits, negotiates, enters, and manages contracts with vendors. C.S.S.B. 543 seeks to establish such improvements.

### **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 rulemaking authority is expressly granted to the State Office of Risk Management in SECTION 34 of this bill.

### **ANALYSIS**

C.S.S.B. 543 amends the Government Code, for purposes of state agency accounting procedures, to specify that purchasing, as included in the definition of "enterprise resource planning," includes solicitations and contracting, to require a state agency's annual financial report to include any claims made against the agency for the preceding fiscal year and the amount paid by the agency in relation to each claim, and to require state agencies, other than a university system or an institution of higher education, to report contract and purchasing information in the uniform manner required by the comptroller of public accounts. The bill requires the centralized accounting and payroll system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, to provide alerts to the comptroller to notify the comptroller of a state contract, other than a contract of a university system or an institution of higher education, that has a high risk of loss to the state based on parameters identified by comptroller rule, including a change order of more than 20 percent of the original contract's value and a contract entered into in an amount that exceeds a predetermined threshold amount. The bill establishes that if, through the uniform statewide accounting system or a component of that system, the comptroller or an officer or employee of the comptroller's office releases or publishes information that is confidential or excepted from required disclosure in reliance on a determination made by a state agency about the status of the information as confidential or excepted from disclosure, the comptroller, officer, or employee, as

appropriate, is immune from any civil or criminal liability for releasing or publishing the information and is not required to comply with the notification requirements of statutory provisions relating to security breach notification by a state agency and of Business & Commerce Code provisions relating to the unauthorized use of identifying information in relation to the release or publication of the information. The bill authorizes a state agency in the legislative branch of state government to elect to participate in the centralized accounting and payroll system or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project.

C.S.S.B. 543 includes among the periodic audits of a state agency's major systems and controls that must be conducted under a state agency's program of internal auditing the periodic audits of contract management processes and controls and includes in a state agency's program of internal auditing the periodic audits of one or more of the agency's contracts with high-risk factors.

C.S.S.B. 543 revises the statutory prohibition on a state agency using appropriated money to contract with a person to audit the agency to remove the specification that the prohibition applies only to an audit of the financial records or accounts of the agency, to add among the exceptions to the prohibition an audit of the state agency in accordance with a statutory provision regarding the coordination of certain audits under statutory provisions generally relating to the state auditor, and to remove from among the other exceptions to the prohibition the exceptions provided by statutory provisions pertaining to the state lottery, to the Texas Department of Housing and Community Affairs, and to the Texas Turnpike Authority division of the Texas Department of Transportation (TxDOT).

C.S.S.B. 543 requires a state agency purchasing goods or services that exceed \$50,000 under a contract listed on the multiple award contract schedule developed by the comptroller to submit a request for pricing to at least three vendors included on the schedule in the category to which the purchase relates or to all vendors included on the schedule in the category to which the purchase relates if fewer than three vendors are included in the category. The bill clarifies, for purposes of the use of the schedule by a state agency, that the price listed for a good or service under a multiple award contract is a maximum price and that a state agency may negotiate a lower price for goods or services under a contract listed on a schedule.

C.S.S.B. 543 adds the following to the information the State Council on Competitive Government is required to consider in comparing the cost of providing a service: the installation costs and any other initial costs associated with a contract with a private contractor, other costs associated with the transition to using a private contractor's services, and cost savings to the state if a private contractor were awarded the contract.

C.S.S.B. 543 increases from \$14,000 to \$50,000 the minimum threshold amount of contracts, including an amendment, modification, renewal, or extension of the contract, for certain construction projects, professional services, and consulting services that triggers the requirement that a certain written notification be provided to the Legislative Budget Board (LBB).

C.S.S.B. 543 expands the limited applicability of provisions governing state contracting standards and oversight by removing a condition that limited such applicability, with respect to procurements by state agencies other than an institution of higher education and the M.D. Anderson Cancer Center and other than procurements less than a certain monetary amount, to each procurement of goods or services made by a state agency that is made outside the purchasing authority delegated to the agency by the comptroller.

C.S.S.B. 543 expands the definition of "contract," for purposes of statutory provisions generally governing state contracting standards and oversight and for purposes of the applicable bill provisions, to include an agreement or other written expression of terms of agreement, including an amendment, a modification, a renewal, or an extension, for the purchase of goods or services that is entered into or paid for, wholly or partly, by a state agency during a fiscal year. The bill

requires each state agency to maintain in a central location all contracts for that agency and to maintain a comprehensive list of all contracts for that agency. The bill requires each state agency to maintain accurate records of all essential information relating to agency contracts, including information on a contract delay or changes to a contract in which total expenditures under the contract increase by more than 20 percent from the original contract amount and including information on cost overruns, including a written explanation of why expenditures have increased under a contract, and specifies that the term "contract," for purposes of this bill provision requiring each state agency to maintain accurate records of all essential information, includes a sole source contract. The bill requires contracts and other related information that must be maintained by a state agency to be retained for the duration of the contract, notwithstanding record retention schedules required to be prepared and submitted under statutory provisions governing the preservation and management of state records and other historical resources.

C.S.S.B. 543 specifies, for the purpose of the bill's contract reporting provision as that provision relates to statutory provisions generally governing state contracting standards and oversight, the Government Code provisions that prescribe the reporting requirements for certain contracts and specifies that the term "contract" includes construction contracts for purposes of this bill provision regarding contract reporting. The bill requires a state agency to procure professional services in accordance with the Professional Services Procurement Act and requires each state agency to establish formal guidelines and procedures for all employees involved in the contracting process regarding who may approve a contract for the agency, for contract planning and solicitation, for contract negotiations, for contract management, and for contract oversight. The bill establishes that a state agency's interagency agreement or contract is governed by the Interagency Cooperation Act and an interlocal contract to which a state agency is a party is governed by the Interlocal Cooperation Act. The bill specifies that the most important considerations in determining the best value for the state in contracting for goods and services are purchase price and whether the goods or services meet specifications, authorizes a state agency to consider, subject to other specified statutory requirements, other relevant factors, and sets out a list of other factors relevant to determining the best value for the state in the context of a particular purchase.

C.S.S.B. 543 authorizes a state agency to use any forms developed by the comptroller as templates, guides, or samples for contracts entered into by the agency. The bill sets out essential contract provisions required in each contract to which the provisions are applicable, other than a grant, and requires a state agency, if the agency determines that the circumstances of a proposed contract require more protection for the state than the essential contract provisions provide, to include a provision in the contract providing for that protection. The bill specifies that, in any contract for the acquisition of goods or services to which a state agency is a party, a provision required by other applicable law to be included in the contract is considered to be a part of the executed contract without regard to whether the provision appears on the face of the contract or the contract includes any provision to the contrary, and the bill requires a state agency, if the agency determines that the circumstances of a proposed contract require more protection for the state than the contract provisions required by state law provide, to include a provision in the contract providing for that protection. The bill requires a state agency to establish a standardized process for renewing all contracts of the agency. The bill requires a state agency to establish a reasonable term for a contract before solicitation of the contract and to make an effort to keep the maximum length of a contract to four years without reissuing a competitive solicitation, including any contract renewals or extensions. The bill requires a contract term so established to be included in a solicitation document and prohibits a state agency from entering into a contract that has an indefinite term.

C.S.S.B. 543 requires a state agency to require, for each contract for goods or services that is subject to statutory provisions relating to state contracting standards and oversight and to the bill's provisions relating to state contracting standards and oversight, that payment under the contract be linked to clear and measurable achievements, such as length of time of work, contract

deliverables, or performance measures, and prohibits an agency from making a final payment on such a contract for goods or services unless the agency verifies that all contract deliverables have been received. The bill defines a "contract deliverable," for purposes of statutory provisions generally governing state contracting standards and oversight and for purposes of the applicable bill provisions, as a unit or increment of work required by a contract, including goods, services, reports, or documents.

C.S.S.B. 543 requires a state agency's policy that is established and adopted as one of its contract management policies for the purpose of defining applicable contract monitoring roles and responsibilities of certain staff to establish clear lines of accountability, staff roles and responsibilities, and decision-making authority for program staff, contract management staff, and executive management staff. The bill clarifies, in the existing requirement that the policy clearly define those monitoring roles and responsibilities of internal audit staff and other inspection, investigative, or audit staff, that the roles and responsibilities are those of agency staff, including internal audit staff and other inspection, investigative, or audit staff.

C.S.S.B. 543 requires each state agency to review a contractor's performance under a contract with a value of \$25,000 or more after the contract is completed or otherwise terminated and requires an agency to report to the comptroller on the results of the review, using forms made available to the agency. The bill requires each state agency that enters into contracts other than interagency contracts to establish a career ladder program for contract management in the agency. The bill authorizes an employee hired as a contract manager to participate in procurement planning, contract solicitation, contract formation, price establishment, and other contract activities. The bill requires each state agency to determine, in consultation with the state auditor, the amount and significance of contract management duties sufficient for an employee to be considered a contract manager, program staff, or a contract specialist. The bill defines "contract manager," for purposes of statutory provisions generally governing state contracting standards and oversight and for purposes of the applicable bill provisions, as a person who is employed by a state agency and who has significant contract management duties for the state agency.

C.S.S.B. 543 requires each state agency to adopt a policy to establish a monetary threshold above which agency contracts and amendments to or extensions of agency contracts require written authorization by the agency executive director. The bill requires each state agency to annually report to the comptroller a list of persons authorized to approve contracts at the agency and requires the list to include each person's name, position, and supervisory responsibility, if any. The bill prohibits a state agency from negotiating a major contract with only one employee engaging in the negotiation. The bill defines "major contract," for purposes of statutory provisions generally governing state contracting standards and oversight and for purposes of the applicable bill provisions, to mean a contract, including a service contract and the renewal of a contract, that has a value of at least \$1 million.

C.S.S.B. 543 requires a contractor's performance to be periodically reviewed throughout a contract's term. The bill requires a state agency to ensure ongoing communication between executive management staff, contract management staff, and program staff of the results of the reviews with specific attention to contracts that are anticipated to be completed later than originally estimated or expected to cost more than the amount that was originally budgeted. The bill requires a state agency, in order to implement these contract review and reporting provisions, to create a system for agency-wide reporting on the status of, activity on, and contractor performance for each contract.

C.S.S.B. 543 requires a state agency that has a contract with a value of \$5 million or more to create a contract administration team to ensure and verify the performance of agency contracts with a value of \$5 million or more and to maintain within the agency contract oversight expertise to effectively manage contractors.

C.S.S.B. 543 requires a state agency to establish and implement a monitoring process for agency contracts that includes certain specified actions, to establish and implement a process for evaluating potential risk to the state that includes certain specified processes, and to establish and implement a procedure for corrective action to be used when contract implementation or performance problems occur. The bill sets out certain specified information the state agency is required to consider in creating the process for evaluating potential risk. The bill requires a state agency, for each agency contract and based on the assessed risk of the contract, to determine the appropriate frequency and method of contract monitoring, to allocate contract monitoring resources, and to develop a contract auditing plan.

C.S.S.B. 543 requires a state agency to maintain effective communication procedures regarding contract performance. The bill requires the chief financial officer of a state agency, or an individual designated by the agency executive director with similar contract administration duties and responsibilities, to report at least monthly to the executive director on the status of agency contracts. The bill requires such a report to include a clear indication of any contract cost overruns or contracts that are performing poorly and contracts that may cause the state to delay or default on service delivery.

C.S.S.B. 543 requires the comptroller to publish, not later than December 1 of each year, a report on the number and dollar value of sole source and emergency purchases made in the previous fiscal year. The bill requires each state agency to timely provide to the comptroller the information the comptroller requires for the purpose of creating the report in the manner and form specified by the comptroller. The bill requires the comptroller to establish requirements for the provision of such information in consultation with the Contract Management and Oversight Team established under the bill's provisions, the Health and Human Services Commission, and TxDOT. The bill prohibits the comptroller from requiring a state agency to provide information on a contract related to health and human services if the value of the contract cannot be determined at the time of execution of the contract and if any qualified vendor is eligible for the contract.

C.S.S.B. 543 requires each state agency that becomes a participant in the centralized accounting and payroll system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, 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, after consultation with the Department of Information Resources (DIR). The bill requires the comptroller to provide, as necessary, information and state agency contract data contained in the centralized accounting and payroll system to other state agencies with oversight duties, including the LBB, the state auditor's office, and DIR.

C.S.S.B. 543 subjects an extension of or amendment to a state agency contract, including a change order, to the same agency approval processes as the original contract. The bill prohibits a state agency from extending or amending a contract unless the agency complies with the same agency approval processes for the extension or amendment as required for the original contract and the agency states in writing why the extension or amendment is necessary or advantageous to the state. The bill requires an agency executive director to authorize a contract amendment in writing for state agency contracts valued in excess of \$1 million. The bill specifies that these provisions do not apply to a contract amendment, extension, or change order that does not change the cost or terms of the contract and do not affect whether a state agency is required to undertake a new solicitation process in the manner required for a new contract in order to extend or amend a contract.

C.S.S.B. 543 requires a state agency, if a proposed contract amendment or extension changes the monetary value of a major contract by at least 20 percent or \$1 million, to submit the amendment or extension for review to the agency's executive director before the agency amends or extends the contract and specifies that such a requirement does not apply to a proposed contract amendment required by a state or federal statute. The bill requires the agency's executive director

to be timely notified of any unanticipated contract cost overrun. The bill specifies that its provisions governing changes to contracts do not apply to contract extensions or renewals that are specifically established as a component of the original procurement.

C.S.S.B. 543 requires a state agency to require a contract manager to complete the contract manager training program developed and administered by the comptroller, requires a state agency to maintain a list of contract managers who have completed the contract manager training program, and authorizes a state agency to develop qualified contract manager training to supplement the required training. The bill requires all members of the governing body of a state agency, excluding a state agency that does not enter into any contracts, to complete at least one abbreviated course of the contract manager training program developed and administered by the comptroller.

C.S.S.B. 543 requires a state agency, before the agency solicits a contract, to identify, justify, and document the need for the good or service; to identify general contracting objectives, assumptions, and constraints; to consider alternatives to soliciting the contract; and to determine the preferred method of delivery for the good or service. The bill prescribes the matters required to be included in a solicitation for a contract and the information a state agency, in preparing a contract solicitation, is required to include in the requirements for contract deliverables. The bill requires a state agency to create and follow a procedure for contract closing that includes procedures for verification that all required goods or services have been delivered or performed, inspected, and accepted and that all existing options have been exercised or have expired; for issuance of a contract completion notice by one of the parties; for acquisition of all required forms, reports, and clearances; for verification that other applicable terms have been met; for verification that there are no outstanding claims or disputes; and for final payment.

C.S.S.B. 543 requires the contract management guide for use by state agencies to provide required and recommended contracting processes and procedures and replaces the requirement that the guide provide information regarding the primary duties of a contract manager with a requirement that the guide provide information regarding the primary duties of contract management. The bill expands the list of duties for which the guide is required to provide instruction; specifies, in the requirement that the guide provide information regarding how to select a contractor, that such information provide information regarding how to fairly and objectively select a contractor; and specifies, in the requirement that the guide provide information regarding how to monitor contractor and subcontractor performance, that the information include how to ensure compliance with provisions in a contract that hold the contractor accountable for performance results. The bill removes the requirement that the guide provide sufficient flexibility to accommodate the unique contracting needs of an individual state agency or program, consistent with protecting the interests of the state, and instead requires the guide to provide procedures for documenting agency decisions that do not follow required contracting processes and procedures but are consistent with protecting those interests.

C.S.S.B. 543 authorizes the comptroller to assess a fee for the contracting training provided for contract managers and state agency governing bodies in an amount sufficient to recover the comptroller's costs.

C.S.S.B. 543 requires the LBB to establish a Contract Management and Oversight Team to develop criteria for identifying high-risk factors in contracts; to consult with state agencies on and review high-risk contracts; to provide recommendations and assistance to state agency personnel throughout the contract management process; to coordinate and consult with the quality assurance team created by the state auditor, the LBB, and DIR on all high-risk contracts relating to a major information resources project, as such a project is defined under the Information Resources Management Act; and to coordinate and consult with the comptroller to develop certain criteria for high-risk contracts, identify strategies to mitigate contract risks, and monitor contract activity using information from the centralized accounting and payroll system or any successor system used to implement the enterprise resource planning component of the

uniform statewide accounting project. The bill defines "high-risk contract" to mean a state agency contract or purchase order that has a value of at least \$10 million; that has a value of less than \$10 million but has high-risk factors as identified by the management and oversight team; that is entered into with an entity that is incorporated outside of the United States; that 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 certain reasons as specified by the bill; or that meets other criteria that may be established by the management and oversight team, including that the contract or purchase order meet certain criteria specified by the bill.

C.S.S.B. 543 requires each state agency to provide written notice to the management and oversight team not later than the 30th day before the date the agency publicly releases solicitation documents for a high-risk contract. The bill requires a state agency to submit to the management and oversight team information and documentation requested by the management and oversight team that relate to a high-risk contract, including information on contract development, vendor selection, and ongoing contract oversight. The bill requires the management and oversight team to review the submitted information and documentation and make recommendations to ensure that potential risks related to the high-risk contract have been identified and mitigated. The bill requires a state agency to implement the management and oversight team's recommendations and provide any additional documentation required by the management and oversight team to demonstrate that risks related to the high-risk contract have been mitigated and requires the agency, if a recommendation made by the management and oversight team is not implemented, to provide written notice to the management and oversight team before the 31st day after the date the agency received the recommendation. The bill requires the management and oversight team, if, after receiving notice, the management and oversight team determines that significant risks related to the high-risk contract remain, to provide written notice of that fact to the LBB, the governor, and the comptroller with a description of the risk and recommendations to mitigate the risk, including cancellation of the high-risk contract. The bill authorizes the management and oversight team to adopt criteria for waiving these consultation and review requirements.

C.S.S.B. 543 authorizes the LBB, governor, or the comptroller, after review of the written notice provided by the management and oversight team, to recommend that a state agency cancel a solicitation or a high-risk contract 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 defines "solicitation," for purposes of the bill's provisions regarding the management and oversight team, as a solicitation for bids, offers, qualifications, proposals, or similar expressions of interest for a high-risk contract. The bill specifies that, with regard to TxDOT contracts, the bill's provisions relating to the management and oversight team apply to contracts that do not relate to highway construction or highway engineering or contracts that are not subject to a Transportation Code provision relating to the informal resolution of certain contract claims and further specifies that such bill provisions do not apply to a contract of the Employees Retirement System of Texas or the Teacher Retirement System of Texas, except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under statutory provisions governing health benefits and other coverages for governmental employees. The bill makes applicable conforming changes regarding this provision.

C.S.S.B. 543 abolishes the Contract Advisory Team established under statutory provisions regarding statewide contract management and created to assist state agencies in improving contract management practices and repeals those applicable statutory provisions. The bill establishes that the validity of an action taken by the advisory team before the abolishment is not affected by the abolition, provides for the transfer of all powers and duties of the advisory team to the 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 advisory team means the management and oversight team, and the bill makes applicable conforming changes to reflect those changes in reference.

C.S.S.B. 543 requires each state agency to submit ongoing contracts of the agency, except for contracts for goods with a value of \$50,000 or less, to the State Office of Risk Management (SORM) for verification of vendor compliance with contract terms and requirements and to correct compliance deficiencies as provided by rules adopted by the office under the bill's provisions. The bill authorizes SORM to contract with a third-party credentialing organization to provide this compliance verification and requires SORM, not later than December 31 of each even-numbered year, to provide a report to the legislature of SORM's findings and recommendations to ensure state contract compliance and mitigate risk to the state. The bill prohibits SORM from requiring a state agency to submit for compliance verification a contract related to health and human services if the value of the contract cannot be determined at the time of the contract's execution and any qualified vendor is eligible for the contract. The bill requires SORM to adopt rules to implement the vendor risk management program, establishes minimum requirements for such rules, including a requirement that the rules set a reasonable fee to be paid by a vendor who enters into a contract with a state agency in an amount that is sufficient to recover SORM's costs under the vendor risk management program and that is less than one percent of the contract, not to exceed \$1,000, and requires each state agency to include in each of its contracts a clause that provides that the vendor agrees that the vendor may be charged the fee.

C.S.S.B. 543 specifies that, to the extent of any conflict, its provisions prevail over another act of the 84th Legislature, Regular Session, 2015, relating to state agency contracting and oversight.

C.S.S.B. 543 repeals Subchapter C, Chapter 2262, Government Code.

#### **EFFECTIVE DATE**

September 1, 2015.

#### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 543 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

##### SENATE ENGROSSED

No equivalent provision.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 821.009(b), Government Code, is amended to read as follows:

(b) Notwithstanding any other law and in addition to the requirements of Subchapter E, Chapter 2262, before a contract described by Subsection (a) may be entered into by the retirement system, a representative of the office of the attorney general shall review the form and terms of the contract and may make recommendations to the retirement system for changes to the contract if the attorney general determines that the office of the attorney general has sufficient subject



matter expertise and resources available to provide this service.

No equivalent provision.

SECTION 2. Section 825.103(g), Government Code, is amended to read as follows:

(g) Notwithstanding any other law and except as provided by Section 2262.202, Chapters 2261 and 2262 do not apply to the retirement system. The Contract Management and Oversight [Advisory] Team shall assist the retirement system at the request of the retirement system. The retirement system may use the training program for contract management provided under Chapter 2262.

No equivalent provision.

SECTION 3. Section 2054.065(a)(2), Government Code, is amended to read as follows:

(2) "Team" means the Contract Management and Oversight [Advisory] Team established under Subchapter E [E], Chapter 2262.

No equivalent provision.

SECTION 4. 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 5. Section 2101.011, Government Code, is amended by adding Subsection (e) to read as follows:

(e) A state agency's annual financial report must include any claims made against the agency for the preceding fiscal year and the amount paid by the agency in relation to each claim.

No equivalent provision.

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

(i) State agencies other than a university system or an institution of higher education as defined by Section 61.003, Education Code, shall report contract and purchasing information in the uniform manner required by the comptroller.

(j) The centralized accounting and payroll system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed under this section and Section 2101.036 must provide alerts to the comptroller to notify the comptroller of a state contract other than a contract of a university system or an institution of higher education as defined by Section 61.003, Education Code, that has a high risk of loss to the state based on parameters identified by rule by the comptroller, including:

(1) a change order of more than 20 percent of the value of the original contract; and

(2) a contract entered into in an amount that exceeds a predetermined threshold amount.

(k) If, through the uniform statewide accounting system or a component of that system, the comptroller or an officer or employee of the comptroller's office releases or publishes information that is confidential or excepted from required disclosure in reliance on a determination made by a state agency about the status of the information as confidential or excepted from disclosure, the comptroller, officer, or employee, as appropriate, is:

(1) immune from any civil or criminal liability for releasing or publishing the information; and

(2) not required to comply with the notification requirements of Section 2054.1125 of this code and Chapter 521, Business & Commerce Code, in relation to the release or publication of the information.

No equivalent provision.

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

(d) Notwithstanding any other provision of this chapter or other law and except as provided by Subsection (e), this section and

any rules implementing this section apply only in relation to a state agency as defined by Section 2054.003.

(e) A state agency in the legislative branch of state government may elect to participate in the centralized accounting and payroll system, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, developed under this section.

SECTION 1. Section 2102.005, Government Code, is amended.

SECTION 8. Same as engrossed version.

SECTION 2. Section 2113.102(a), Government Code, is amended.

SECTION 9. Same as engrossed version.

No equivalent provision.

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 that exceed \$50,000 under a contract listed on the schedule shall submit a request for pricing to:

(1) at least three vendors included on the schedule in the category to which the purchase relates; or

(2) all vendors included on the schedule in the category to which the purchase relates if fewer than three vendors are included in the category.

(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.

No equivalent provision.

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

Sec. 2155.504. USE OF SCHEDULE BY LOCAL GOVERNMENTS [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 3. Section 2162.103(a), Government Code, is amended.

No equivalent provision.

SECTION 12. Same as engrossed version.

SECTION 13. Sections 2165.356(a) and (b), Government Code, are amended to read as follows:

(a) Not later than the 60th day before the date the commission is scheduled to vote on approval of a qualifying project contract, the commission must submit to the Contract Management and Oversight [~~Advisory~~] Team established under Subchapter E [~~C~~], Chapter 2262, documentation of the modifications to a proposed qualifying project made during the commission's evaluation and negotiation process for the project, including a copy of:

- (1) the final draft of the contract;
- (2) the detailed qualifying project proposal; and
- (3) any executed interim or other agreement.

(b) The Contract Management and Oversight [~~Advisory~~] Team shall review the documentation submitted under Subsection (a) and provide written comments and recommendations to the commission. The review must focus on, but not be limited to, best practices for contract management and administration.

No equivalent provision.

SECTION 14. Section 2166.2551, Government Code, is amended to read as follows:

Sec. 2166.2551. **CONTRACT NOTIFICATION.** The commission or an agency whose project is exempted from all or part of this chapter under Section 2166.003 shall provide written notice to the Legislative Budget Board of a contract for a construction project if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~]. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency

enters into the contract.

No equivalent provision.

SECTION 15. Section 2254.006, Government Code, is amended to read as follows:

Sec. 2254.006. CONTRACT NOTIFICATION. A state agency, including an institution of higher education as defined by Section 61.003, Education Code, shall provide written notice to the Legislative Budget Board of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~]. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency enters into the contract.

No equivalent provision.

SECTION 16. Section 2254.0301(a), Government Code, is amended to read as follows:

(a) A state agency shall provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~]. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the entity enters into the contract.

No equivalent provision.

SECTION 17. Sections 2261.001(a) and (c), Government Code, are 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.

(c) The comptroller on request shall determine whether a procurement or type of procurement:

(1) is made under purchasing authority delegated to an agency by or under Section [~~2155.131 or~~] 2155.132; or

(2) is made under some other source of purchasing authority.

SECTION 4. Section 2261.002, Government Code, is amended read as follows:

Sec. 2261.002. DEFINITIONS. In this chapter:

(1) "Contract" includes an agreement or other written expression of terms of agreement, including an amendment, a modification, a renewal, or an extension, for the purchase or sale of goods or services that is entered into or paid for, wholly or partly, by a state agency during a fiscal year and a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

(2) "Contract deliverable" means a unit or increment of work required by a contract, including goods, services, reports, or documents.

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties for the state agency.

(4) "Executive director" means the administrative head of a state agency.

(5) "General counsel" means the general counsel of a state agency.

(6) "Major contract" means a contract, including a renewal of a contract, that has a value of at least \$1 million. The term includes a service contract.

(7) "State agency" has the meaning assigned by Section 2151.002.

SECTION 5. Subchapter A, Chapter 2261, Government Code, is amended by adding Sections 2261.004, 2261.005, 2261.006, and 2261.007 to read as follows:

Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS. (a) Each state agency shall maintain in a central location all contracts for that agency.

(b) Each state agency shall maintain a comprehensive list of all contracts for that agency.

(c) In this subsection, "contract" includes a sole-source contract. Each state agency shall maintain accurate records of all essential information relating to agency contracts, including information on:

SECTION 18. Section 2261.002, Government Code, is amended to read as follows:

Sec. 2261.002. DEFINITIONS. In this chapter:

(1) "Contract" includes an agreement or other written expression of terms of agreement, including an amendment, a modification, a renewal, or an extension, for the purchase of goods or services that is entered into or paid for, wholly or partly, by a state agency during a fiscal year and a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

(2) "Contract deliverable" means a unit or increment of work required by a contract, including goods, services, reports, or documents.

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties for the state agency.

(4) "Executive director" means the administrative head of a state agency.

(5) "General counsel" means the general counsel of a state agency.

(6) "Major contract" means a contract, including a renewal of a contract, that has a value of at least \$1 million. The term includes a service contract.

(7) "State agency" has the meaning assigned by Section 2151.002.

SECTION 19. Subchapter A, Chapter 2261, Government Code, is amended by adding Sections 2261.004, 2261.005, 2261.006, 2261.007, 2261.008, and 2261.009 to read as follows:

Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS. (a) Each state agency shall maintain in a central location all contracts for that agency.

(b) Each state agency shall maintain a comprehensive list of all contracts for that agency.

(c) In this subsection, "contract" includes a sole source contract. Each state agency shall maintain accurate records of all essential information relating to agency contracts, including information on:

(1) a contract delay or changes to a contract in which total expenditures under the contract increase by more than 35 percent from the original contract amount; and  
(2) cost overruns, including a written explanation of why expenditures have increased under a contract.  
(d) Notwithstanding Section 441.185, contracts and other related information required to be maintained under this section by a state agency must be retained for the duration of the contract.

Sec. 2261.005. CONTRACT REPORTING.

(a) In this section, "contract" includes a construction contract.

(b) The following sections prescribe reporting requirements for certain contracts:

- (1) Section 322.020;
- (2) Section 2054.008;
- (3) Section 2166.2551;
- (4) Section 2254.006; and

(5) Section 2254.0301.

Sec. 2261.006. PROFESSIONAL SERVICES.

Sec. 2261.007. CONTRACT GUIDELINES AND PROCEDURES.

SECTION 6. Subchapter B, Chapter 2261, Government Code, is amended.

SECTION 7. The heading to Subchapter C, Chapter 2261, Government Code, is amended.

SECTION 8. Subchapter C, Chapter 2261, Government Code, is amended by adding Sections 2261.103, 2261.104, 2261.105, 2261.106, and 2261.107 to read as follows:

Sec. 2261.103. USE OF UNIFORM FORMS.

(1) a contract delay or changes to a contract in which total expenditures under the contract increase by more than 20 percent from the original contract amount; and  
(2) cost overruns, including a written explanation of why expenditures have increased under a contract.  
(d) Notwithstanding Section 441.185, contracts and other related information required to be maintained under this section by a state agency must be retained for the duration of the contract.

Sec. 2261.005. CONTRACT REPORTING.

(a) In this section, "contract" includes a construction contract.

(b) The following sections prescribe reporting requirements for certain contracts:

- (1) Section 322.020;
- (2) Section 2054.008;
- (3) Section 2166.2551;
- (4) Section 2254.006;
- (5) Section 2254.028; and
- (6) Section 2254.0301.

Sec. 2261.006. PROFESSIONAL SERVICES.

Sec. 2261.007. CONTRACT GUIDELINES AND PROCEDURES.

Sec. 2261.008. INTERAGENCY AGREEMENTS AND CONTRACTS. An interagency agreement or contract of a state agency is governed by Chapter 771.

Sec. 2261.009. INTERLOCAL CONTRACTS. An interlocal contract to which a state agency is a party is governed by Chapter 791.

SECTION 20. Same as engrossed version.

SECTION 21. Same as engrossed version.

SECTION 22. Subchapter C, Chapter 2261, Government Code, is amended by adding Sections 2261.103, 2261.104, 2261.105, 2261.106, and 2261.107 to read as follows:

Sec. 2261.103. USE OF UNIFORM FORMS.

Sec. 2261.104. ESSENTIAL CONTRACT PROVISIONS. The following are required provisions in each contract to which the provisions are applicable, other than a grant:

- (1) legal authority;
- (2) statement of work;
- (3) indemnification or damage claims;
- (4) consideration;
- (5) specifications;
- (6) funding out clause;
- (7) antitrust;
- (8) payment;
- (9) dispute resolution;
- (10) term of contract;
- (11) confidential information;
- (12) abandonment or default;
- (13) right to audit;
- (14) force majeure;
- (15) independent contractor; and
- (16) termination.

Sec. 2261.105. CONTRACT PROVISIONS REQUIRED BY STATE LAW. In any contract for the acquisition of goods or services to which a state agency is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to whether:

- (1) the provision appears on the face of the contract; or
- (2) the contract includes any provision to the contrary.

Sec. 2261.106. CONTRACT RENEWAL.

Sec. 2261.107. CONTRACT DURATION.

SECTION 9. Subchapter D, Chapter 2261, Government Code, is amended by adding Section 2261.152 to read as follows:

Sec. 2261.152. CONTRACT PAYMENT.

Sec. 2261.104. ESSENTIAL CONTRACT PROVISIONS. (a) The following are required provisions in each contract to which the provisions are applicable, other than a grant:

- (1) legal authority;
- (2) statement of work;
- (3) indemnification or damage claims;
- (4) consideration;
- (5) specifications;
- (6) funding out clause;
- (7) antitrust;
- (8) payment;
- (9) dispute resolution;
- (10) term of contract;
- (11) confidential information;
- (12) abandonment or default;
- (13) right to audit;
- (14) force majeure;
- (15) independent contractor; and
- (16) termination.

(b) If a state agency determines that the circumstances of a proposed contract require more protection for the state than the provisions in Subsection (a) provide, the agency shall include a provision in the contract providing for that protection.

Sec. 2261.105. CONTRACT PROVISIONS REQUIRED BY STATE LAW. (a) In any contract for the acquisition of goods or services to which a state agency is a party, a provision required by other applicable law to be included in the contract is considered to be a part of the executed contract without regard to whether:

- (1) the provision appears on the face of the contract; or
- (2) the contract includes any provision to the contrary.

(b) If a state agency determines that the circumstances of a proposed contract require more protection for the state than the provisions described by Subsection (a) provide, the agency shall include a provision in the contract providing for that protection.

Sec. 2261.106. CONTRACT RENEWAL.

Sec. 2261.107. CONTRACT DURATION.

SECTION 23. Subchapter D, Chapter 2261, Government Code, is amended by adding Section 2261.152 to read as follows:

Sec. 2261.152. CONTRACT PAYMENT.



(a) For each contract for goods or services that is subject to this chapter, a state agency shall require that payment under the contract be linked to clear and measurable achievements, such as length of time of work or contract deliverables.

(b) A state agency may not make a final payment on a contract for goods or services that is subject to this chapter unless the agency verifies that all contract deliverables have been received.

SECTION 10. The heading to Subchapter E, Chapter 2261, Government Code, is amended.

SECTION 11. Section 2261.202, Government Code, is amended.

SECTION 12. Subchapter E, Chapter 2261, Government Code, is amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207, 2261.208, 2261.209, 2261.210, 2261.211, 2261.212, 2261.213, and 2261.214 to read as follows:

Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE.

(a) After a contract is completed or otherwise terminated, each state agency shall review the contractor's performance under the contract.

(b) Using forms made available to the state agency, a state agency shall report to the comptroller on the results of the review regarding a contractor's performance under a major contract.

(c) A state agency may use any vendor performance tracking system available to state agencies to determine whether to award a contract to a person reviewed in the database.

Sec. 2261.205. EXCLUDING CONTRACTOR FROM SOLICITATION PROCESS. Based on its own contractor performance reviews and on information in any vendor performance tracking system available to state agencies, a state agency may exclude a contractor from the solicitation process for a contract if the agency determines the contractor has performed poorly on a previous state contract without regard to whether the contractor has been barred under Section

(a) For each contract for goods or services that is subject to this chapter, a state agency shall require that payment under the contract be linked to clear and measurable achievements, such as length of time of work, contract deliverables, or performance measures.

(b) A state agency may not make a final payment on a contract for goods or services that is subject to this chapter unless the agency verifies that all contract deliverables have been received.

SECTION 24. Same as engrossed version.

SECTION 25. Same as engrossed version.

SECTION 26. Subchapter E, Chapter 2261, Government Code, is amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207, 2261.208, 2261.209, 2261.210, 2261.211, 2261.212, 2261.213, and 2261.214 to read as follows:

Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE.

After a contract with a value of \$25,000 or more is completed or otherwise terminated, each state agency shall review the contractor's performance under the contract and report to the comptroller on the results of the review using forms made available to the state agency.

2155.077.

Sec. 2261.206. CONTRACTING STAFF.

Sec. 2261.207. APPROVAL OF CONTRACTS. (a) Each state agency shall adopt a policy to establish a monetary threshold above which agency contracts and amendments to or extensions of agency contracts require written authorization by the agency executive director.

(b) For state agency contracts valued in excess of \$1 million, the agency executive director must authorize a contract amendment in writing.

(c) Each state agency shall annually report to the comptroller a list of persons authorized to approve contracts at the agency. The list must include each person's name, position, and supervisory responsibility, if any.

Sec. 2261.208. NEGOTIATION OF MAJOR CONTRACT BY SINGLE EMPLOYEE PROHIBITED.

Sec. 2261.209. CONTRACT REVIEW; REPORTING.

Sec. 2261.210. CONTRACT ADMINISTRATION TEAM.

Sec. 2261.211. CONTRACT MONITORING PROCESS.

Sec. 2261.212. RISK MANAGEMENT PROCESS.

Sec. 2261.213. CONTRACT COMMUNICATION. (a) A state agency shall maintain effective communication procedures regarding contract performance.

(b) The chief financial officer of a state agency, or an individual designated by the executive director with similar duties and skills as a chief financial officer, shall report at least monthly to the executive director on the status of agency contracts. The report must include a clear indication of:

(1) any contract cost overruns or contracts that are performing poorly; and

(2) contracts that may cause the state to delay or default on service delivery.

Sec. 2261.205. CONTRACTING STAFF.

Sec. 2261.206. APPROVAL OF CONTRACTS. (a) Each state agency shall adopt a policy to establish a monetary threshold above which agency contracts and amendments to or extensions of agency contracts require written authorization by the agency executive director.

(b) Each state agency shall annually report to the comptroller a list of persons authorized to approve contracts at the agency. The list must include each person's name, position, and supervisory responsibility, if any.

Sec. 2261.207. NEGOTIATION OF MAJOR CONTRACT BY SINGLE EMPLOYEE PROHIBITED.

Sec. 2261.208. CONTRACT REVIEW; REPORTING.

Sec. 2261.209. CONTRACT ADMINISTRATION TEAM.

Sec. 2261.210. CONTRACT MONITORING PROCESS.

Sec. 2261.211. RISK MANAGEMENT PROCESS.

Sec. 2261.212. CONTRACT COMMUNICATION. (a) A state agency shall maintain effective communication procedures regarding contract performance.

(b) The chief financial officer of a state agency, or an individual designated by the executive director with similar contract administration duties and responsibilities, shall report at least monthly to the executive director on the status of agency contracts. The report must include a clear indication of:

(1) any contract cost overruns or contracts that are performing poorly; and

(2) contracts that may cause the state to delay or default on service delivery.

Sec. 2261.214. REPORT ON CERTAIN PURCHASES. (a) Not later than August 1 of each year, the comptroller shall publish a report on the number and dollar value of sole source and emergency purchases made in the previous calendar year.

(b) Each state agency shall timely provide to the comptroller the information the comptroller requires for the purpose of creating the report under Subsection (a) in the manner and form specified by the comptroller.

(c) The comptroller shall establish requirements for the provision of information under Subsection (b) in consultation with the Contract Advisory Team created under Subchapter C, Chapter 2262, the Health and Human Services Commission, and the Texas Department of Transportation.

(d) The comptroller may not require a state agency to provide information under Subsection (b) on a contract related to health and human services if:

(1) the value of the contract cannot be determined at the time of execution of the contract; and

(2) any qualified vendor is eligible for the contract.

Sec. 2261.213. REPORT ON CERTAIN PURCHASES. (a) Not later than December 1 of each year, the comptroller shall publish a report on the number and dollar value of sole source and emergency purchases made in the previous fiscal year.

(b) Each state agency shall timely provide to the comptroller the information the comptroller requires for the purpose of creating the report under Subsection (a) in the manner and form specified by the comptroller.

(c) The comptroller shall establish requirements for the provision of information under Subsection (b) in consultation with the Contract Management and Oversight Team created under Subchapter E, Chapter 2262, the Health and Human Services Commission, and the Texas Department of Transportation.

(d) The comptroller may not require a state agency to provide information under Subsection (b) on a contract related to health and human services if:

(1) the value of the contract cannot be determined at the time of execution of the contract; and

(2) any qualified vendor is eligible for the contract.

Sec. 2261.214. CONTRACT DATABASE.

(a) Each state agency that becomes a participant in the centralized accounting and payroll system as authorized by Sections 2101.035 and 2101.036, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project, 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, after consultation with the Department of Information Resources.

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

SECTION 13. Chapter 2261, Government Code, is amended by adding Subchapters F, G, H, and I to read as follows:

SECTION 27. Chapter 2261, Government Code, is amended by adding Subchapters F, G, H, and I to read as follows:

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2261.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE ORDERS.

(a) An extension of or amendment to a state agency contract, including a change order, is subject to the same agency approval processes as the original contract.

(b) A state agency may not extend or amend a contract unless the agency complies with the same agency approval processes for the extension or amendment as required for the original contract and the agency states in writing why the extension or amendment is necessary or advantageous to the state.

(c) This section does not affect whether a state agency is required to undertake a new solicitation process in the manner required for a new contract in order to extend or amend a contract.

Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST OVERRUNS. (a) If a proposed contract amendment or extension changes the monetary value of a major contract by at least 35 percent or \$1 million, the state agency must submit the amendment or extension for review to the agency's executive director before the agency amends or extends the contract.

(b) Subsection (a) does not apply to a proposed contract amendment required by a state or federal statute.

(c) The executive director shall be timely notified of any unanticipated contract cost overrun.

Sec. 2261.253. CERTAIN CONTRACT EXTENSIONS. This subchapter does not apply to contract extensions that are specifically established as a component of the original procurement.

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2261.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE ORDERS. (a) This section does not apply to a contract amendment, extension, or change order that does not change the cost or terms of the contract.

(b) An extension of or amendment to a state agency contract, including a change order, is subject to the same agency approval processes as the original contract.

(c) A state agency may not extend or amend a contract unless the agency complies with the same agency approval processes for the extension or amendment as required for the original contract and the agency states in writing why the extension or amendment is necessary or advantageous to the state.

(d) This section does not affect whether a state agency is required to undertake a new solicitation process in the manner required for a new contract in order to extend or amend a contract.

(e) For state agency contracts valued in excess of \$1 million, the agency executive director must authorize a contract amendment in writing.

Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST OVERRUNS. (a) If a proposed contract amendment or extension changes the monetary value of a major contract by at least 20 percent or \$1 million, the state agency must submit the amendment or extension for review to the agency's executive director before the agency amends or extends the contract.

(b) Subsection (a) does not apply to a proposed contract amendment required by a state or federal statute.

(c) The executive director shall be timely notified of any unanticipated contract cost overrun.

Sec. 2261.253. CERTAIN CONTRACT EXTENSIONS AND RENEWALS. This subchapter does not apply to contract extensions or renewals that are specifically established as a component of the original procurement.

SUBCHAPTER G. TRAINING

Sec. 2261.301. TRAINING FOR CONTRACT MANAGERS.

Sec. 2261.302. TRAINING FOR GOVERNING BODIES.

SUBCHAPTER H. CONTRACT PLANNING AND SOLICITATION

Sec. 2261.351. CONTRACT PLANNING.

Sec. 2261.352. SOLICITATION OF CONTRACT. (a) A solicitation for a contract must include the following:

- (1) a description of the work;
- (2) a specific and measurable standard of performance;
- (3) a list of the test conditions, method, or procedure for verifying that the contract deliverable meets the standard;
- (4) a method or process to monitor and ensure quality in the contract deliverable;
- (5) an acceptance process for each contract deliverable that is expected to be delivered;
- (6) a compensation structure that is consistent with the type and value of work performed; and
- (7) a remedy, if appropriate, for failure to meet contract deliverables.

(b) In preparing a contract solicitation, a state agency must include in the requirements for the contract deliverables:

- (1) the quality level of the good or service;
- (2) the amount of completion that is required;
- (3) the suitability of the good or service for the work to be done for the agency; and
- (4) a defined and documented method of evaluation to be used in making the award and in determining the best value bid for the procurement.

SUBCHAPTER I. CONTRACT CLOSING

Sec. 2261.401. CLOSING PROCEDURE.

No equivalent provision.

SUBCHAPTER G. TRAINING

Sec. 2261.301. TRAINING FOR CONTRACT MANAGERS.

Sec. 2261.302. TRAINING FOR GOVERNING BODIES.

SUBCHAPTER H. CONTRACT PLANNING AND SOLICITATION

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- (1) a description of the work;
- (2) a specific and measurable standard of performance;
- (3) a list of the test conditions, methods, or procedures for verifying that the contract deliverable meets the standard;
- (4) a method or process to monitor and ensure quality in the contract deliverable;
- (5) an acceptance process for each contract deliverable that is expected to be delivered;
- (6) a compensation structure that is consistent with the type and value of work performed; and
- (7) a remedy, if appropriate, for failure to meet contract deliverables.

(b) In preparing a contract solicitation, a state agency must include in the requirements for the contract deliverables:

- (1) the quality level of the good or service;
- (2) the amount of completion that is required;
- (3) the suitability of the good or service for the work to be done for the agency; and
- (4) a defined and documented method of evaluation to be used in making the award and in determining the best value bid for the procurement.

SUBCHAPTER I. CONTRACT CLOSING

Sec. 2261.401. CLOSING PROCEDURE.

SECTION 28. Section 2262.001(1), Government Code, is amended to read as follows:

- (1) "Team" means the Contract Management and Oversight [Advisory] Team created under Subchapter E [C].

No equivalent provision.

SECTION 29. Section 2262.0015, Government Code, is amended to read as follows:

Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. (a) The comptroller by rule shall establish threshold requirements that exclude small or routine contracts, including purchase orders, from the application of Subchapters A, B, and D [~~this chapter~~].

(b) Subchapters A, B, and D do [~~This chapter does~~] not apply to an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on November 1, 2013.

No equivalent provision.

SECTION 30. Section 2262.002(b), Government Code, is amended to read as follows:

(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 14. Sections 2262.051(c) and (d), Government Code, are amended to read as follows:

(c) The guide must provide required and recommended contracting processes and procedures and information regarding the primary duties of [a] contract management [~~manager~~], including how to:

- (1) develop and negotiate a contract;
- (2) fairly and objectively select a contractor; [~~and~~]
- (3) monitor contractor and subcontractor performance under a contract and ensure compliance with provisions in a contract that hold the contractor accountable for performance results;
- (4) develop an accurate and comprehensive statement of work and conform contract documents to the statement of work;
- (5) evaluate and ensure compliance with contract deliverables and performance metrics and any associated remedies and incentives;
- (6) maintain required documentation for contracting decisions, contract changes, and problems with a contract;
- (7) communicate any serious issue or risk

SECTION 31. Sections 2262.051(c) and (d), Government Code, are amended to read as follows:

(c) The guide must provide required and recommended contracting processes and procedures and information regarding the primary duties of [a] contract management [~~manager~~], including how to:

- (1) develop and negotiate a contract;
- (2) fairly and objectively select a contractor; [~~and~~]
- (3) monitor contractor and subcontractor performance under a contract and ensure compliance with provisions in a contract that hold the contractor accountable for performance results;
- (4) develop an accurate and comprehensive statement of work and conform contract documents to the statement of work;
- (5) evaluate and ensure compliance with contract deliverables and performance metrics and any associated remedies and incentives;
- (6) maintain required documentation for contracting decisions, contract changes, and problems with a contract;
- (7) communicate any serious issue or risk

that is identified with a contract in a timely manner to the agency's governing body or the single state officer who governs the agency;

(8) create a risk management process under Section 2261.212;

(9) build and maintain a working relationship with the contractor, including instruction on communication and timely management of problems;

(10) create a procedure for selecting and applying a preferred dispute resolution method;

(11) implement an escalation process to address contract disagreements;

(12) evaluate and approve requests for payments that are consistent with the contract; and

(13) develop a process for contract closure and performance evaluation of a contractor under a contract.

(d) The guide must include model provisions for state agency contracts. The guide must:

(1) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(2) recognize the unique contracting needs of an individual state agency or program and provide procedures for documenting agency decisions that do not follow required contracting processes and procedures but are ~~[sufficient flexibility to accommodate those needs,]~~ consistent with protecting the interests of this state;

(3) include maximum contract periods under which a new competitive solicitation is not necessary; and

(4) include the model contract management process developed under Section 2262.104 and recommendations on the appropriate use of the model.

No equivalent provision.

No equivalent provision.

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that is identified with a contract in a timely manner to the agency's governing body or the single state officer who governs the agency;

(8) create a risk management process under Section 2261.211;

(9) build and maintain a working relationship with the contractor, including instruction on communication and timely management of problems;

(10) create a procedure for selecting and applying a preferred dispute resolution method;

(11) implement an escalation process to address contract disagreements;

(12) evaluate and approve requests for payments that are consistent with the contract; and

(13) develop a process for contract closure and performance evaluation of a contractor under a contract.

(d) The guide must include model provisions for state agency contracts. The guide must:

(1) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(2) recognize the unique contracting needs of an individual state agency or program and provide procedures for documenting agency decisions that do not follow required contracting processes and procedures but are ~~[sufficient flexibility to accommodate those needs,]~~ consistent with protecting the interests of this state; and

(3) include maximum contract periods under which a new competitive solicitation is not necessary; ~~and~~

~~[(4) include the model contract management process developed under Section 2262.104 and recommendations on the appropriate use of the model].~~

SECTION 32. Section 2262.053(d), Government Code, is amended to read as follows:

(d) The comptroller shall administer training under this section and may assess a fee for the training in an amount sufficient to recover the comptroller's costs under this section.

SECTION 33. Section 2262.0535,

15.132.1126

Government Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller may assess a fee for the training provided under this section in an amount sufficient to recover the comptroller's costs under this section.

No equivalent provision.

SECTION 34. Chapter 2262, Government Code, is amended by adding Subchapters E and F to read as follows:

SUBCHAPTER E. CONTRACT MANAGEMENT AND OVERSIGHT TEAM

Sec. 2262.201. DEFINITIONS. In this subchapter:

(1) "High-risk contract" means a state agency contract or purchase order that:

(A) has a value of at least \$10 million;

(B) has a value of less than \$10 million, but has high-risk factors as identified by the team;

(C) is entered into with an entity that is incorporated outside of the United States;

(D) 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:

(i) a violation of, or noncompliance with, the terms of the contract;

(ii) delivery of an ineffective product, service, or system;

(iii) significant delays or cost overruns;

(iv) fraud;

(v) misconduct; or

(vi) any other event that resulted in the termination or cancellation of the contract for cause; or

(E) meets other criteria that may be established by the team, including that the contract or purchase order:

(i) is awarded by an agency with significant audit findings related to contracting in the previous two fiscal years;

(ii) is expected to cost more than 20 percent of the awarding agency's budget available from all sources;

(iii) outsources a program or key function of a program of the awarding agency;

(iv) has a value of more than \$1 million and is awarded on an emergency basis or is a sole source contract; or

(v) has a value of more than \$1 million and



has change orders that increase the cost of the contract by more than 20 percent of the original contract cost, excluding routine contract renewals.

(2) "Major information resources project" has the meaning assigned by Section 2054.003(10).

(3) "Quality assurance team" means the quality assurance team established under Section 2054.158.

(4) "Solicitation" means a solicitation for bids, offers, qualifications, proposals, or similar expressions of interest for a high-risk contract.

Sec. 2262.202. APPLICABILITY OF SUBCHAPTER. (a) 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.

(b) This subchapter does not apply to a contract of the Employees Retirement System of Texas or the Teacher Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Subtitle H, Title 8, Insurance Code.

Sec. 2262.203. ESTABLISHMENT; GENERAL DUTIES. The Legislative Budget Board shall establish a Contract Management and Oversight Team to:

(1) develop criteria for identifying high-risk factors in contracts;

(2) consult with state agencies on and review high-risk contracts as provided by Section 2262.204;

(3) provide recommendations and assistance to state agency personnel throughout the contract management process;

(4) coordinate and consult with the quality assurance team on all high-risk contracts relating to a major information resources project; and

(5) coordinate and consult with the comptroller to:

(A) develop criteria for high-risk contracts under Section 2262.201(1)(E);

(B) identify strategies to mitigate contract risks; and

(C) monitor contract activity using

information from the centralized accounting and payroll system or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project developed under Sections 2101.035 and 2101.036.

Sec. 2262.204. NOTICE AND REVIEW; WAIVER. (a) Each state agency must 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.

(b) A state agency must submit to the team information and documentation requested by the team that relate to a high-risk contract, including information on contract development, vendor selection, and ongoing contract oversight.

(c) The team shall review information and documentation submitted under Subsection (b) and make recommendations to ensure that potential risks related to the high-risk contract have been identified and mitigated.

(d) A state agency shall implement the team's recommendations and provide any additional documentation required by the team to demonstrate that risks related to the high-risk contract have been mitigated. If a recommendation made by the team is not implemented, the agency must provide written notice to the team before the 31st day after the date the agency received the recommendation.

(e) If, after receiving notice provided under Subsection (d), the team determines that significant risks related to the high-risk contract remain, the team shall provide written notice of that fact to the Legislative Budget Board, the governor, and the comptroller with a description of the risk and recommendations to mitigate the risk, including cancellation of the high-risk contract.

(f) The team may adopt criteria for waiving the consultation and review requirements of this section.

Sec. 2262.205. SOLICITATION AND CONTRACT CANCELLATION. After review of the written notice provided by the team under Section 2262.204(e), the Legislative Budget Board, the governor, or the comptroller may recommend that a state agency cancel a solicitation or a high-risk

contract if:

- (1) a proposed contract would place the state at an unacceptable risk if executed; or
- (2) an executed contract is experiencing performance failure or payment irregularities.

SUBCHAPTER F. VENDOR RISK MANAGEMENT PROGRAM FOR STATE CONTRACTS

Sec. 2262.251. DEFINITION. In this subchapter, "office" means the State Office of Risk Management.

Sec. 2262.2515. APPLICABILITY. This subchapter does not apply to a contract for goods with a value of \$50,000 or less.

Sec. 2262.252. COMPLIANCE VERIFICATION. (a) Each state agency shall submit to the office ongoing contracts of the agency for verification of vendor compliance with contract terms and requirements and to correct contract compliance deficiencies as provided by rules adopted by the office under Section 2262.253.

(b) The office may contract with a third-party credentialing organization to provide compliance verification as provided by this subchapter.

(c) Not later than December 31 of each even-numbered year, the office shall provide a report to the legislature on the office's findings under this subchapter and recommendations to ensure state contract compliance and mitigate risk to the state.

(d) Notwithstanding Subsection (a), the office may not require a state agency to submit for compliance verification a contract related to health and human services if:

- (1) the value of the contract cannot be determined at the time of execution of the contract; and
- (2) any qualified vendor is eligible for the contract.

Sec. 2262.253. RULES RELATING TO COMPLIANCE VERIFICATION. (a) The office shall adopt rules to implement this subchapter.

(b) At a minimum, rules adopted under Subsection (a) must:

(1) provide standards for:  
(A) selecting and submitting a statistically significant sampling of contracts for review under this subchapter;  
(B) identifying vendor noncompliance or deficiency as a result of a contract review under this subchapter; and  
(C) implementing corrective action in relation to vendor noncompliance or deficiency;  
(2) in relation to verification system requirements, provide criteria for:  
(A) monitoring of vendor compliance with contract terms and requirements through the life cycle of the contract; and  
(B) implementation of Internet-based software that has the capability to exchange information and facilitate payments and real-time reporting of collected information;  
(3) in relation to requirements for contract compliance verification:  
(A) designate verification checklists, including requirements for interviews and recordkeeping, exposure analyses, equipment and facility forms, and pre-verification and post-verification compliance;  
(B) provide standards for verifying vendor certificates of insurance, policy types and limits, policy expirations and renewals, and endorsements;  
(C) provide standards for additional vendor screenings, including:  
(i) financial screening, including reviewing profit and loss statements, cash flow statements, balance statements, and federal employer identification numbers and other taxpayer identification numbers;  
(ii) license screening, including any required certifications and professional licenses;  
(iii) state and federal debarment and exclusion screening;  
(iv) compliance with legal requirements;  
(v) compliance with safety standards, including workers' compensation and automobile insurance coverage; and  
(vi) review of vendor compliance with security standards for information systems; and  
(D) address any additional issues the office determines to be necessary to achieve best practices in the verification of contracts for compliance with contract terms and requirements and to correct contract

compliance deficiencies; and

(4) set a reasonable fee to be paid by a vendor who enters into a contract with a state agency in an amount that is sufficient to recover the office's costs under this subchapter and that is less than one percent of the contract, not to exceed \$1,000.

Sec. 2262.254. REQUIRED CONTRACT PROVISION RELATING TO VENDOR RISK MANAGEMENT PROGRAM. Each state agency shall include in each of its contracts a clause that provides that the vendor agrees that the vendor may be charged a reasonable fee as provided by Section 2262.253(b)(4).

No equivalent provision.

SECTION 35. Subchapter C, Chapter 2262, Government Code, is repealed.

No equivalent provision.

SECTION 36. (a) The Contract Advisory Team is abolished.

(b) The validity of an action taken by the Contract Advisory Team before the team was abolished by this Act is not affected by the abolition.

(c) All powers and duties of the Contract Advisory Team are transferred to the Contract Management and Oversight Team established by this Act.

(d) A rule, form, policy, procedure, or decision of the Contract Advisory Team continues in effect as a rule, form, policy, procedure, or decision of the Contract Management and Oversight Team until superseded by an act of the Contract Management and Oversight Team.

(e) A reference in law to the Contract Advisory Team means the Contract Management and Oversight Team.

(f) Any action or proceeding involving the Contract Advisory Team is transferred without change in status to the Contract Management and Oversight Team, and the Contract Management and Oversight Team assumes, without a change in status, the position of the Contract Advisory Team in a negotiation or proceeding to which the Contract Advisory Team is a party.

No equivalent provision.

SECTION 37. Except as otherwise provided by this Act, this Act applies 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.

No equivalent provision.

SECTION 38. 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 into on or after the effective date of this Act.

No equivalent provision.

SECTION 39. To the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to state agency contracting and oversight.

SECTION 15. Sections 2261.104, 2261.105, 2261.107, 2261.208, 2261.351, and 2261.352, Government Code, as added by this Act, apply only to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act.

No equivalent provision.

SECTION 16. A contract manager is not required to complete the training required under Section 2261.301, Government Code, as added by this Act, until September 1, 2017.

No equivalent provision.

SECTION 17. A member of a governing body of a state agency is not required to complete the training required under Section 2261.302, Government Code, as added by this Act, until September 1, 2017.

No equivalent provision.

SECTION 18. A state agency is not required to comply with Section 2261.202, Government Code, as amended by this Act, and Section 2261.004 and Sections 2261.204 through 2261.213, Government Code, as added by this Act, until September 1, 2017.

No equivalent provision.

SECTION 19. This Act takes effect November 1, 2015.

SECTION 40. This Act takes effect September 1, 2015.