

By: Price

H.B. No. 3241

A BILL TO BE ENTITLED

AN ACT

relating to state agency contracting.

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

SECTION 1. Subchapter L, Chapter 441, Government Code, is amended by adding Section 441.1855 to read as follows:

Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a state agency:

(1) shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and

(2) may destroy the contract and documents only after the fourth anniversary of the date the contract is completed or expires.

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

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

(1) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;

(2) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; or

(3) a university system or an institution of higher

1 education as defined by Section 61.003, Education Code [~~, except a~~
2 ~~public junior college~~].

3 SECTION 3. Section 2155.078, Government Code, is amended by
4 amending Subsections (a) and (b) and adding Subsection (a-1) to
5 read as follows:

6 (a) The commission shall establish and administer a system
7 of training, continuing education, and certification for state
8 agency purchasing personnel. The training and continuing education
9 for state agency purchasing personnel must include ethics training.
10 The commission may establish and offer appropriate training to
11 vendors on a cost recovery basis. The commission may adopt rules to
12 administer this section, including rules relating to monitoring a
13 certified purchaser's compliance with the continuing education
14 requirements of this section.

15 (a-1) The training, continuing education, and certification
16 required under Subsection (a) must include:

17 (1) training on the selection of an appropriate
18 procurement method by project type; and

19 (2) training conducted by the Department of
20 Information Resources on purchasing technologies.

21 (b) Notwithstanding [~~Except as provided by~~] Subsection (n),
22 all state agency purchasing personnel, including agencies exempted
23 from the purchasing authority of the commission, must receive the
24 training and continuing education to the extent required by rule of
25 the commission. The training and continuing education must include
26 ethics training. A state agency employee who is required to receive
27 the training may not participate in purchases by the employing

1 agency unless the employee has received the required training or
2 received equivalent training from a national association
3 recognized by the commission. The equivalent training may count,
4 as provided by Subsection (k), toward the continuing education
5 requirements.

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

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

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

15 Sec. 2155.090. VENDOR PERFORMANCE TRACKING SYSTEM. (a)
16 The comptroller shall evaluate a vendor's performance based on the
17 information reported under Section 2155.089 and criteria
18 established by the comptroller.

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

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

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

27 (e) The comptroller shall make the vendor performance

1 tracking system accessible to the public on the comptroller's
2 Internet website.

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

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

9 (1) are available from only one vendor; or

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

12 [~~(3)~~] are commodity items as defined by Section
13 2157.068(a); or

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

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

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

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

26 (1) for a purchase with a value of \$50,000 or less,
27 directly award a contract to a vendor included on the schedule

1 without submission of a request for bids to other vendors on the
2 list;

3 (2) for a purchase with a value of more than \$50,000
4 but not more than \$150,000, submit a request for proposals to at
5 least three vendors included on the schedule in the category to
6 which the purchase relates;

7 (3) for a purchase with a value of more than \$150,000
8 but not more than \$1 million, submit a request for proposals to at
9 least six vendors included on the schedule in the category to which
10 the purchase relates; and

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

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

17 Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES.

18 (a) A [~~state agency or~~] local government may purchase goods [~~or~~
19 ~~services~~] directly from a vendor under a contract listed on a
20 schedule developed under this subchapter. A purchase authorized by
21 this section satisfies any requirement of state law relating to
22 competitive bids or proposals and satisfies any applicable
23 requirements of Chapter 2157.

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

1 subchapter.

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

4 (3) "Veterans service agency" means a community-based
5 organization that:

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

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

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

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

19 (b) The commission shall strongly encourage each vendor
20 with a contract listed on a schedule developed under this
21 subchapter and who is not a historically underutilized business or
22 small business to use historically underutilized or small
23 businesses to sell goods [~~or provide a service~~] under the contract.

24 If a vendor does not make a good faith effort to use historically
25 underutilized and small businesses under the contract, the
26 commission may exclude the vendor from being listed on a schedule
27 developed under this subchapter.

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

4 (1) the contract is on a schedule developed under
5 Section 2155.502;

6 (2) the vendor for the contract authorizes in writing
7 the historically underutilized business or small business to sell
8 goods [~~or provide a service~~] under that contract; and

9 (3) the historically underutilized business or small
10 business provides that written authorization to the commission.

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

14 (a) In this section, "commodity items" means commercial
15 software or [~~7~~] hardware [~~7, or technology services, other than~~
16 ~~telecommunications services,~~] that is [~~are~~] generally available to
17 businesses or the public and for which the department determines
18 that a reasonable demand exists in two or more state agencies. The
19 term includes seat management, through which a state agency
20 transfers its personal computer equipment and service
21 responsibilities to a private vendor to manage the personal
22 computing needs for each desktop in the state agency, including all
23 necessary hardware, software, and support services.

24 (e-1) A state agency contracting to purchase a commodity
25 item shall use the list maintained as required by Subsection (e) as
26 follows:

27 (1) for a contract with a value of \$50,000 or less, the

1 agency may directly award the contract to a vendor included on the
2 list without submission of a request for bids to other vendors on
3 the list;

4 (2) for a contract with a value of more than \$50,000
5 but not more than \$150,000, the agency must submit a request for
6 proposals to at least three vendors included on the list in the
7 category to which the contract relates;

8 (3) for a contract with a value of more than \$150,000
9 but not more than \$1 million, the agency must submit a request for
10 proposals to at least six vendors included on the list in the
11 category to which the contract relates; and

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

15 SECTION 11. Subchapter Z, Chapter 2252, Government Code, is
16 amended by adding Section 2252.9011 to read as follows:

17 Sec. 2252.9011. CONTRACTS WITH FORMER OR RETIRED PRIVATE
18 VENDOR EMPLOYEES. A state agency may not enter into an employment
19 contract, a professional services contract under Chapter 2254, or a
20 consulting services contract under Chapter 2254 with an individual
21 who is a former or retired employee of a private vendor under which
22 the individual will perform services for the agency related to the
23 individual's former duties for the vendor under a contract with the
24 agency before the second anniversary of the last date on which the
25 individual was employed by the private vendor.

26 SECTION 12. Section [2254.021\(6\)](#), Government Code, is
27 amended to read as follows:

1 services from a private vendor by the agency.

2 (b) A state agency may not enter into a contract for the
3 purchase of goods or services with a private vendor with whom any of
4 the following agency employees or officials have a financial
5 interest:

6 (1) a member of the agency's governing body;

7 (2) the governing official, executive director,
8 general counsel, chief procurement officer, or procurement
9 director of the agency; or

10 (3) a family member related to an employee or official
11 described by Subdivision (1) or (2) within the second degree by
12 affinity or consanguinity.

13 (c) A state agency employee or official has a financial
14 interest in a person if the employee or official:

15 (1) owns or controls, directly or indirectly, an
16 ownership interest of at least one percent in the person, including
17 the right to share in profits, proceeds, or capital gains; or

18 (2) could reasonably foresee that a contract with the
19 person could result in a financial benefit to the employee or
20 official.

21 (d) A financial interest prohibited by this section does not
22 include a retirement plan, blind trust, insurance coverage, or
23 ownership interest of less than one percent in a corporation.

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

1 of:

2 (1) each contract the agency enters into, including
3 contracts entered into without inviting, advertising for, or
4 otherwise requiring competitive bidding before selection of the
5 contractor, until the contract expires or is completed;

6 (2) the statutory or other authority under which a
7 contract that is not competitively bid under Subdivision (1) is
8 entered into without compliance with competitive bidding
9 procedures; and

10 (3) the request for proposals related to a
11 competitively bid contract included under Subdivision (1) until the
12 contract expires or is completed.

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

15 (c) Each state agency by rule shall establish a procedure to
16 identify each contract that requires enhanced contract or
17 performance monitoring and submit information on the contract to
18 the agency's governing body or, if the agency is not governed by a
19 multimember governing body, the officer who governs the agency.
20 The agency's contract management office or procurement director
21 shall immediately notify the agency's governing body or governing
22 official, as appropriate, of any serious issue or risk that is
23 identified with respect to a contract monitored under this
24 subsection.

25 Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$1 MILLION.

26 (a) For each contract for the purchase of goods or services that
27 has a value exceeding \$1 million, a state agency shall develop and

1 implement contract reporting requirements that provide information
2 on:

3 (1) compliance with financial provisions and delivery
4 schedules under the contract;

5 (2) corrective action plans required under the
6 contract and the status of any active corrective action plan; and

7 (3) any liquidated damages assessed or collected under
8 the contract.

9 (b) Each state agency shall verify:

10 (1) the accuracy of any information reported under
11 Subsection (a) that is based on information provided by a
12 contractor; and

13 (2) the delivery time of goods or services scheduled
14 for delivery under the contract.

15 (c) Except as provided by Subsection (d), a state agency may
16 enter into a contract for the purchase of goods or services that has
17 a value exceeding \$1 million only if:

18 (1) the governing body of the state agency approves
19 the contract and the approved contract is signed by the presiding
20 officer of the governing body; or

21 (2) for a state agency that is not governed by a
22 multimember governing body, the officer who governs the agency
23 approves and signs the contract.

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

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

2 For each state agency contract for the purchase of goods or services
3 that has a value exceeding \$5 million, the contract management
4 office or procurement director of the agency must:

5 (1) verify in writing that the solicitation and
6 purchasing methods and contractor selection process comply with
7 state law and agency policy; and

8 (2) submit to the governing body of the agency, or
9 governing official of the agency if the agency is not governed by a
10 multimember governing body, information on any potential issue that
11 may arise in the solicitation, purchasing, or contractor selection
12 process.

13 Sec. 2261.256. RISK ANALYSIS PROCEDURE; CONTRACT
14 MANAGEMENT HANDBOOK; CONTRACT MANAGEMENT DATABASE. (a) Each state
15 agency shall develop and comply with a risk analysis procedure. The
16 procedure must provide for:

17 (1) assessing the risk of fraud, abuse, or waste in the
18 contractor selection process, contract provisions, and payment and
19 reimbursement rates and methods for the different types of goods
20 and services for which the agency contracts; and

21 (2) identifying contracts that require enhanced
22 contract monitoring.

23 (b) Each state agency shall publish a contract management
24 handbook that establishes consistent contracting policies and
25 practices to be followed by the agency and that is consistent with
26 the comptroller's contract management guide. The agency handbook
27 may include standard contract provisions and formats for the agency

1 to incorporate in contracts.

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

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

7 (5) "State agency" has the meaning provided by Section
8 2056.001, except that the term includes a university system or an
9 institution of higher education as defined by Section 61.003,
10 Education Code.

11 SECTION 16. Sections 2262.101(a), (b), and (c), Government
12 Code, as amended by Chapters 676 (H.B. 1965) and 1227 (S.B. 1681),
13 Acts of the 83rd Legislature, Regular Session, 2013, are reenacted
14 and amended to read as follows:

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

17 (1) reviewing [~~and making recommendations on the~~]
18 solicitation documents and contract documents for contracts of
19 state agencies that have a value of at least \$10 million, including
20 the value of any amendment to or extension of the contract
21 authorized in the contract that would increase the value of the
22 contract;

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

27 (3) providing recommendations to the comptroller

1 regarding:

2 (A) the development of the contract management
3 guide; and

4 (B) the training under Section 2262.053;

5 (4) providing recommendations and assistance to state
6 agency personnel throughout the contract management process;

7 (5) coordinating and consulting with the quality
8 assurance team established under Section 2054.158 on all contracts
9 relating to a major information resources project; ~~and~~

10 (6) ~~[(4)]~~ developing and recommending policies and
11 procedures to improve state agency contract management practices;

12 (7) ~~[(5)]~~ developing and recommending procedures to
13 improve state agency contracting practices by including
14 consideration for best value; and

15 (8) ~~[(6)]~~ creating and periodically performing a risk
16 assessment to determine the appropriate level of management and
17 oversight of contracts by state agencies.

18 (b) The risk assessment created and performed ~~[reviewed]~~
19 under Subsection (a)(8) ~~[(a)(6)]~~ must include~~[, but is not limited~~
20 ~~to]~~ the following criteria:

21 (1) the amount of appropriations to the agency;

22 (2) total contract value as a percentage of
23 appropriations to the agency; and ~~[or]~~

24 (3) the impact of the functions and duties of the state
25 agency on the health, safety, and well-being of residents
26 ~~[citizens]~~.

27 (c) The comptroller shall oversee the activities of the

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

3 SECTION 17. Section 2262.102(a), Government Code, is
4 amended to read as follows:

5 Sec. 2262.102. MEMBERS. (a) The team consists of the
6 following nine [~~six~~] members:

7 (1) one member from the Health and Human Services
8 Commission;

9 (2) one member from the comptroller's office;

10 (3) one member from the Department of Information
11 Resources;

12 (4) one member from the Texas Facilities Commission;

13 (5) one member from the governor's office; [~~and~~]

14 (6) one member from a small state agency;

15 (7) one member from the Texas Department of
16 Transportation;

17 (8) one member from the Texas Education Agency; and

18 (9) one member from the Texas Commission on
19 Environmental Quality.

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

22 Sec. 2262.105. QUARTERLY REPORT TO LEGISLATIVE BUDGET
23 BOARD. The contract advisory team shall submit a quarterly report
24 to the Legislative Budget Board on:

25 (1) the number of solicitation documents and contracts
26 reviewed by the team in the preceding quarter;

27 (2) the number of documents and contracts reviewed

1 under Subdivision (1) compared to the total number of contracts
2 entered into by state agencies, expressed as a percentage; and
3 (3) whether state agencies accepted or rejected the
4 team's recommendations and any reasons provided by the state
5 agencies for rejecting the recommendations.

6 SECTION 19. The following provisions are repealed:

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

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

11 SECTION 20. (a) As soon as is practicable after the
12 effective date of this Act, the executive directors of the Texas
13 Department of Transportation, the Texas Education Agency, and the
14 Texas Commission on Environmental Quality shall each appoint a
15 member to the contract advisory team as required by Section
16 2262.102, Government Code, as amended by this Act.

17 (b) As soon as is practicable after the effective date of
18 this Act, the comptroller of public accounts, and each affected
19 state agency as necessary, shall adopt the rules and procedures and
20 take the actions necessary to implement the changes in law made by
21 this Act.

22 SECTION 21. To the extent of any conflict, this Act prevails
23 over another Act of the 84th Legislature, Regular Session, 2015,
24 relating to nonsubstantive additions to and corrections in enacted
25 codes.

26 SECTION 22. The changes in law made by this Act apply only
27 to a contract entered into on or after the effective date of this

1 Act. A contract entered into before that date is governed by the
2 law in effect immediately before the effective date of this Act, and
3 the former law is continued in effect for that purpose.

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