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H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the review, oversight, and reporting of certain state
3 agency contracts and the assessment of certain state agency
4 projects.

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

6 SECTION 1. The heading to Section 322.020, Government Code,
7 is amended to read as follows:

8 Sec. 322.020. [~~MAJOR~~] CONTRACTS DATABASE.

9 SECTION 2. Section 322.020, Government Code, is amended by
10 amending Subsections (a), (b), and (c) and adding Subsections
11 (b-1), (b-2), (b-3), and (b-4) to read as follows:

12 (a) In this section[~~,"major contract" means~~]:

13 (1) "Contract" means a contract, grant, or agreement
14 for the purchase or sale of goods or services that is entered into
15 or paid for, wholly or partly, by a state agency or an amendment,
16 modification, renewal, or extension of the contract, grant, or
17 agreement. The term includes a revenue generating contract, an
18 interagency or interlocal grant or agreement, a purchase order, or
19 other written expression of terms of agreement. [~~a contract for~~
20 ~~which notice is required under one of the following sections:~~

21 [~~(A) Section 2054.008,~~

22 [~~(B) Section 2166.2551,~~

23 [~~(C) Section 2254.006, or~~

24 [~~(D) Section 2254.0301, or~~

1 (2) "Institution of higher education" has the meaning
2 assigned by Section 61.003, Education Code.

3 (3) "State agency" has the meaning assigned by Section
4 2054.003 ~~[a contract, including an amendment, modification,~~
5 ~~renewal, or extension.~~

6 ~~[(A) for which notice is not required under a~~
7 ~~section listed in Subdivision (1);~~

8 ~~[(B) that is not a purchase order, an interagency~~
9 ~~contract, or a contract paid only with funds not appropriated by the~~
10 ~~General Appropriations Act; and~~

11 ~~[(C) with a value that exceeds \$50,000].~~

12 (b) This section applies only to:

13 (1) a major consulting services contract, as defined
14 by Section 2254.021; and

15 (2) a contract, including any amendment,
16 modification, renewal, or extension of the contract, that has a
17 value that exceeds or is reasonably expected to exceed \$50,000,
18 other than a contract of an institution of higher education that:

19 (A) is paid for solely with institutional funds
20 or hospital and clinic fees, as described by Section 51.009,
21 Education Code; or

22 (B) is for sponsored research.

23 **(b-1) Not later than the 30th calendar day after the date a**
24 **contract is awarded, amended, modified, renewed, or extended, a**
25 **[Each] state agency shall provide written notice of the contract to**
26 **the Legislative Budget Board. The written notice must include**
27 **copies of the following documents:**

1 (1) each [~~major~~] contract entered into by the agency,
2 including each amendment, modification, renewal, or extension of
3 the contract; and

4 (2) each request for proposal, invitation to bid, or
5 comparable solicitation related to the [~~major~~] contract.

6 (b-2) The requirement to provide copies of documents under
7 Subsection (b-1) does not apply to:

8 (1) an enrollment contract described by 1 T.A.C.
9 Section 391.183 as that section existed on September 1, 2015; or

10 (2) a contract of the Texas Department of
11 Transportation that:

12 (A) relates to highway construction or
13 engineering; or

14 (B) is subject to Section 201.112,
15 Transportation Code.

16 (b-3) A state agency may redact from the written notice
17 provided under Subsection (b-1) information excepted from
18 disclosure under Chapter 552, including information that may be
19 used to perpetrate fraud on the agency, such as:

20 (1) certain commercial or financial information;

21 (2) credit card, debit card, charge card, and access
22 device numbers; and

23 (3) government information related to security or
24 infrastructure issues for computers.

25 (b-4) For an institution of higher education, Subsection
26 (b-1) applies only if:

27 (1) for a major information system, as defined by

1 Section 2054.0965, the value exceeds \$1 million and the contract is
2 paid with appropriated funds;

3 (2) for a construction project, the contract is paid
4 with appropriated funds; or

5 (3) for professional services, the contract is for
6 services other than physician or optometric service and is paid
7 with appropriated funds.

8 (b-5) The redaction of information under this subsection
9 does not exempt the information from the requirements of Section
10 552.021 or 552.221.

11 (c) The Legislative Budget Board shall post on the Internet
12 a copy of:

13 (1) each [major] contract, including each amendment,
14 modification, renewal, or extension of the contract [of a state
15 agency]; and

16 (2) each request for proposal, invitation to bid, or
17 comparable solicitation related to the [major] contract.

18 SECTION 3. Chapter 322, Government Code, is amended by
19 adding Sections 322.021, 322.0211, and 322.0212 to read as follows:

20 Sec. 322.021. STATE AGENCY CONTRACT OVERSIGHT. (a) In this
21 section:

22 (1) "Board" means the Legislative Budget Board.

23 (2) "Institution of higher education" has the meaning
24 assigned by Section 61.003, Education Code.

25 (3) "State agency" has the meaning assigned by Section
26 2054.003.

27 (b) Subject to Subsection (c), the board may review state

1 agency contracts to determine compliance with the contract
2 management guide developed under Section 2054.554, the
3 comptroller's procurement policy manuals, and each applicable
4 state contracting law, rule, policy, and procedure. The authority
5 to review a state agency contract under this subsection applies
6 regardless of the source of funds or method of financing for the
7 contract.

8 (c) This section does not apply to a contract of an
9 institution of higher education that is paid for solely with
10 institutional funds or hospital and clinic fees, as described by
11 Section 51.009, Education Code. The board shall review the
12 contract management handbook developed by an institution of higher
13 education as required by Section 51.9337(b)(3), Education Code,
14 when determining the institution's compliance with contracting
15 rules and procedures.

16 (d) Board staff may request, and are entitled to obtain, any
17 document related to a contract reviewed under this section or to a
18 purchase under the contract.

19 (e) Each state agency shall cooperate with the board in
20 conducting a contract review under this section and in resolving
21 any issue resulting from the contract review.

22 Sec. 322.0211. NOTICE OF VIOLATION OF STATE CONTRACTING
23 LAW; CORRECTIVE ACTION PLAN. (a) If the Legislative Budget Board
24 determines under Section 322.021 that a state agency contract
25 violates the contract management guide, the comptroller's
26 procurement policy manuals, or a state contracting law, rule,
27 policy, or procedure, the board's director shall provide notice of

1 the violation to the agency.

2 (b) A state agency shall provide a written response to the
3 notice provided under Subsection (a) not later than the 10th
4 business day after the date the agency receives the notice.

5 (c) If the board determines that the response provided by a
6 state agency under Subsection (b) does not adequately address or
7 resolve the violation determined under Subsection (a), the board's
8 director may provide to the board and the state agency,
9 comptroller, and governor written notice of the violation. A
10 violation notice provided under this subsection must:

11 (1) detail the specific provision violated by the
12 contract;

13 (2) recommend actions to be taken to address the
14 violation and any identified risks related to the contract;

15 (3) list potential remedies for the violation; and

16 (4) state any enforcement mechanism that may be
17 assessed under Section 322.0212 for the violation.

18 (d) A state agency that receives notice of a violation under
19 Subsection (c) shall develop a written corrective action plan
20 consistent with the board's recommendations and provide the plan to
21 the board not later than the 30th calendar day after the date the
22 agency receives the notice.

23 (e) The board may monitor a state agency's implementation of
24 the corrective action plan.

25 Sec. 322.0212. ENFORCEMENT. (a) The Legislative Budget
26 Board may assess an enforcement mechanism against a state agency
27 that the board determines under Section 322.021 is in violation of

1 the contract management guide, the comptroller's procurement
2 policy manuals, or a state contracting law, rule, policy, or
3 procedure. The enforcement mechanism must be assessed in
4 accordance with the schedule developed under Subsection (b).

5 (b) The board may establish a schedule of enforcement
6 mechanisms that may be assessed against a state agency for a
7 violation described by Subsection (a). The enforcement mechanisms
8 may include:

9 (1) enhanced monitoring of the state agency's
10 contracts by board personnel;

11 (2) required consultation with the Contract Advisory
12 Team established under Section 2262.101 or the quality assurance
13 team established under Section 2054.158 before issuance of a
14 contract by the state agency;

15 (3) targeted audits by the State Auditor's Office at
16 the request of the board; and

17 (4) recommended cancellation of a contract determined
18 to contain a violation described by Section 322.0211(a).

19 (c) The board's director may recommend to the board an
20 enforcement mechanism to be assessed against a state agency for a
21 contract violation.

22 (d) The board may increase the severity of an enforcement
23 mechanism assessed against a state agency for repeated contract
24 violations described by Section 322.0211(a).

25 (e) The board may dismiss an enforcement mechanism assessed
26 against a state agency by the board for a contract violation
27 described by Section 322.0211(a) on successful implementation of a

1 corrective action plan by the agency under Section 322.0211(d).

2 SECTION 4. Section 2054.0965, Government Code, is amended
3 by amending Subsection (b) and adding Subsection (c) to read as
4 follows:

5 (b) Except as otherwise modified by rules adopted by the
6 department, the review must include:

7 (1) an inventory of the agency's major information
8 systems[~~, as defined by Section 2054.008,~~] and other operational or
9 logistical components related to deployment of information
10 resources as prescribed by the department;

11 (2) an inventory of the agency's major databases and
12 applications;

13 (3) a description of the agency's existing and planned
14 telecommunications network configuration;

15 (4) an analysis of how information systems,
16 components, databases, applications, and other information
17 resources have been deployed by the agency in support of:

18 (A) applicable achievement goals established
19 under Section 2056.006 and the state strategic plan adopted under
20 Section 2056.009;

21 (B) the state strategic plan for information
22 resources; and

23 (C) the agency's business objectives, mission,
24 and goals;

25 (5) agency information necessary to support the state
26 goals for interoperability and reuse; and

27 (6) confirmation by the agency of compliance with

1 state statutes, rules, and standards relating to information
2 resources.

3 (c) In this section, "major information system" includes:

4 (1) one or more computers that in the aggregate cost
5 more than \$100,000;

6 (2) a service related to computers, including computer
7 software, that costs more than \$100,000; and

8 (3) a telecommunications apparatus or device that
9 serves as a voice, data, or video communications network for
10 transmitting, switching, routing, multiplexing, modulating,
11 amplifying, or receiving signals on the network and costs more than
12 \$100,000.

13 SECTION 5. Subchapter F, Chapter 2054, Government Code, is
14 amended by adding Section 2054.1184 to read as follows:

15 Sec. 2054.1184. ASSESSMENT OF MAJOR INFORMATION RESOURCES
16 PROJECT. (a) A state agency proposing to spend appropriated funds
17 for a major information resources project must first conduct an
18 execution capability assessment to:

19 (1) determine the agency's capability for implementing
20 the project;

21 (2) reduce the agency's financial risk in implementing
22 the project; and

23 (3) increase the probability of the agency's
24 successful implementation of the project.

25 (b) A state agency shall submit to the department, the
26 quality assurance team established under Section 2054.158, and the
27 Legislative Budget Board a detailed report that identifies the

1 agency's organizational strengths and any weaknesses that will be
2 addressed before the agency initially spends appropriated funds for
3 a major information resources project.

4 (c) A state agency may contract with an independent third
5 party to conduct the assessment under Subsection (a) and prepare
6 the report described by Subsection (b).

7 SECTION 6. Section 2261.253, Government Code, is amended to
8 read as follows:

9 Sec. 2261.253. REQUIRED POSTING OF [~~CERTAIN CONTRACTS;~~
10 ~~ENHANCED~~] CONTRACT INFORMATION AND PERFORMANCE MONITORING. (a)
11 Each [~~For each contract for the purchase of goods or services from a~~
12 ~~private vendor, each~~] state agency shall post on its Internet
13 website's home page a link to the Legislative Budget Board's
14 contracts database established under Section 322.020. [~~website.~~

15 [~~(1) each contract the agency enters into, including~~
16 ~~contracts entered into without inviting, advertising for, or~~
17 ~~otherwise requiring competitive bidding before selection of the~~
18 ~~contractor, until the contract expires or is completed,~~

19 [~~(2) the statutory or other authority under which a~~
20 ~~contract that is not competitively bid under Subdivision (1) is~~
21 ~~entered into without compliance with competitive bidding~~
22 ~~procedures, and~~

23 [~~(3) the request for proposals related to a~~
24 ~~competitively bid contract included under Subdivision (1) until the~~
25 ~~contract expires or is completed.]~~

26 (b) For each contract in an amount of \$15,000 or more for the
27 purchase of goods or services from a private vendor that is paid for

1 solely with institutional funds or hospital and clinic fees, as
2 described by Section 51.009, Education Code, an institution of
3 higher education, as defined by Section 61.003, Education Code,
4 shall post on the institution's Internet website:

5 (1) the contract, including a contract that does not
6 require competitive bidding before selection of the contractor,
7 until the contract expires or is completed;

8 (2) for a contract that does not require competitive
9 bidding, the statutory or other authority that allows the contract
10 to be entered into without compliance with competitive bidding
11 procedures; and

12 (3) the request for proposals related to a
13 competitively bid contract posted under Subdivision (1), until the
14 contract is completed [~~A state agency monthly may post contracts~~
15 ~~described by Subsection (a) that are valued at less than \$15,000].~~

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

26 (d) An institution of higher education may redact
27 information from the contracts posted on the institution's Internet

1 website under Subsection (b) to the same extent as permitted under
2 Section 322.022(b-3). The redaction of information under this
3 subsection does not exempt the information from the requirements of
4 Section 552.021 or 552.221.

5 ~~[(d) This section does not apply to a memorandum of~~
6 ~~understanding, interagency contract, interlocal agreement, or~~
7 ~~contract for which there is not a cost.]~~

8 SECTION 7. Section 2262.101, Government Code, is amended by
9 adding Subsection (g) to read as follows:

10 (g) The team shall provide to the Legislative Budget Board a
11 copy of:

12 (1) each recommendation made under Subsection (a)(1)
13 on a solicitation or contract document not later than the 10th
14 calendar day after the date the team makes the recommendation; and

15 (2) any written explanation submitted by a state
16 agency under Subsection (d)(2) stating the reason a recommendation
17 is not applicable to the contract under review not later than the
18 10th calendar day after the date the team receives the explanation.

19 SECTION 8. (a) Sections 2262.102(a) and (d), Government
20 Code, are amended to read as follows:

21 (a) The team consists of the following [~~six~~] members:

22 (1) one member from the Health and Human Services
23 Commission;

24 (2) one member from the comptroller's office;

25 (3) one member from the Department of Information
26 Resources;

27 (4) one member from the Texas Facilities Commission;

1 (5) one member from the governor's office; and

2 (6) one or more members [~~member~~] from any other [~~a~~
3 ~~small~~] state agencies, as designated by the comptroller as the
4 comptroller considers necessary [~~agency~~].

5 (d) The comptroller may adopt rules regarding the
6 membership of the team, as appropriate, to implement this section
7 [~~In this section, "small state agency" means a state agency with~~
8 ~~fewer than 100 employees~~].

9 (b) As soon as practicable after the effective date of this
10 Act, the comptroller shall designate one or more members to the
11 Contract Advisory Team as provided by Section 2262.102, Government
12 Code, as amended by this Act.

13 SECTION 9. The following sections of the Government Code
14 are repealed:

15 (1) Section 322.020(f);

16 (2) Section 2054.008;

17 (3) Section 2166.2551;

18 (4) Section 2254.006; and

19 (5) Section 2254.0301.

20 SECTION 10. The changes in law made by this Act apply to a
21 contract entered into or amended, modified, renewed, or extended on
22 or after the effective date of this Act. A contract entered into or
23 amended, modified, renewed, or extended before the effective date
24 of this Act is governed by the law in effect on the date the contract
25 was entered into or amended, modified, renewed, or extended, and
26 the former law is continued in effect for that purpose.

27 SECTION 11. This Act takes effect September 1, 2017.