

By: Capriglione

H.B. No. 31

A BILL TO BE ENTITLED

AN ACT

relating to oversight of and requirements applicable to state contracts and other state financial and accounting issues; providing a civil penalty.

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

SECTION 1. Chapter 322, Government Code, is amended by adding Section 322.025 to read as follows:

Sec. 322.025. REPORT ON CONTRACT SPENDING. (a) In this section, "state agency" has the meaning assigned by Section 2056.001.

(b) Not later than September 15 of each year, the board shall issue a report detailing the amount of each state agency's budget for the previous state fiscal year that was spent on contracts.

SECTION 2. Section 441.1855, Government Code, is amended 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) for each contract entered into by the agency, shall retain in its records, to the extent the documents exist, [each contract entered into by the state agency and] all contract planning, solicitation, evaluation, monitoring, modification, and closeout documents related to the contract, including at a minimum:

1           (A) a copy of all general and internal  
2 correspondence related to the contract;

3           (B) the records or minutes of all internal or  
4 external meetings related to the contract, including sign-in sheets  
5 or agendas;

6           (C) a copy of all contractor invoices provided  
7 under the contract;

8           (D) any information relating to discount  
9 provisions for prompt payment under the contract and any letters  
10 related to contract price deductions or fee adjustments;

11           (E) a copy of all supporting documentation for  
12 contractor payments or progress payments under the contract;

13           (F) a copy of any audits performed involving the  
14 contract; and

15           (G) a copy of all conflict of interest  
16 documentation and forms required by law related to the contract;  
17 and

18           (2) shall retain ~~[may destroy]~~ the contract and  
19 documents described by Subdivision (1) until:

20           (A) ~~[only after the seventh anniversary of]~~ the  
21 date~~[-~~

22           ~~[(A)]~~ the contract is completed or expires; and  
23 ~~[or]~~

24           (B) if ~~[all]~~ issues ~~[that]~~ arise from any  
25 litigation, claim, negotiation, audit, open records request,  
26 administrative review, or other action involving the contract or  
27 documents, the seventh anniversary of the date the issues are

1 resolved.

2 SECTION 3. Section [531.102](#), Government Code, is amended by  
3 adding Subsection (a-9) to read as follows:

4 (a-9) The inspector general shall appoint oversight  
5 personnel to audit, review, and investigate high-risk contracts and  
6 procurement and contracting processes of the commission, as  
7 identified by the office of inspector general, and provide  
8 quarterly reports on the monitoring to the inspector general,  
9 attorney general, and governor. The quarterly reports must be  
10 posted on the commission's publicly accessible Internet website.  
11 The oversight personnel may work with the state auditor's office,  
12 governor's office, Legislative Budget Board, attorney general's  
13 office, quality assurance team established under Section [2054.158](#),  
14 and contract advisory team established under Subchapter C, Chapter  
15 [2262](#), in performing the oversight personnel's duties under this  
16 subsection.

17 SECTION 4. Section [2102.0091](#)(c), Government Code, is  
18 amended to read as follows:

19 (c) In addition to the requirements of Subsection (a), a  
20 state agency shall file with the Governor's Office of Budget,  
21 Planning, and Policy, the state auditor, and the Legislative Budget  
22 Board an ~~any~~ action plan or other response issued by the state  
23 agency's governing board or the administrator of the state agency  
24 if the state agency does not have a governing board in response to  
25 every issue identified in the report of the state agency's internal  
26 auditor.

27 SECTION 5. Chapter [2115](#), Government Code, is amended by

adding Section 2115.006 to read as follows:

Sec. 2115.006. OVERPAYMENTS BY STATE AGENCY. (a) If a state agency makes an overpayment to a vendor, the vendor must return the amount overpaid by the agency before the 91st calendar day after the date either party discovers the overpayment. If the amount overpaid by the state agency is not returned before the 91st calendar day, the vendor is subject to a civil penalty in an amount equal to three times the amount of the overpayment and the agency shall refer the matter to the attorney general for action.

(b) The attorney general may institute an action in district court to recover a civil penalty under this section. A civil penalty recovered in an action brought by the attorney general shall be deposited in the state treasury.

SECTION 6. Section 2155.074(c), Government Code, is amended to read as follows:

(c) A state agency shall consult with and receive approval from the comptroller in an open meeting [~~commission~~] before considering factors other than price and meeting specifications when the agency procures through competitive bidding goods or services with a value that exceeds \$100 million [~~\$100,000~~]. The state agency shall retain in the agency's records a copy of the meeting minutes with the final executed contract.

SECTION 7. Section 2155.077(a-2), Government Code, is amended to read as follows:

(a-2) The comptroller shall [~~may~~] bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to

1 a state agency, if more than two contracts between the vendor and  
2 the state have been terminated by the state for cause based on  
3 unsatisfactory vendor performance during the preceding three  
4 years.

5 SECTION 8. Subchapter B, Chapter 2155, Government Code, is  
6 amended by adding Section 2155.092 to read as follows:

7 Sec. 2155.092. REPORT ON PERFORMANCE BY AGENCY FOR CERTAIN  
8 PROCUREMENTS. (a) This section applies only to a procurement for  
9 services with a value of at least \$1 million but not more than \$5  
10 million.

11 (b) Before a purchase of services under this chapter, each  
12 state agency, including the comptroller, must:

13 (1) create a written report evaluating the feasibility  
14 of the agency performing the service that is the subject of the  
15 proposed purchase; and

16 (2) if the agency determines from the evaluation that  
17 it is not feasible for the agency to perform the service, provide an  
18 explanation of the reasons for the agency's determination.

19 (c) A report created under this section must be included in  
20 the procurement analysis for the purchase.

21 SECTION 9. Subchapter B, Chapter 2251, Government Code, is  
22 amended by adding Section 2251.031 to read as follows:

23 Sec. 2251.031. PAYMENT TO VENDOR. (a) A state agency may  
24 not:

25 (1) pay an invoice from a vendor unless the invoice  
26 directly correlates to a corresponding contract with the vendor; or

27 (2) make a payment to a vendor more than once per

1 month.

2 (b) A payment by a state agency to a vendor under a contract  
3 must receive:

4 (1) the approval and signature of two employees of the  
5 state agency; or

6 (2) if a contract manager, as defined by Section  
7 2262.001, has been assigned to the contract by the state agency, the  
8 approval and signature of the contract manager and one other  
9 employee of the state agency.

10 (c) If a finding is made that a payment was made without the  
11 signatures required under Subsection (b), the state agency may  
12 revoke the payment at any time.

13 SECTION 10. Subchapter C, Chapter 2261, Government Code, is  
14 amended by adding Section 2261.103 to read as follows:

15 Sec. 2261.103. REQUIRED CONTRACT PROVISIONS. (a) An  
16 attorney representing a state agency shall assist in drafting a  
17 contract to be entered into by the agency and include in the  
18 contract at a minimum the provisions listed in Subsection (b) and  
19 other applicable provisions recommended in the contract management  
20 guide developed under Section 2262.051.

21 (b) The following are required provisions in each contract  
22 to which the provisions are applicable:

23 (1) amendments;

24 (2) antitrust;

25 (3) applicable law and venue;

26 (4) applicable law and conforming amendments;

27 (5) assignments;

- (6) confidentiality and public information act;
- (7) equal opportunity;
- (8) federal, state, and local law requirements;
- (9) felony criminal convictions;
- (10) financial interests and gifts;
- (11) immigration;
- (12) no conflicts; and
- (13) right to audit.

SECTION 11. Subchapter D, Chapter 2261, Government Code, is amended by adding Section 2261.152 to read as follows:

Sec. 2261.152. DOCUMENTATION REQUIRED FOR PAYMENT. (a) A state agency may not make a payment to a vendor without a contract, invoice, or other documentation that clearly demonstrates the agency's obligation to make a payment.

(b) This section does not apply to the return of any amount overpaid by a state agency to a vendor because of an incorrect contract, invoice, or other documentation.

SECTION 12. Subchapter F, Chapter 2261, Government Code, is amended by adding Section 2261.258 to read as follows:

Sec. 2261.258. REPORTING OF CONTRACT VIOLATION. (a) A state employee or member of the public may report to the comptroller a state contracting violation. The comptroller shall investigate a report made under this subsection.

(b) A state agency may not suspend or terminate the employment of, or take other adverse personnel action against, a state employee who in good faith reports a violation to the comptroller under this section.

1        (c) If, as a result of an investigation under this section  
2 of a state contracting violation that occurred before March 8,  
3 2017, savings to the state are realized, the comptroller shall  
4 verify the amount of savings and an amount equal to 30 percent of  
5 the savings may be appropriated to the comptroller only for  
6 distribution to the state employee or member of the public who  
7 reported the violation that initiated the investigation.

8        SECTION 13. Section [2262.051](#), Government Code, is amended  
9 by amending Subsections (a), (b), (c), (d), and (g) and adding  
10 Subsections (i) and (j) to read as follows:

11        (a) In consultation with the attorney general, the  
12 Department of Information Resources, the ~~[comptroller, and the]~~  
13 state auditor, and state agencies that award major contracts, the  
14 comptroller ~~[commission]~~ shall develop and ~~[or]~~ periodically  
15 update a contract management guide for use by state  
16 agencies. Participation by the state auditor under this  
17 subsection is subject to approval by the legislative audit  
18 committee for inclusion in the audit plan under Section [321.013](#)(c).

19        (b) The comptroller ~~[commission]~~ may adopt rules necessary  
20 to develop or update the guide.

21        (c) The guide must provide information regarding the  
22 primary duties of a contract manager, including how to:

- 23                (1) develop and negotiate a contract;  
24                (2) select a contractor; ~~[and]~~  
25                (3) monitor contractor and subcontractor performance  
26 under a contract; and  
27                (4) encourage competition for goods and services

purchased by this state.

(d) The guide must include model provisions for state agency contracts. The guide must:

(1) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(2) recognize the unique contracting needs of an individual state agency or program based on the size, nature, and type of goods or services purchased by the state agency or program and provide sufficient flexibility to accommodate those needs, consistent with protecting the interests of this state;

(3) include maximum contract periods under which a new competitive solicitation is not necessary; and

(4) include the model contract management process developed under Section [2262.104](#) and recommendations on the appropriate use of the model.

(g) The guide must establish procedures under which a state agency is required to:

(1) solicit explanations from qualified potential respondents who did not respond to a competitive solicitation for a contract on which fewer than two qualified bids were received by the agency; and

(2) develop and implement improved procurement practices.

(i) The guide must suggest best practices related to procurement metrics used by a state agency to measure and monitor

the effectiveness of the state agency's procurement methods,  
including the:

(1) number and value of procurements made by the state  
agency;

(2) number of canceled procurements by the state  
agency;

(3) reasons for canceled procurements;

(4) common exceptions to the state agency's terms and  
conditions by a respondent;

(5) number of responses per competitive solicitation;  
and

(6) average length of time for each phase of the state  
agency's procurement processes, including the length of time:

(A) between the date the state agency issues the  
competitive solicitation and the date the state agency begins  
receiving responses to the solicitation;

(B) for the evaluation of responses to a  
competitive solicitation;

(C) of the negotiation between the state agency  
and a vendor; and

(D) between the date the state agency issues the  
competitive solicitation and the date the state agency awards a  
contract to a vendor.

(j) The guide may include references to procurement  
maturity models and procurement readiness assessments used by other  
large public and private enterprises.

SECTION 14. Subchapter B, Chapter 2262, Government Code, is

amended by adding Section 2262.056 to read as follows:

Sec. 2262.056. CONTRACT MANAGERS REQUIRED FOR MAJOR CONTRACTS. A state agency, at a minimum, shall assign a contract manager for each major contract of the agency to manage the oversight of the contract.

SECTION 15. Chapter 2262, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CONTRACT OUTSIDE TACTICAL TEAM

Sec. 2262.201. DEFINITIONS. In this subchapter:

(1) "Information resources" has the meaning assigned by Section 2054.003.

(2) "Team" means a contract outside tactical team established under authority provided by this subchapter.

Sec. 2262.202. CONTRACT OUTSIDE TACTICAL TEAM. (a) From appropriated funds, a state agency shall enter into a contract with a team for assistance in improving information resources contract management practices for contracts with a value of at least \$100 million. The team shall review and make recommendations on the solicitation documents, contract documents, scope of work, project timeline and management, documentation requirements, audit schedule and audit scope, and technical issues for the contract.

(b) A team consists of the following members selected by the state agency:

(1) outside legal counsel; or  
(2) providers of professional consulting services with expertise in the subject matter of the contract.

(c) A state agency may not select a provider of professional

1 consulting services or a group or association of providers or award  
2 a contract for the services on the basis of competitive bids  
3 submitted for the contract or for the services but shall make the  
4 selection and award:

5 (1) on the basis of demonstrated competence and  
6 qualifications to perform the services; and

7 (2) for a fair and reasonable price.

8 (d) A state agency shall:

9 (1) comply with a recommendation made under Subsection  
10 (a); or

11 (2) submit a written explanation regarding the reasons  
12 the recommendation is not applicable to the contract under review.

13 SECTION 16. This Act applies only in relation to a contract  
14 for which a state agency first advertises or otherwise solicits  
15 bids, proposals, offers, or qualifications on or after the  
16 effective date of this Act and to a payment made under a contract  
17 described by this section.

18 SECTION 17. This Act takes effect December 1, 2017.