

BILL ANALYSIS

Senate Research Center

S.B. 533
By: Nelson
Finance
6/6/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 84th Legislature, Regular Session, 2015, passed S.B. 20, a sweeping reform of state contracting spurred by allegations of impropriety at a state agency during the procurement of a major information resources project. The lieutenant governor subsequently charged the Senate Committee on Finance to monitor implementation of the legislation during the interim. From that review, state agencies and the private sector offered recommendations to clarify and strengthen the provisions of S.B. 20. S.B. 533 is a product of that review. (Original Author's / Sponsor's Statement of Intent)

S.B. 533 amends current law relating to governmental entity contracting and procurement.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas comptroller of public accounts in SECTION 17 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 572.069, Government Code, as follows:

Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED. Prohibits a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person from accepting employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn, rather than the date the officer's or employee's service or employment with the state agency ceased.

SECTION 2. Amends Section 2054.1181(a), Government Code, as follows:

(a) Requires the Department of Information Resources (DIR), at the direction of the governor, lieutenant governor, or speaker of the house of representatives, to provide additional oversight services for major information resources projects, including risk management, quality assurance services, independent project monitoring, and project management, rather than authorizes the quality assurance team, in coordination with the governor, to recommend major information resources projects to DIR for oversight and, as part of this oversight, require DIR to provide risk management, quality assurance services, independent project monitoring, and project management. Authorizes DIR to contract with a vendor to provide the necessary oversight at DIR's direction.

SECTION 3. Amends Section 2054.158, Government Code, as follows:

Sec. 2054.158. QUALITY ASSURANCE TEAM; DUTIES. (a) Includes the Texas comptroller of public accounts (comptroller) among certain entities to which this subsection applies and includes the creation of an automated project review system in the list of duties required of those entities.

(b) Includes provision of annual training for state agency procurement and contract management staff on best practices and methodologies for information technology contracts in the list of required duties of the quality assurance team.

(c) Provides that the state auditor serves on the quality assurance team as an advisor.

SECTION 4. Amends Section 2054.303(a), Government Code, to require a state agency, for each proposed major information resources project or major contract, to prepare, among certain other analyses, in consultation with DIR, a technical architectural assessment of the project or contract.

SECTION 5. Amends Section 2054.304, Government Code, by adding Subsections (d) and (e), as follows:

(d) Requires the state agency, in each project plan for a major information resources project, to consider incorporating into the project the applicable best practices recommended in the quality assurance team's annual report.

(e) Requires that a state agency contract for a major information resources project comply with the requirements in the comptroller's contract management guide developed under Section 2262.051 (Contract Management Guide; Rules).

SECTION 6. Amends Subchapter B, Chapter 2155, Government Code, by adding Sections 2155.090 and 2155.091, as follows:

Sec. 2155.090. VENDOR AND EMPLOYEE INTERACTION AND COMMUNICATION POLICY. (a) Requires the comptroller to update a contract management guide to include policies on the interactions and communication between employees of the state agency and a vendor that contracts with the state agency or seeks to conduct business with the state agency.

(b) Provides that this subtitle (State Purchasing and General Services) does not prohibit the exchange of information between a state agency and a vendor related to future solicitations or as necessary to monitor an existing contract.

Sec. 2155.091. CHIEF PROCUREMENT OFFICER: POWERS AND DUTIES. (a) Requires the comptroller to employ a chief procurement officer to serve as the chief procurement officer for this state.

(b) Provides that the chief procurement officer has certain authority over state agency procurement.

(c) Requires a state agency to comply with any request for information from the chief procurement officer necessary to conduct the analysis authorized by Subsection (b)(1) (relating to authorizing the chief procurement officer to analyze state purchasing data to leverage state purchasing power).

(d) Requires the chief procurement officer to coordinate with DIR and the quality assurance team to conduct a contract solicitation review required by Subsection (a)(4) and make appropriate recommendations to the comptroller and legislature based on the review. Provides that this section grants the chief procurement officer authority only to review a contract solicitation. Provides that DIR or the appropriate state agency retains the authority to award a statewide information resources contract as authorized by law.

(e) Requires the chief procurement officer to coordinate with the Contract Advisory Team to conduct the review required by Section 2262.101 (Creation; Duties). Requires a state agency to comply with any request for information by the chief procurement officer that is necessary to conduct the review.

SECTION 7. Amends Subchapter D, Chapter 2155, Government Code, by adding Section 2155.205, as follows:

Sec. 2155.205. INTERSTATE PURCHASING. (a) Authorizes the comptroller, subject to Section 2156.181 or other law, to enter into agreements to authorize state agencies and political subdivisions of other states to purchase goods or services through comptroller contracts.

(b) Authorizes the comptroller to charge a reasonable administrative fee to state agencies and political subdivisions of other states that purchase a good or service under this section.

SECTION 8. Amends Sections 2157.068(e-1) and (e-2), Government Code, as follows:

(e-1) Requires a state agency contracting to purchase a commodity item to use the required list as follows:

(1) makes no changes to this subdivision;

(2) for a contract with a value of more than \$50,000 but not more than \$1 million, rather than not more than \$150,000, the agency is required to submit a request for pricing to at least three vendors on the list in the category to which the contract relates; and

(3) for a contract with a value of more than \$1 million but not more than \$5 million, rather than for a contract with a value of more than \$150,000 but not more than \$1 million, the agency is required to submit a request for pricing to a certain number of vendors.

(e-2) Prohibits a state agency from entering into a contract to purchase a commodity item if the value of the contract exceeds \$5 million, rather than \$1 million.

SECTION 9. Amends Section 2261.252, Government Code, by adding Subsections (a-1), (e), and (f), as follows:

(a-1) Provides that a state agency employee or official is required to disclose under Subsection (a) (relating to requiring certain state agency employees or officials to disclose any potential conflict of interest) any potential conflict of interest specified by state law or agency policy that is known by the employee or official at a certain time.

(e) Provides that this section applies only to a contract for the purchase of goods or services solicited through a purchase order if the amount of the purchase order exceeds \$25,000.

(f) Provides that Section 51.923 (Qualifications of Certain Business Entities to Enter Into Contracts With an Institution of Higher Education), Education Code, governs the conflicts of interest of the members of the governing board of an institution of higher education, as those terms are defined by Section 61.003 (Definitions), Education Code, and that this section does not apply to those members.

SECTION 10. Amends Section 2261.253, Government Code, by adding Subsections (e), (f), (g), and (h), as follows:

(e) Requires a state agency that posts a contract on its Internet website as required under this section to redact from the posted contract certain information.

(f) Provides that the redaction of information under Subsection (e) does not exempt the information from the requirements of Section 552.021 (Availability of Public Information) or 552.221 (Application of Public Information; Production of Public Information).

(g) Provides that Subsection (a) (relating to certain postings made by each state agency on their Internet websites) does not apply to certain contracts.

(h) Defines "institution of higher education."

SECTION 11. Amends Section 2262.101(a), Government Code, to provide that the Contract Advisory Team is created to assist state agencies in improving contract management practices by, among certain other activities, reviewing and making recommendations on certain documents for contracts of state agencies that have a value of at least \$5 million, rather than \$10 million.

SECTION 12. Amends Section 2252.102, Government Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes the chief procurement officer described by Section 2155.091 to add members to the Contract Advisory Team by designating members from state agencies that agree to participate on the team. Authorizes a state agency to decline a request to participate on the team under this subsection by submitting a written statement declining the request to the chief procurement officer.

SECTION 13. Amends Section 2269.056(b), Government Code, as follows:

(b) Requires that the governmental entity publish in the request for proposals and qualifications:

(1) creates this subdivision from existing text and makes no further changes;

(2) creates this subdivision from existing text and makes nonsubstantive changes; and

(3) for state agencies, a detailed methodology for scoring each criterion.

SECTION 14. Amends Section 2269.361(a), Government Code, as follows:

(a) Requires that a response to a request for detailed proposals be submitted on or before the earlier of the time for submission requested by the governmental entity or the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms, rather than requires the firm to submit a proposal not later than the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms.

SECTION 15. Amends Subchapter A, Chapter 8, Education Code, by adding Section 8.012, as follows:

Sec. 8.012. CONTRACT MANAGEMENT GUIDE. Requires the agency to comply with the comptroller's contract management guide developed under Section 2262.051, Government Code, in each contract between the agency and a regional education service center established under this chapter (Regional Education Service Centers).

SECTION 16. Amends Section 51.923(e), Education Code, as follows:

(e) Provides that, for purposes of this section, a member of a governing board has a substantial interest in a business entity if:

(1) the member owns one percent or more, rather than 10 percent or more, of the voting stock or shares of the business entity or owns either one percent or more, rather than 10 percent or more, or \$15,000 or more of the fair market value of the business entity;

(2) funds received by the member from the business entity exceed one percent, rather than 10 percent, of the member's gross income for the previous year; or

(3) and (4) makes no changes to these subdivisions.

SECTION 17. (a) Requires the comptroller, not later than January 1, 2018, to employ a chief procurement officer as required by Section 2155.091, Government Code, as added by this Act, and adopt any rules necessary to implement the changes in law made by this Act.

(b) Requires each state agency, not later than January 1, 2018, to adopt a vendor and employee interaction and communication policy as required by Section 2155.090, Government Code, as added by this Act.

(c) Makes application of this Act prospective.

(d) Provides that, notwithstanding the other provisions of this Act, Section 2269.361(a), Government Code, as amended by this Act, applies to a contract entered into on or after the effective date of this Act and for which a bid or other solicitation response was submitted after June 21, 2017.

(e) Makes application of Section 51.923, Education Code, as amended by this Act, notwithstanding the other provisions of this Act, prospective.

SECTION 18. Effective date: September 1, 2017.