

By: Capriglione, Bonnen of Brazoria, Howard,
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H.B. No. 20

Substitute the following for H.B. No. 20:

By: Capriglione

C.S.H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to the review, oversight, and reporting of certain state
agency contracts.

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

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

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

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

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

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

[~~(A) Section 2054.008,~~

[~~(B) Section 2166.2551,~~

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

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

(2) "Institution of higher education" has the meaning

1 assigned by Section 61.003, Education Code.

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

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

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

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

11 (b) This section applies only to:

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

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

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

21 (B) is for sponsored research.

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

27 (1) each [major] contract entered into by the agency,

1 including each amendment, modification, renewal, or extension of
2 the contract; and

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

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

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

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

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

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

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

19 (1) certain commercial or financial information;

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

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

24 (b-4) An institution of higher education shall report to the
25 board a contract paid with appropriated funds for:

26 (1) a purchase of a major information system, as
27 defined by Section 2054.0965, in an amount that exceeds \$1 million;

1 (2) a construction project in an amount, including an
2 amount included in any amendment, modification, renewal, or
3 extension of the contract, that exceeds \$50,000; and

4 (3) professional services, other than a physician or
5 optometric services, in an amount, including an amount included in
6 any amendment, modification, renewal, or extension of the contract,
7 that exceeds \$50,000.

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

10 (1) each [~~major~~] contract, including each amendment,
11 modification, renewal, or extension of the contract [~~of a state~~
12 ~~agency~~]; and

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

15 SECTION 3. Chapter [322](#), Government Code, is amended by
16 adding Sections 322.021, 322.0211, and 322.0212 to read as follows:

17 Sec. 322.021. STATE AGENCY CONTRACT OVERSIGHT. (a) In this
18 section:

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

20 (2) "Institution of higher education" has the meaning
21 assigned by Section [61.003](#), Education Code.

22 (3) "State agency" has the meaning assigned by Section
23 [2054.003](#).

24 (b) Subject to Subsection (c), the board may review state
25 agency contracts to determine compliance with the contract
26 management guide developed under Section [2054.554](#), the
27 comptroller's procurement policy manuals, and each applicable

1 state contracting law, rule, policy, and procedure. The authority
2 to review a state agency contract under this subsection applies
3 regardless of the source of funds or method of financing for the
4 contract.

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

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

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

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

26 (b) A state agency shall provide a written response to the
27 notice provided under Subsection (a) not later than the 10th

1 business day after the date the agency receives the notice.

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

8 (1) detail the specific provision violated by the
9 contract;

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

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

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

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

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

22 Sec. 322.0212. ENFORCEMENT. (a) The Legislative Budget
23 Board may assess an enforcement mechanism against a state agency
24 that the board determines under Section 322.021 is in violation of
25 the contract management guide, the comptroller's procurement
26 policy manuals, or a state contracting law, rule, policy, or
27 procedure. The enforcement mechanism must be assessed in

1 accordance with the schedule developed under Subsection (b).

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

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

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

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

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

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

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

22 (e) The board may dismiss an enforcement mechanism assessed
23 against a state agency by the board for a contract violation
24 described by Section 322.0211(a) on successful implementation of a
25 corrective action plan by the agency under Section 322.0211(d).

26 SECTION 4. Section 2054.0965, Government Code, is amended
27 by amending Subsection (b) and adding Subsection (c) to read as

1 follows:

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

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

8 (2) an inventory of the agency's major databases and
9 applications;

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

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

15 (A) applicable achievement goals established
16 under Section 2056.006 and the state strategic plan adopted under
17 Section 2056.009;

18 (B) the state strategic plan for information
19 resources; and

20 (C) the agency's business objectives, mission,
21 and goals;

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

24 (6) confirmation by the agency of compliance with
25 state statutes, rules, and standards relating to information
26 resources.

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

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

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

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

10 SECTION 5. Section [2261.253](#), Government Code, is amended to
11 read as follows:

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

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

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

26 ~~[(3) the request for proposals related to a~~
27 ~~competitively bid contract included under Subdivision (1) until the~~

1 ~~contract expires or is completed.]~~

2 (b) For each contract in an amount of \$15,000 or more for the
3 purchase of goods or services from a private vendor that is paid for
4 solely with institutional funds or hospital and clinic fees, as
5 described by Section 51.009, Education Code, an institution of
6 higher education, as defined by Section 61.003, Education Code,
7 shall post on the institution's Internet website:

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

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

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

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

1 subsection.

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

5 SECTION 6. Section 2262.101, Government Code, is amended by
6 adding Subsection (g) to read as follows:

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

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

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

16 SECTION 7. The following sections of the Government Code
17 are repealed:

18 (1) Section 322.020(f);

19 (2) Section 2054.008;

20 (3) Section 2166.2551;

21 (4) Section 2254.006; and

22 (5) Section 2254.0301.

23 SECTION 8. The changes in law made by this Act apply to a
24 contract entered into or amended, modified, renewed, or extended on
25 or after the effective date of this Act. A contract entered into or
26 amended, modified, renewed, or extended before the effective date
27 of this Act is governed by the law in effect on the date the contract

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1 was entered into or amended, modified, renewed, or extended, and
2 the former law is continued in effect for that purpose.

3 SECTION 9. This Act takes effect September 1, 2017.