

By: Elkins

H.B. No. 3345

A BILL TO BE ENTITLED

AN ACT

relating to state contracting and management, and the establishment of a centralized purchasing, vendor management, contract audit and transparency system for state agencies.

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

SECTION 1. 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 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.

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

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

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

8 (7) "State agency" has the meaning assigned by Section
9 2151.002.

10 SECTION 2. Subchapter A, Chapter 2261, Government Code, is
11 amended by adding Section 2261.004 to read as follows:

12 Sec. 2261.004 CONTRACT GUIDELINES AND PROCEDURES. Each
13 state agency shall establish formal guidelines and procedures for
14 all employees involved in the contracting process:

15 (1) regarding who may approve a contract for the agency;

16 (2) for contract planning and solicitation;

17 (3) for contract negotiations;

18 (4) for contract management; and

19 (5) for contract oversight.

20 SECTION 3. Subchapter B, Chapter 2261, Government Code, is
21 amended by adding Section 2261.054 to read as follows:

22 Sec. 2261.054. BEST VALUE STANDARD FOR CONTRACTING FOR
23 GOODS AND SERVICES. In determining the best value for the state,
24 the purchase price and whether the goods or services meet
25 specifications are the most important considerations. A state
26 agency may consider, subject to Sections 2155.074(c) and 2155.075,
27 other relevant factors, including:

- 1 (1) installation costs;
- 2 (2) life cycle costs;
- 3 (3) the quality and reliability of the goods and services;
- 4 (4) the delivery terms;
- 5 (5) indicators of probable vendor performance under the
6 contract such as past vendor performance, the vendor's financial
7 resources and ability to perform, the vendor's experience or
8 demonstrated capability and responsibility, and the vendor's
9 ability to provide reliable maintenance agreements and support;
- 10 (6) the cost of any employee training associated with a
11 purchase;
- 12 (7) the effect of a purchase on agency productivity;
- 13 (8) the vendor's anticipated economic impact on the state
14 or a subdivision of the state, including potential tax revenue and
15 employment; and
- 16 (9) other factors relevant to determining the best value
17 for the state in the context of a particular purchase.

18 SECTION 4. The heading to Subchapter C, Chapter 2261,
19 Government Code, is amended to read as follows:

20 SUBCHAPTER C. CONTRACT FORMATION AND PROVISIONS

21 SECTION 5. Subchapter C, Chapter 2261, Government Code, is
22 amended by adding Sections 2261.103, 2261.104, 2261.105, and
23 2261.106 to read as follows:

24 Sec. 2261.103. USE OF UNIFORM FORMS. A state agency may use
25 any forms approved by the comptroller as templates, guides, or
26 samples for contracts entered into by the agency.

27 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. A state agency shall establish a standardized process for renewing all contracts of the

1 agency.

2 SECTION 6. Subchapter D, Chapter 2261, Government Code, is
3 amended by adding Section 2261.152 to read as follows:

4 Sec. 2261.152. CONTRACT PAYMENT. (a) For each contract for
5 goods or services that is subject to this chapter, a state agency
6 shall require that payment under the contract be linked to clear and
7 measurable achievements, such as length of time of work or contract
8 deliverables.

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

12 SECTION 7. Chapter 2151, Government Code, is amended by
13 adding Section 2151.006, Government Code, to read as follows:

14 Section 2151.006 CENTRALIZED AUDIT SYSTEM. (a) The
15 comptroller shall establish and manage a centralized purchasing,
16 vendor management and contract audit and transparency system to be
17 utilized by state agencies as defined in Sec. 2151.002(a) for the
18 purpose of all transactions and auditing including:

- 19 (1) contract sourcing activities, including but not
20 limited to competitive bidding processes;
21 (2) vendor registration and electronic responses;
22 (3) contract award recommendations;
23 (4) bid tabulations;
24 (5) contract issuance, amendments, change orders,
25 payments and related purchasing activity;
26 (6) state agency purchase history;
27 (7) vendor performance tracking and analysis; and

1 (8) vendor contract purchase history.

2 (b)The comptroller shall adopt rules that establish:

3 (1) state agency standards for all contract
4 activities, including contract awards,
5 amendments, extensions and terminations;

6 (2) a portal that serves as a single source of data to
7 be used by all state agencies responsible for
8 purchasing, contracting and procurement
9 oversight;

10 (3) transparency standards for all state purchasing,
11 contracting and procurement activities; and

12 (4) a vendor system maintenance fee.

13 SECTION 8. To the extent of any conflict, this Act prevails
14 over another Act of the 84th Legislature, Regular Session, 2015,
15 relating to nonsubstantive additions to and corrections in enacted
16 codes.

17 SECTION 9. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2015.