

By: Capriglione

H.B. No. 18

A BILL TO BE ENTITLED

AN ACT

relating to contract procurement, management, auditing, oversight,
and evaluation of state agencies.

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

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;

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

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

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

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

10 (A) the contract is completed or expires; or

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

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

17 Sec. 2261.103. REQUIRED CONTRACT PROVISIONS. (a) An
18 attorney representing a state agency shall assist in the drafting
19 of a contract to be entered into by the agency in order to include
20 the provisions listed in Subsection (b) and other provisions
21 necessary to accomplish the agency's purposes.

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

24 (1) amendments;

25 (2) antitrust;

26 (3) applicable law and venue;

27 (4) applicable law and conforming amendments;

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

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

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

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

20 SECTION 5. Section 2262.005, Government Code, is amended to
21 read as follows:

22 Sec. 2262.005. CONSULTATION WITH INTERESTED PARTIES [~~STATE~~
23 ~~AGENCIES~~]. The comptroller shall consult with state agencies,
24 vendors, and other interested parties in developing rules, forms,
25 contract terms, guides, manuals, and criteria required under this
26 chapter.

27 Section 6. Section 2262.051, Government Code, is amended by

1 amending Subsections (a), (b), (c), (d), and (g) and adding
2 Subsections (i) and (j) to read as follows:

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

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

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

- 15 (1) develop and negotiate a contract;
16 (2) select a contractor; ~~[and]~~
17 (3) monitor contractor and subcontractor performance
18 under a contract; and
19 (4) encourage competition for goods and services
20 purchased by this state.

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

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

- 27 (2) recognize the unique contracting needs of an

1 individual state agency or program based on the size, nature, and
2 type of goods or services purchased by the state agency or program
3 and provide sufficient flexibility to accommodate those needs,
4 consistent with protecting the interests of this state;

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

7 (4) include the model contract management process
8 developed under Section 2262.104 and recommendations on the
9 appropriate use of the model.

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

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

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

18 (A) providing earlier notice to prospective
19 vendors of the state agency's intent to issue a competitive
20 solicitation;

21 (B) expanding the time in which a prospective
22 vendor may respond to a competitive solicitation;

23 (C) improving up-front communication between a
24 state agency and a prospective vendor about the state agency's
25 needs and objectives; and

26 (D) improving educational efforts by the state
27 agency to understand vendor capabilities, skills, and benefits [~~on~~

1 ~~which fewer than two qualified bids were received by the agency]~~.

2 (i) The guide must suggest best practices related to
3 procurement metrics used by a state agency to measure and monitor
4 the effectiveness of the state agency's procurement methods,
5 including the:

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

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

10 (3) reasons for canceled procurements;

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

13 (5) number of responses per competitive solicitation;

14 and

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

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

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

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

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

27 (j) The guide may include references to procurement

1 maturity models and procurement readiness assessments used by other
2 large public and private enterprises.

3 SECTION 7. Section 2262, Government Code, is amended by
4 adding Section 2262.155 to read as follows:

5 Sec. 2262.155. REQUIRED PROVISION RELATING TO CONTRACT
6 MANAGEMENT. All major contracts as defined by Sec. 2262.001(4),
7 Government Code, must have a contract manager as defined by Sec.
8 2262.001(3), Government Code assigned to manage oversight of the
9 contract.

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

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

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

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

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

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

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

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

1 within current appropriations.

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

4 Sec. 2102.0091. REPORTS OF PERIODIC AUDITS. (a) A state
5 agency shall file with the Sunset Advisory Commission, the
6 Governor's Office of Budget, Planning, and Policy, the state
7 auditor, and the Legislative Budget Board a copy of each report,
8 action plans, and responses submitted to the state agency's
9 governing board or the administrator of the state agency if the
10 state agency does not have a governing board by the agency's
11 internal auditor.

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

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

16 (a-2) The comptroller shall ~~may~~ bar a vendor from
17 participating in state contracts that are subject to this subtitle,
18 including contracts for which purchasing authority is delegated to
19 a state agency, if more than two contracts between the vendor and
20 the state have been terminated by the state for unsatisfactory
21 vendor performance during the preceding three years.

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

24 Sec. 2155.088. MATERIAL CHANGES TO CONTRACTS.

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

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

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

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

7 (c) A state agency shall consult with and receive approval
8 from the commission before considering factors other than price and
9 meeting specifications when the agency procures through
10 competitive bidding goods or services with a value that exceeds
11 \$100,000.

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

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

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

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

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

13 Sec. 554.002. RETALIATION PROHIBITED FOR REPORTING
14 VIOLATION OF LAW. (a) A state or local governmental entity may not
15 suspend or terminate the employment of, or take other adverse
16 personnel action against, a public employee who in good faith
17 reports a violation of law or reporting contracting violations by
18 the employing governmental entity or another public employee to an
19 appropriate law enforcement authority.

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

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

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

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

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

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

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

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

21 SECTION 18. Section 531.0057(b), Government Code, is
22 amended to read as follows:

23 (b) Subject to Section 531.024141, the ~~[The]~~ commission may
24 contract with any public or private transportation provider or with
25 any regional transportation broker for the provision of public
26 transportation services.

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

1 by adding Subsection (b) to read as follows:

2 (b) As part of the quality review assessment of the Medicaid
3 medical transportation program under Subsection (a)(3), the
4 commission shall hire a single independent vendor with appropriate
5 expertise to conduct surveys of:

6 (1) the satisfaction rates of Medicaid recipients who
7 are receiving medical transportation program services; and

8 (2) the unmet transportation needs of Medicaid
9 recipients who are not receiving medical transportation program
10 services and who are having difficulty obtaining transportation to
11 health care appointments.

12 SECTION 20. Section 531.02414(d), Government Code, is
13 amended to read as follows:

14 (d) Subject to Sections 531.024141 and ~~[Section]~~ 533.00257,
15 the commission may contract with a public transportation provider,
16 as defined by Section 461.002, Transportation Code, a private
17 transportation provider, or a regional transportation broker for
18 the provision of public transportation services, as defined by
19 Section 461.002, Transportation Code, under the medical
20 transportation program.

21 SECTION 21. Subchapter B, Chapter 531, Government Code, is
22 amended by adding Section 531.024141 to read as follows:

23 Sec. 531.024141. DELIVERY OF MEDICAID MEDICAL
24 TRANSPORTATION PROGRAM SERVICES. (a) In this section:

25 (1) "Managed transportation organization" has the
26 meaning assigned by Section 533.00257.

27 (2) "Medical transportation program" has the meaning

1 assigned by Section 531.02414.

2 (b) Notwithstanding any other law, the commission shall use
3 the most cost-effective delivery model for the provision of medical
4 transportation program services throughout the state. In
5 determining the most cost-effective delivery model, the commission
6 shall, on a regional basis, consider using:

7 (1) a managed transportation delivery model in which
8 managed transportation organizations and providers operate under a
9 capitated rate system in accordance with Section 533.00257;

10 (2) a fee-for-service delivery model; or

11 (3) other delivery models deemed appropriate by the
12 commission.

13 (c) Before soliciting bids for the provision of medical
14 transportation program services in a region through a managed
15 transportation delivery model or another selected delivery model
16 deemed appropriate by the commission under Subsection (b)(3), the
17 commission shall conduct an assessment to determine if the
18 applicable model is more cost-effective than a fee-for-service
19 delivery model. If the commission determines that the managed
20 transportation delivery model or other selected delivery model is
21 potentially more cost-effective than a fee-for-service delivery
22 model, the commission shall establish a cost threshold for
23 accepting bids for the provision of medical transportation program
24 services in the region through a managed transportation delivery
25 model or the other selected delivery model.

26 (d) A cost threshold established under Subsection (c) must
27 be:

1 (1) expressed as a cost per unit, such as a cost per
2 recipient or a cost per trip; and

3 (2) based on historical data for the provision of
4 medical transportation program services through a fee-for-service
5 delivery model in the region.

6 (e) If the commission receives bids at or below the cost
7 threshold established under Subsection (c) from qualified managed
8 transportation organizations or qualified vendors seeking to
9 provide services under the other selected delivery model, the
10 commission shall provide medical transportation program services
11 in the region through a managed transportation delivery model or
12 the other selected delivery model, as applicable, and shall award
13 contracts to managed transportation organizations or vendors based
14 on the price and quality of the services to be provided by the
15 organization or vendor.

16 (f) If the commission is unable to solicit bids from
17 qualified managed transportation organizations or vendors at or
18 below the cost threshold established under Subsection (c), the
19 commission shall provide medical transportation program services
20 through a fee-for-service delivery model in the region.

21 (g) For purposes of this section, a delivery model's
22 cost-effectiveness is based on the price and quality of the
23 services delivered through the model, in addition to any other
24 requirements established by applicable state and federal
25 procurement laws.

26 SECTION 22. Sections [533.00257](#)(b) and (c), Government Code,
27 are amended to read as follows:

1 (b) If [~~Subject to Subsection (i),~~] the commission provides
2 [~~shall provide~~] medical transportation program services [~~on a~~
3 ~~regional basis~~] through a managed transportation delivery model in
4 accordance with Section 531.024141, the commission shall use
5 [~~using~~] managed transportation organizations and providers, as
6 appropriate, that:

7 (1) operate under a capitated rate system;

8 (2) assume financial responsibility under a full-risk
9 model;

10 (3) operate a call center;

11 (4) use fixed routes when available and appropriate;
12 and

13 (5) agree to provide data to the commission if the
14 commission determines that the data is required to receive federal
15 matching funds.

16 (c) Subject to Section 531.024141, the [~~The~~] commission
17 shall procure managed transportation organizations [~~under the~~
18 ~~medical transportation program~~] through a competitive bidding
19 process [~~for each managed transportation region as determined by~~
20 ~~the commission~~].

21 SECTION 23. Sections [533.00257](#)(i) and (j), Government Code,
22 are repealed.

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

1 continued in effect for that purpose.

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

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

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

14 (a) This only applies to procurement for services.

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

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

19 SECTION 27. Section 441.1855, Government Code, is amended
20 to read as follows:

21 Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS
22 BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a
23 state agency:

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

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

3 (A) completion of the contract, or

4 (B) the seventh anniversary of the date:

5 (1) the contract is completed or expires;

6 or

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

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

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

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

18 SUBCHAPTER E. CONTRACT OUTSIDE TACTICAL TEAM

19 Sec. 2262.200 CREATION; DUTIES (a) The Contract Outside
20 Tactical Team is created to assist state agencies in improving IT
21 contract management practices by:

22 (1) reviewing and making recommendations on the
23 solicitation documents, contract documents, scope of work, project
24 timeline and management, documentation requirements, audit
25 schedule and audit scope and technical issues for contracts of
26 state agencies that have a value of at least \$100 million;

27 (2) The team consists of the following members:

1 i. Outside Legal Counsel

2 ii. Provider of Professional Consulting Services

3 with expertise in contract subject matter

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

11 (1) A state agency shall:

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

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

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