

By: Otto, Walle, et al.

H.B. No. 15

Substitute the following for H.B. No. 15:

By: Elkins

C.S.H.B. No. 15

A BILL TO BE ENTITLED

AN ACT

1
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 825.103(g), Government Code, is amended
6 to read as follows:

7 (g) Notwithstanding any other law, Chapters 2261 and 2262 do
8 not apply to the retirement system. The Contract Management and
9 Oversight [~~Advisory~~] Team shall assist the retirement system at the
10 request of the retirement system. The retirement system may use
11 the training program for contract management provided under Chapter
12 2262.

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

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

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

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

22 (j) A state agency that enters into a contract for a
23 commodity item under this section must obtain at least three
24 competitive offers from vendors selected by the department under

1 Subsection (b) if at least three vendors selected by the department
2 offer the item.

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

5 Sec. 2157.0685. CONTRACT REQUIREMENTS FOR CERTAIN
6 SERVICES. (a) In this section, "statement of work" means a
7 document stating the requirements for a contract that are specific
8 to the vendor under the contract, including deliverables,
9 performance specifications, and other requirements, and that are
10 not specified in a contract awarded by the department under Section
11 2157.068.

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

14 (c) For a contract awarded by the department under Section
15 2157.068 that requires a state agency to develop and execute a
16 statement of work to initiate services under the contract, the
17 state agency must:

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

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

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

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

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

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

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

18 SECTION 6. Section 2166.2551, Government Code, is amended
19 to read as follows:

20 Sec. 2166.2551. CONTRACT NOTIFICATION. The commission or
21 an agency whose project is exempted from all or part of this chapter
22 under Section 2166.003 shall provide written notice to the
23 Legislative Budget Board of a contract for a construction project
24 if the amount of the contract, including an amendment,
25 modification, renewal, or extension of the contract, exceeds
26 \$50,000 [~~\$14,000~~]. The notice must be on a form prescribed by the
27 Legislative Budget Board and filed not later than the 10th day after

1 the date the agency enters into the contract.

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

4 Sec. 2254.006. CONTRACT NOTIFICATION. A state agency,
5 including an institution of higher education as defined by Section
6 61.003, Education Code, shall provide written notice to the
7 Legislative Budget Board of a contract for professional services,
8 other than a contract for physician or optometric services, if the
9 amount of the contract, including an amendment, modification,
10 renewal, or extension of the contract, exceeds \$50,000 [~~\$14,000~~].
11 The notice must be on a form prescribed by the Legislative Budget
12 Board and filed not later than the 10th day after the date the
13 agency enters into the contract.

14 SECTION 8. Section 2254.0301(a), Government Code, is
15 amended to read as follows:

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

23 SECTION 9. Section 2262.001(1), Government Code, is amended
24 to read as follows:

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

27 SECTION 10. Section 2262.0015, Government Code, is amended

1 to read as follows:

2 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS.

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

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

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

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

15 (1) relate to highway construction or highway
16 engineering; or

17 (2) are subject to Section 201.112, Transportation
18 Code.

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

21 SUBCHAPTER E. CONTRACT MANAGEMENT AND OVERSIGHT TEAM

22 Sec. 2262.201. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

11 (iii) significant delays or cost overruns;

12 (iv) fraud;

13 (v) misconduct; or

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

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

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

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

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

25 (iv) has change orders that change the cost
26 or duration of a contract by more than 20 percent of the original
27 contract cost or duration, as applicable.

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

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

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

8 Sec. 2262.202. APPLICATION OF SUBCHAPTER TO TEXAS
9 DEPARTMENT OF TRANSPORTATION. This subchapter applies to contracts
10 of the Texas Department of Transportation that:

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

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

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

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

20 (2) consult with state agencies on and approve an
21 action related to a high-risk contract as provided by Section
22 2262.204;

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

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

1 Sec. 2262.204. NOTICE AND APPROVAL; WAIVER. (a) Each state
2 agency must provide written notice to the team not later than the
3 30th day before the date the agency publicly releases solicitation
4 documents for a high-risk contract.

5 (b) Each state agency must receive a separate prior approval
6 from the team before spending money:

7 (1) under an executed high-risk contract; and

8 (2) to make a payment or a series of payments that
9 exceeds half of the high-risk contract value.

10 (c) In determining whether to approve an action described by
11 Subsection (b), the team may review related documentation to ensure
12 that potential risks related to the high-risk contract have been
13 identified and mitigated. If the potential risks cannot be
14 sufficiently mitigated, the team shall disapprove the action.

15 (d) The team may adopt criteria for waiving the consultation
16 and approval requirements of this section.

17 Sec. 2262.205. SOLICITATION AND CONTRACT CANCELLATION. (a)
18 After review of and comment on the matter by the Legislative Budget
19 Board, the team may recommend that a state agency cancel a
20 solicitation or a contract during the review process under Section
21 2262.204 if:

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

24 (2) an executed contract is experiencing performance
25 failure or payment irregularities.

26 (b) If a state agency does not implement a recommendation
27 made under Subsection (a), the team shall provide notice of that

1 failure to the comptroller and the comptroller may not authorize
2 the expenditure of funds for the contract.

3 SECTION 13. Subchapter C, Chapter 2262, Government Code, is
4 repealed.

5 SECTION 14. (a) The Contract Advisory Team is abolished.

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

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

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

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

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

25 SECTION 15. Section [2157.068](#), Government Code, as amended
26 by this Act, and Subchapter E, Chapter 2262, Government Code, as
27 added by this Act, apply only in relation to a contract:

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

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

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

8 SECTION 16. Sections [2166.2551](#), [2254.006](#), and
9 [2254.0301\(a\)](#), Government Code, as amended by this Act, apply only
10 to a state agency contract for which the agency is required to
11 provide notice to the Legislative Budget Board that is entered into
12 on or after the effective date of this Act.

13 SECTION 17. This Act takes effect September 1, 2015.