

By: Otto, Walle, et al.

H.B. No. 15

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the management and oversight of state contracts,
3 including contracts for information technology commodity items.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

7 (b) Notwithstanding any other law and in addition to the
8 requirements of Subchapter E, Chapter 2262, before a contract
9 described by Subsection (a) may be entered into by the retirement
10 system, a representative of the office of the attorney general
11 shall review the form and terms of the contract and may make
12 recommendations to the retirement system for changes to the
13 contract if the attorney general determines that the office of the
14 attorney general has sufficient subject matter expertise and
15 resources available to provide this service.

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

18 (g) Notwithstanding any other law and except as provided by
19 Section 2262.202, Chapters 2261 and 2262 do not apply to the
20 retirement system. The Contract Management and Oversight
21 ~~[Advisory]~~ Team shall assist the retirement system at the request
22 of the retirement system. The retirement system may use the
23 training program for contract management provided under Chapter
24 2262.

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

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

5 SECTION 4. Sections 2165.356(a) and (b), Government Code,
6 are amended to read as follows:

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

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

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

22 SECTION 5. Section 2166.2551, Government Code, is amended
23 to read as follows:

24 Sec. 2166.2551. CONTRACT NOTIFICATION. The commission or
25 an agency whose project is exempted from all or part of this chapter
26 under Section 2166.003 shall provide written notice to the
27 Legislative Budget Board of a contract for a construction project

1 if the amount of the contract, including an amendment,
2 modification, renewal, or extension of the contract, exceeds
3 \$50,000 [~~\$14,000~~]. The notice must be on a form prescribed by the
4 Legislative Budget Board and filed not later than the 10th day after
5 the date the agency enters into the contract.

6 SECTION 6. Section 2254.006, Government Code, is amended to
7 read as follows:

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

18 SECTION 7. Section 2254.0301(a), Government Code, is
19 amended to read as follows:

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

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

1 to read as follows:

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

4 SECTION 9. Section 2262.0015, Government Code, is amended
5 to read as follows:

6 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS.

7 (a) The comptroller by rule shall establish threshold
8 requirements that exclude small or routine contracts, including
9 purchase orders, from the application of Subchapters A, B, and D
10 ~~[this chapter]~~.

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

14 SECTION 10. Section 2262.002(b), Government Code, is
15 amended to read as follows:

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

19 (1) relate to highway construction or highway
20 engineering; or

21 (2) are subject to Section 201.112, Transportation
22 Code.

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

25 SUBCHAPTER E. CONTRACT MANAGEMENT AND OVERSIGHT TEAM

26 Sec. 2262.201. DEFINITIONS. In this subchapter:

27 (1) "High-risk contract" means a state agency contract

1 or purchase order that:

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

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

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

7 (D) is entered into with an entity that, during
8 the five-year period preceding the date of the purchase or award of
9 the contract, has had a contract with a state agency or federal
10 governmental entity terminated or canceled for:

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

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

15 (iii) significant delays or cost overruns;

16 (iv) fraud;

17 (v) misconduct; or

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

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

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

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

27 (iii) outsources a program or key function

1 of a program of the awarding agency;

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

4 (v) has a value of more than \$1 million and
5 has change orders that increase the cost of the contract by more
6 than 20 percent of the original contract cost, excluding routine
7 contract renewals.

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

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

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

15 Sec. 2262.202. APPLICABILITY OF SUBCHAPTER. (a) This
16 subchapter applies to contracts of the Texas Department of
17 Transportation that:

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

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

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

27 Sec. 2262.203. ESTABLISHMENT; GENERAL DUTIES. The

1 Legislative Budget Board shall establish a Contract Management and
2 Oversight Team to:

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

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

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

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

12 (5) coordinate and consult with the comptroller to:

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

15 (B) identify strategies to mitigate contract
16 risks; and

17 (C) monitor contract activity using information
18 from the centralized accounting and payroll system or any successor
19 system used to implement the enterprise resource planning component
20 of the uniform statewide accounting project developed under
21 Sections [2101.035](#) and [2101.036](#).

22 Sec. 2262.204. NOTICE AND REVIEW; WAIVER. (a) Each state
23 agency must provide written notice to the team not later than the
24 30th day before the date the agency publicly releases solicitation
25 documents for a high-risk contract.

26 (b) A state agency must submit to the team information and
27 documentation requested by the team that relate to a high-risk

1 contract, including information on contract development, vendor
2 selection, and ongoing contract oversight.

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

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

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

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

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

1 (1) a proposed contract would place the state at an
2 unacceptable risk if executed; or

3 (2) an executed contract is experiencing performance
4 failure or payment irregularities.

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

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

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

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

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

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

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

27 SECTION 14. Sections 2166.2551, 2254.006, and

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1 2254.0301(a), Government Code, as amended by this Act, apply only
2 to a state agency contract for which the agency is required to
3 provide notice to the Legislative Budget Board that is entered into
4 on or after the effective date of this Act.

5 SECTION 15. This Act takes effect September 1, 2015.