

By: Nelson

S.B. No. 353

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. Sections 2155.078(a) and (b), Government Code, are amended to read as follows:

(a) The commission shall establish and administer a system of training, continuing education, and certification for state agency purchasing personnel. The training and continuing education for state agency purchasing personnel must include ethics training.

The commission may establish and offer appropriate training to vendors on a cost recovery basis. The commission may adopt rules to administer this section, including rules relating to monitoring a certified purchaser's compliance with the continuing education requirements of this section.

(b) Notwithstanding [~~Except as provided by~~] Subsection (n), all state agency purchasing personnel, including agencies exempted from the purchasing authority of the commission, must receive the training and continuing education to the extent required by rule of the commission. The training and continuing education must include ethics training. A state agency employee who is required to receive the training may not participate in purchases by the employing agency unless the employee has received the required training or received equivalent training from a national association recognized by the commission. The equivalent training may count,

1 as provided by Subsection (k), toward the continuing education
2 requirements.

3 SECTION 2. Chapter 2261, Government Code, is amended by
4 adding Subchapter F to read as follows:

5 SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR
6 CERTAIN CONTRACTS

7 Sec. 2261.251. APPLICABILITY OF SUBCHAPTER. Section
8 2261.001 does not apply to this subchapter.

9 Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF
10 INTEREST; CERTAIN CONTRACTS PROHIBITED. (a) Each state agency
11 employee or official who is involved in procurement or in contract
12 management for a state agency shall disclose to the agency any
13 potential conflict of interest specified by state law or agency
14 policy that is known by the employee or official with respect to any
15 contract or bid for the purchase of goods or services by the agency.

16 (b) A state agency may not enter into a contract for the
17 purchase of goods or services with a person with whom any of the
18 following agency employees or officials have a financial interest:

19 (1) a member of the agency's governing body;
20 (2) the governing official, executive director,
21 general counsel, chief procurement officer, or procurement
22 director of the agency; or

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

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

1 (1) owns or controls, directly or indirectly, an
2 ownership interest in the person, including the right to share in
3 profits, proceeds, or capital gains; or

4 (2) could reasonably foresee that a contract with the
5 person could result in a financial benefit to the employee or
6 official.

7 Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS;
8 ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each
9 contract for the purchase of goods or services, each state agency
10 shall post on its Internet website a list of:

11 (1) each contract the agency enters into without
12 inviting, advertising for, or otherwise requiring competitive
13 bidding before selection of the contractor; and

14 (2) the statutory or other authority under which the
15 contract described by Subdivision (1) may be entered into without
16 compliance with competitive bidding procedures.

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

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

1 (a) For each contract for the purchase of goods or services that
2 has a value exceeding \$1 million, a state agency shall develop and
3 implement contract reporting requirements that provide information
4 on:

5 (1) compliance with financial provisions and delivery
6 schedules under the contract;

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

9 (3) any liquidated damages assessed or collected under
10 the contract.

11 (b) Each state agency shall verify:

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

15 (2) the delivery time of goods or services scheduled
16 for delivery under the contract.

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

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

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

26 (d) The governing body or governing official of a state
27 agency, as appropriate, may delegate to the executive director of

1 the agency the approval and signature authority under Subsection
2 (c).

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

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

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

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

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

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

23 (2) identifying contracts that require enhanced
24 contract monitoring.

25 (b) Each state agency shall publish a contract management
26 handbook that establishes consistent contracting policies and
27 practices to be followed by the agency. The handbook may include

1 standard contract provisions and formats for the agency to
2 incorporate in contracts.

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

6 SECTION 3. The changes in law made by this Act apply only to
7 a contract entered into on or after the effective date of this Act.
8 A contract entered into before that date is governed by the law in
9 effect immediately before the effective date of this Act, and the
10 former law is continued in effect for that purpose.

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