

BILL ANALYSIS

C.S.H.B. 18
By: Capriglione
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties raise concerns regarding the oversight of and requirements applicable to state contracts and other state financial and accounting issues, including contract procurement, management, auditing, oversight, and evaluation. C.S.H.B. 18 seeks to address these concerns by, among other provisions, codifying certain oversight and management best practices.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 18 amends the Government Code to require the state auditor, in devising the audit plan for the state for each year, to consider the performance of audits of programs operated by health and human services agencies that have not recently received audit coverage and have expenditures of less than \$100 million per year. The bill requires the Legislative Budget Board (LBB) not later than September 15 of each year to issue a report detailing how much of each applicable state agency's budget for the previous state fiscal year was spent on contracts.

C.S.H.B. 18 expands the types of contract-related documents an applicable state agency is required to retain in its records for each contract entered into by the agency and conditions that retention on the extent to which the documents exist. The bill replaces the authorization for such an agency to destroy the contract and documents after a certain period with a requirement that the agency retain the contract and documents and provides for the duration of the retention period.

C.S.H.B. 18 requires the Health and Human Services (HHSC) inspector general to appoint oversight personnel to audit, review, and investigate high-risk contracts and procurement and contracting processes of HHSC, as identified by the office of inspector general, and provide on a quarterly basis reports on the monitoring to the inspector general, attorney general, and governor. The quarterly reports must be posted on the publicly accessible website of HHSC. The bill authorizes oversight personnel to work with the state auditor's office, governor's office, LBB, attorney general's office, quality assurance team, and contract advisory team in performing the oversight personnel's duties set out by the bill.

C.S.H.B. 18 clarifies that, with regard to the requirement under the Texas Internal Auditing Act that an applicable state agency file an action plan or other response issued by the agency's

governing board or administrator, as applicable, in response to a report of the agency's internal auditor, that the required filing is in response to every issue identified in such report.

C.S.H.B. 18 requires a vendor, if an applicable state agency makes an overpayment to the vendor, to return the amount overpaid by the agency before the 91st calendar day after the date either party discovers the overpayment. The bill subjects the vendor to a civil penalty in an amount equal to three times the amount of the overpayment if the amount overpaid by the state agency is not returned before the 91st calendar day and requires the agency to refer the matter to the attorney general for action in such circumstance. The bill authorizes the attorney general to institute an action in district court to recover such a civil penalty and requires a civil penalty recovered in an action brought by the attorney general to be deposited in the state treasury.

C.S.H.B. 18 specifies that, with regard to the requirement that an applicable state agency consult with and receive approval from the comptroller of public accounts before considering factors other than price and meeting specifications when the agency procures through competitive bidding goods or services with a certain maximum value, that the approval must be received in an open meeting. The bill increases the applicable maximum value of such procurement from \$100,000 to \$100 million and requires the agency to retain in its records a copy of the meeting minutes with the final executed contract.

C.S.H.B. 18 removes the comptroller's discretion to bar a vendor from participating in state contracts that are subject to the State Purchasing and General Services Act if more than two contracts between the vendor and the state have been terminated by the state for certain cause and instead requires the comptroller to do so. The bill changes the applicable cause from unsatisfactory vendor performance during the preceding three years to cause based on such unsatisfactory performance.

C.S.H.B. 18 requires each applicable state agency, including the comptroller, before a purchase of services with a value of at least \$1 million but not more than \$5 million, to create a written report evaluating the feasibility of the agency performing the service that is the subject of the proposed purchase and, if the agency determines from the evaluation that it is not feasible for the agency to perform the service, to provide an explanation of why the agency reached that determination. The bill requires such a report to be included in the procurement analysis for the purchase.

C.S.H.B. 18 prohibits an applicable state agency from paying an invoice from a vendor unless the invoice directly correlates to a corresponding contract with the vendor and from making a payment to a vendor more than once per month. The bill requires a payment by a state agency to a vendor under a contract to receive the approval and signature of two employees of the state agency or, if a contract manager has been assigned to the contract by the state agency, the approval and signature of the contract manager and one other employee of the state agency. The bill authorizes the state agency, if a finding is made that a payment was made without the required signatures, to revoke the payment at any time.

C.S.H.B. 18 requires an attorney representing an applicable state agency to assist in the drafting of a contract to be entered into by the agency in order to include at a minimum certain required contract provisions set out by the bill and other applicable provisions recommended in the contract management guide. The bill prohibits such a state agency from making a payment to a vendor without a contract, invoice, or other documentation that clearly demonstrates the agency's obligation to make a payment, with the exception of the return of any amount overpaid by a state agency to a vendor because of an incorrect contract, invoice, or other documentation.

C.S.H.B. 18 authorizes a state employee or member of the public to report to the comptroller a state contracting violation and requires the comptroller to investigate such a report. The bill prohibits an applicable state agency from suspending or terminating the employment of, or taking other adverse personnel action against, a state employee who in good faith reports a

violation to the comptroller under these provisions. The bill requires the comptroller, if, as a result of an investigation of a state contracting violation that occurred before March 8, 2017, savings to the state are realized, to verify the amount of savings and authorizes, under the same circumstance, the appropriation of an amount equal to 30 percent of the savings to the comptroller only for distribution to the state employee or member of the public who reported the violation that initiated the investigation.

C.S.H.B. 18 revises the requirement that the comptroller consult applicable state agencies in developing forms, contract terms, and criteria required under statewide contract management provisions by requiring the comptroller to also consult with vendors and other interested parties. The bill expands the scope of such consultations to include the development of rules, guides, and manuals required under the statewide contract management provisions. The bill includes such state agencies that award contracts that have a value of at least \$1 million among the entities the comptroller must consult in regard to the development and periodic update of a contract management guide and includes among the required information in the guide information on how to encourage competition for goods and services purchased by the state. The bill specifies, for purposes of the requirement that the guide's model provisions for such an agency's contracts recognize the unique contracting needs of an individual agency or a program, that such needs are those based on the size, nature, and type of goods or services purchased by the agency or program. The bill includes as procedures the guide must establish procedures under which an applicable state agency is required to develop and implement improved procurement practices. The bill requires the guide to suggest best practices related to certain procurement metrics and authorizes the guide to include references to procurement maturity models and procurement readiness assessments used by other large public and private enterprises. The bill requires a state agency, at a minimum, to assign a contract manager for each contract of the agency that has a value of at least \$1 million to manage oversight of the contract.

C.S.H.B. 18 requires an applicable state agency, from appropriated funds, to enter into a contract with a team for assistance in improving information resources contract management practices for contracts that have a value of at least \$100 million. The bill provides for the composition of the team as selected by the state agency and requires the team to 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. The bill prohibits a state agency from selecting a provider of professional consulting services or a group or association of providers and from awarding a contract for the services on the basis of competitive bids submitted for the contract or for the services but requires the agency to make the selection and award for a fair and reasonable price and on the basis of demonstrated competence and qualifications to perform the services. The bill requires a state agency to comply with a recommendation made by the team or submit a written explanation regarding why the recommendation is not applicable to the contract under review.

C.S.H.B. 18 requires HHSC, as part of the quality review assessment of the Medicaid medical transportation program, to hire a single independent vendor with appropriate expertise to conduct surveys of the satisfaction rates of Medicaid recipients who are receiving program services and of the unmet transportation needs of Medicaid recipients who are not receiving program services and who are having difficulty obtaining transportation to health care appointments.

C.S.H.B. 18 requires HHSC to use the most cost-effective delivery model for the provision of Medicaid medical transportation program services throughout Texas. The bill requires HHSC, in determining the most cost-effective delivery model, to consider, on a regional basis, using a managed transportation delivery model in which managed transportation organizations and providers operate under a capitated rate system in accordance with state law, using a fee-for-service delivery model, or using other delivery models considered appropriate by HHSC. The bill requires HHSC to conduct an assessment to determine if the applicable model is more cost-effective than a fee-for-service delivery model before soliciting bids for the provision of program services in a region through a managed transportation delivery model or another

selected delivery model considered appropriate by HHSC.

C.S.H.B. 18 requires HHSC to establish a cost threshold for accepting bids for the provision of medical transportation program services in the region through a managed transportation delivery model or the other selected delivery model if HHSC determines that the managed transportation delivery model or other selected delivery model is potentially more cost-effective than a fee-for-service delivery model. The bill requires the cost threshold to be expressed as a cost per unit and to be based on historical data for the provision of program services through a fee-for-service delivery model in the region. The bill requires HHSC, if HHSC receives bids at or below the established cost threshold from qualified managed transportation organizations or qualified vendors seeking to provide services under the other selected delivery model, to provide medical transportation program services in the region through a managed transportation delivery model or the other selected delivery model, as applicable, and to award contracts to managed transportation organizations or vendors based on the price and quality of the services to be provided by the organization or vendor. The bill requires HHSC, if HHSC is unable to solicit bids from qualified managed transportation organizations or vendors at or below the established cost threshold, to provide medical transportation program services through a fee-for-service delivery model in the region. The bill establishes that a delivery model's cost-effectiveness is based on the price and quality of the services delivered through the model, in addition to any other requirements established by applicable state and federal procurement laws. The bill repeals provisions relating to a delay in the provision of medical transportation program services through a managed transportation delivery model in certain areas of Texas.

C.S.H.B. 18 repeals Sections 533.00257(i) and (j), Government Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 18 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
No equivalent provision.	ARTICLE 1. GENERAL STATE CONTRACTING AND OTHER FINANCIAL ISSUES
No equivalent provision.	SECTION 1.01. Section 321.013, Government Code, is amended by adding Subsection (m) to read as follows: <u>(m) In devising the audit plan under Subsection (c), the State Auditor shall consider the performance of audits of programs operated by health and human services agencies that:</u> <u>(1) have not recently received audit coverage; and</u> <u>(2) have expenditures of less than \$100 million per year.</u>

SECTION 1. 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:

(A) the ~~[each]~~ contract, including any contract modifications, ~~[entered into by the state agency]~~ and all contract solicitation documents related to the contract;

(B) a copy of all general and internal correspondence related to the contract;

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

(D) a copy of all contractor invoices provided under the contract;

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

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

(G) a copy of any audits performed involving the contract; and

(H) a copy of all conflict of interest documentation and forms required by law related to the contract; and

(2) may destroy the contract and documents described by Subdivision (1) only after the seventh anniversary of the date:

(A) the contract is completed or expires; or

(B) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

SECTION 2. Subchapter C, Chapter 2261, Government Code, is amended by adding Section 2261.103 to read as follows:

Sec. 2261.103. REQUIRED CONTRACT PROVISIONS. (a) An attorney representing a state agency shall assist in the drafting of a

SECTION 1.03. 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:

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

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

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

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

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

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

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

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

(A) ~~[only after the seventh anniversary of]~~ the date[=

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

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

SECTION 1.11. Subchapter C, Chapter 2261, Government Code, is amended by adding Section 2261.103 to read as follows:

Sec. 2261.103. REQUIRED CONTRACT PROVISIONS. (a) An attorney representing a state agency shall assist in the drafting of a

contract to be entered into by the agency in order to include the provisions listed in Subsection (b) and other provisions necessary to accomplish the agency's purposes.

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

- (1) amendments;
- (2) antitrust;
- (3) applicable law and venue;
- (4) applicable law and conforming amendments;
- (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 3. 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 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.

(See SECTION 4 below.)

SECTION 4. This Act applies only in relation to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act.

SECTION 5. Section 2262.005, Government Code, is amended.

Section 6. Section 2262.051, Government Code, is amended by amending Subsections (a), (b), (c), (d), and (g) and adding Subsections (i) and (j) to read as follows:

contract to be entered into by the agency in order to include at a minimum the provisions listed in Subsection (b) and other applicable provisions recommended in the contract management guide developed under Section 2262.051.

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

- (1) amendments;
- (2) antitrust;
- (3) applicable law and venue;
- (4) applicable law and conforming amendments;
- (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 1.12. 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.

(See Sec. 2261.152(b), Government Code, above.)

SECTION 1.14. Same as introduced version.

SECTION 1.15. Section 2262.051, Government Code, is amended by amending Subsections (a), (b), (c), (d), and (g) and adding Subsections (i) and (j) to read as follows:

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

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

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

(1) develop and negotiate a contract;

(2) select a contractor; ~~[and]~~

(3) monitor contractor and subcontractor performance under a contract; and

(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) analyze the reasons ~~[solicit explanations from qualified potential respondents who did not respond to]~~ a competitive solicitation for a contract received fewer than two qualified bids; and

(2) develop and implement improved procurement practices, including:

(A) providing earlier notice to prospective

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

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

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

(1) develop and negotiate a contract;

(2) select a contractor; ~~[and]~~

(3) monitor contractor and subcontractor performance under a contract; and

(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.

vendors of the state agency's intent to issue a competitive solicitation;
(B) expanding the time in which a prospective vendor may respond to a competitive solicitation;
(C) improving up-front communication between a state agency and a prospective vendor about the state agency's needs and objectives; and
(D) improving educational efforts by the state agency to understand vendor capabilities, skills, and benefits [on which fewer than two qualified bids were received by the agency].

(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 7. Section 2262, Government Code, is amended by adding Section 2262.155 to read as follows:
Sec. 2262.155. REQUIRED PROVISION RELATING TO CONTRACT MANAGEMENT.
All major contracts as defined by Sec.

(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 1.16. 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

2262.001(4), Government Code, must have a contract manager as defined by Sec. 2262.001(3), Government Code assigned to manage oversight of the contract.

SECTION 8. Section 2251, Government Code, is amended by adding Section 2251.030 to read as follows:

Sec. 2251.030. PAYMENTS TO VENDOR. No invoices shall be paid that do not directly correlate to a corresponding contract.

(a) All payments shall require the approval and signature of two state employees.

(1) If the contract has a contract manager assigned, the contract manager must be one of the two signatures.

(b) If it is found that a payment was made without two signatures, the state can revoke that payment at any time.

SECTION 9. Section 2155.144, Government Code, is amended by adding subsection (q) to read as follows:

Sec. 2155.144. PROCUREMENTS BY HEALTH AND HUMAN SERVICES AGENCIES.

(q) An agency to which this section applies must perform a financial audit as described by Section 321.0131, Government Code, once every two years. The audit shall be performed by an independent auditor. The cost of the audit shall be contained within current appropriations.

SECTION 10. Section 2102.0091, Government Code, is amended to read as follows:

Sec. 2102.0091. REPORTS OF PERIODIC AUDITS. (a) A state agency shall file with the Sunset Advisory Commission, the Governor's Office of Budget, Planning, and Policy, the state auditor, and the Legislative Budget Board a copy of each report, action plans, and responses submitted to the state agency's governing board or the administrator of the state agency if the state

contract manager for each major contract of the agency to manage the oversight of the contract.

SECTION 1.10. Subchapter B, Chapter 2251, Government Code, is amended by adding Section 2251.031 to read as follows:

Sec. 2251.031. PAYMENT TO VENDOR.

(a) A state agency may not:

(1) pay an invoice from a vendor unless the invoice directly correlates to a corresponding contract with the vendor; or
(2) make a payment to a vendor more than once per month.

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

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

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

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

No equivalent provision.

SECTION 1.05. Section 2102.0091(c), Government Code, is amended to read as follows:

agency does not have a governing board by the agency's internal auditor.

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

SECTION 11. Section 2155.077, Government Code, is amended to read as follows:

SECTION 1.08. Section 2155.077(a-2), Government Code, is amended to read as follows:

Sec. 2155.077. BARRING VENDOR FROM PARTICIPATION IN STATE CONTRACTS.

(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 a state agency, if more than two contracts between the vendor and the state have been terminated by the state for unsatisfactory vendor performance during the preceding three years.

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

SECTION 12. Section 2155.088, Government Code, is amended to read as follows:

No equivalent provision.

Sec. 2155.088. MATERIAL CHANGES TO CONTRACTS.

(c) Each material change that results in an increase of \$1 million or more to the overall contract shall be reported by the agency and posted on their website.

(1) These reports shall be subject to the Public Information Act.

SECTION 13. Section 2155.074, Government Code, is amended by adding section 1 of Subsection C:

SECTION 1.07. Section 2155.074(c), Government Code, is amended to read as follows:

Sec. 2155.074. BEST VALUE STANDARD FOR PURCHASE OF GOODS OR SERVICES.

(c) A state agency shall consult with and receive approval from the 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 \$100,000.

(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

(1) Commission approval shall be made in an open meeting and a copy of meeting minutes shall be included with the final executed contract.

SECTION 14. Section 531.102, Government Code, is amended to read as follows:

Sec. 531.102. OFFICE OF INSPECTOR GENERAL. (a) The commission's office of inspector general is responsible for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and the enforcement of state law relating to the provision of those services. The commission may obtain any information or technology necessary to enable the office to meet its responsibilities under this subchapter or other law.

(a-7) The Inspector General shall appoint a Contract Internal Affairs Specialist to monitor and investigate the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in Commission contracts. The Contract Internal Affairs Specialist may work with the State Auditor's Office, Office of the Governor, Quality Assurance Team, Contract Advisory Team, and Office of the Attorney General. The Contract Internal Affairs Specialist shall report to the Inspector General, Attorney General, and Governor on a quarterly basis and the report shall be posted on the Commission website.

SECTION 15. Section 554.002, Government Code, is amended to read as follows:

Sec. 554.002. RETALIATION PROHIBITED FOR REPORTING VIOLATION OF LAW. (a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law or reporting contracting

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 1.04. Section 531.102, Government Code, is amended by adding Subsection (a-7) to read as follows:

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

No equivalent provision.

violations by the employing governmental entity or another public employee to an appropriate law enforcement authority.

(b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

(1) regulate under or enforce the law alleged to be violated in the report; or

(2) investigate or prosecute a violation of criminal law.

(c) Any employee or member of the public who reports an issue on a contract that realizes a savings shall receive 30% of that savings.

SECTION 16. Section 2261.151, Government Code, is amended to read as follows:

Sec. 2261.151. REEVALUATION OF PAYMENT AND REIMBURSEMENT RATES. (a) To ensure that its payment and reimbursement methods and rates are appropriate, each state agency that makes procurements to which this chapter applies shall reevaluate at least biennially its payment and reimbursement methods and rates, which shall not be paid more than once per month, especially methods and rates based on historical funding levels or on a formula established by agency rule rather than being based on reasonable and necessary actual costs incurred.

SECTION 17. Section 2115.006, Government Code, is amended to read as follows:

Sec. 2115.006. OVERPAYMENTS BY AGENCY. In the case of an overpayment made by the state, the vendor has 90 days to return the overage. If the overage is not returned in 90 days, the vendor is subject to a penalty of three times the amount of the overage.

No equivalent provision.

SECTION 1.06. 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.

No equivalent provision.

SECTION 1.09. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.090 to read as follows:
Sec. 2155.090. REPORT ON PERFORMANCE BY AGENCY FOR CERTAIN PROCUREMENTS. (a) This section applies only to a procurement for services with a value of at least \$1 million but not more than \$5 million.
(b) Before a purchase of services under this chapter, each state agency, including the comptroller, must:
(1) create a written report evaluating the feasibility of the agency performing the service that is the subject of the proposed purchase; and
(2) if the agency determines from the evaluation that it is not feasible for the agency to perform the service, provide an explanation of why the agency reached that determination.
(c) A report created under this section must be included in the procurement analysis for the purchase.

No equivalent provision.

SECTION 1.13. 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.
(c) If, as a result of an investigation under this section of a state contracting violation that occurred before March 8, 2017, savings to the state are realized, the comptroller shall verify the amount of savings and an amount equal to 30 percent of the savings may be appropriated to the comptroller only for distribution to the state employee or member of the public who reported the violation that initiated the investigation.

No equivalent provision.

SECTION 18. Section 531.0057(b), Government Code, is amended.

SECTION 19. Section 531.02412, Government Code, is amended.

SECTION 20. Section 531.02414(d), Government Code, is amended.

SECTION 21. Subchapter B, Chapter 531, Government Code, is amended.

SECTION 22. Sections 533.00257(b) and (c), Government Code, are amended.

SECTION 23. Sections 533.00257(i) and (j), Government Code, are repealed.

SECTION 24. Section 531.024141, Government Code, as added by this Act, applies to a contract entered into or renewed on or after the effective date of this Act. A contract entered into or renewed before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 25. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 26. Section 2156.0013, Government Code, is amended to read as follows:

Sec. 2156.0013. IN-HOUSE FEASIBILITY. Prior to solicitation of bids, a report must be created evaluating the feasibility of an in-house solution for contracts from \$1-5 million.

(a) This only applies to procurement for services.

(b) The agency must submit a written analysis explaining why an inter-agency solution is not achievable.

ARTICLE 2. DELIVERY OF MEDICAID MEDICAL TRANSPORTATION PROGRAM SERVICES

SECTION 2.01. Same as introduced version.

SECTION 2.02. Same as introduced version.

SECTION 2.03. Same as introduced version.

SECTION 2.04. Substantially the same as introduced version.

SECTION 2.05. Same as introduced version.

SECTION 2.06. Same as introduced version.

SECTION 2.07. Substantially the same as introduced version.

SECTION 2.08. Substantially the same as introduced version.

No equivalent provision.

(c) This report must be included in the procurement analysis.

SECTION 27. 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) shall retain in its records each contract entered into by the state agency, ~~and~~ all contract solicitation documents related to the contract, appropriations expenditure matching, related audits, and other materials; and

(2) Shall keep ~~may destroy~~ the contract and documents ~~only~~ the greater of:

(A) completion of the contract, or
(B) the seventh anniversary of the date:

(1) the contract is completed or expires; or
(2) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

SECTION 28. Section 322.025, Government Code, is amended to read as follows:

Sec. 322.025. REPORT ON CONTRACT SPENDING. At the completion of each fiscal year, the board shall report how much of each agency's budget is spent in contracts for that fiscal year.

SECTION 29. Section 2262, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CONTRACT OUTSIDE TACTICAL TEAM

Sec. 2262.200 CREATION; DUTIES

(See SECTION 1.03 above.)

SECTION 1.02. 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 how much of each state agency's budget for the previous state fiscal year was spent on contracts.

SECTION 1.17. 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) The Contract Outside Tactical Team is created to assist state agencies in improving IT contract management practices by:

(1) reviewing and making 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 contracts of state agencies that have a value of at least \$100 million;

(2) The team consists of the following members:

i. Outside Legal Counsel

ii. Provider of Professional Consulting Services with expertise in contract subject matter

(b) A governmental entity may not select a provider of professional consulting services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award on the basis of demonstrated competence and qualifications to perform the services; and for a fair and reasonable price.

(1) A state agency shall:

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

(ii) submit a written explanation regarding why the recommendation is not applicable to the contract under review.

No equivalent provision.

No equivalent provision.

SECTION 30. This Act takes effect September 1, 2017.

(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 that have 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 consulting services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

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

(2) for a fair and reasonable price.

(d) A state agency shall:

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

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

ARTICLE 3. TRANSITION AND EFFECTIVE DATE

SECTION 3.01. Except as otherwise provided by this Act, this Act applies only in relation to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act, and to a payment made under a contract described by this section.

SECTION 3.02. Same as introduced version.