

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 19, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB533 by Nelson (Relating to state agency contracting and procurement.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB533, As Passed 3rd House: a negative impact of (\$574,000) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$287,000)
2019	(\$287,000)
2020	(\$287,000)
2021	(\$287,000)
2022	(\$287,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1	Change in Number of State Employees from FY 2017
2018	(\$287,000)	3.0
2019	(\$287,000)	3.0
2020	(\$287,000)	3.0
2021	(\$287,000)	3.0
2022	(\$287,000)	3.0

Fiscal Analysis

The bill would amend the Government Code, Education Code, Human Resources Code, and Civil Practices and Remedies Code relating to state agency contracting.

The bill would transfer the authority to recommend Department of Information Resources (DIR)

oversight of major information projects from the Quality Assurance Team (QAT) in coordination with the Governor, to the Governor, Lieutenant Governor, or Speaker of the House. DIR would be allowed to contract with a vendor to provide those services.

Under current law, the State Auditor's Office (SAO), Legislative Budget Board (LBB), and DIR have certain duties related to QAT. The bill would add the Comptroller of Public Accounts (CPA) to those agencies, require those agencies to create an automated project review system; require QAT to provide certain annual training for state agency procurement and contract management staff; and specify that the SAO serves on QAT as an advisor.

The bill would require that state agencies prepare, in consultation with DIR, a technical architectural assessment for each major information resources project or major contract. The bill would impose certain additional requirements on state agency project plans for major information resources projects or major contracts

The bill would require state agencies to adopt a policy on the interaction between their employees and vendors. The bill would clarify that the provisions of Subtitle D (state purchasing and general services) of Title 10 (general government) of the Government Code do not prohibit the exchange of information between a state agency and a vendor related to future solicitations or to monitor an existing contract.

The bill would require the CPA to employ a chief procurement officer to serve as the chief procurement officer for this state. The chief procurement officer would have authority over state agency procurement. The chief procurement officer would coordinate with DIR and QAT to conduct contract solicitation reviews for certain information technology projects and with the Contract Advisory Team (CAT) to conduct reviews of certain solicitation and contract documents for contracts that have a value of \$5 million or more.

The bill would allow the CPA to authorize state agencies and political subdivisions of other states to purchase goods or services through CPA contracts, for which the CPA could charge a reasonable administrative fee, subject to Government Code, Section 2156.181.

The bill would require state agencies to submit a request for pricing for an information technology commodity contract with a value of more than \$50,000, but not more than \$1 million, to at least three vendors (current law imposes that restriction on such contracts with a value of more than \$50,000, but not more than \$150,000). The bill would require state agencies to submit a request for pricing for an information technology commodity contract with a value of more than \$1 million, but not more than \$5 million, to at least six vendors (current law imposes that restriction on such contracts with a value of more than \$150,000, but not more than \$1 million). The bill would prohibit a state agency from entering a contract to purchase an information technology commodity if the value of the contract exceeds \$5 million (current law imposes that prohibition on such contracts with a value of more than \$1 million).

The bill would require a state agency employee or official to disclose any potential conflict of interest during the procurement process or the term of a contract with a private vendor where the amount of the purchase order exceeds \$25,000. A state agency would not have to post certain contract information on the agency's website if the contract has been posted on LBB contracts database. A state agency that posts a contract on its website would be required to redact certain information.

The bill would lower the threshold for CAT reviews from \$10 million to \$5 million. The bill would allow the chief procurement officer to add members to CAT by designating members from

agencies that agree to participate.

The bill would require the Texas Education Agency to comply with the CPA contract management guide in contracts with a regional educational service center.

The bill would require the CPA not later than January 1, 2018 to: 1) employ a chief procurement officer; 2) modify the contract management guide as required by Section 2262.051(i) of the Government Code as added by the bill; and 3) adopt any rules necessary to implement the changes in law made by the bill.

The bill would specify that boards for institutions of higher education are to be governed by Section 51.923, Education Code, and would lower the substantial business interest threshold in Section 51.923(e) of the Education Code from ten percent to one percent.

The bill would forbid a former state employee from taking a job at a contractor whose contract the employee oversaw for two years after the contract is signed or terminated/withdrawn (current law requires waiting two years after the employee's departure from the agency).

The bill would modify the definition of a contract that is reportable to the LBB Contracts Database to include all major types of state purchases, and to conform to the definition of "contracts" in the Introduced 2018-19 General Appropriations Bill.

The bill would require state agencies to report contracts valued over \$50,000 and all "major consulting service" contracts over \$15,000 (as defined by section 2254.021) to the LBB within 30 days of execution or modification.

The bill would exempt from the reporting requirements contracts solely paid for with higher education institutional funds or hospital and clinic fees, and sponsored research contracts. The bill would require institutions of higher education to report contracts paid with appropriated funds for major information systems valued at or over \$1 million, construction projects valued at or over \$50,000, and professional service contracts valued at or above \$50,000.

The bill would require that all contracts reported to the LBB include contract and solicitation document attachments. The bill would permit reporting agencies to redact certain information from these attachments to prevent fraud against the state. Health and Human Services (HHSC) contracts related to Medicaid provider enrollment services and Texas Department of Transportation (TxDOT) contracts related to highway engineering and construction would be exempt from the document attachments requirement.

The bill would require the CAT to provide the LBB with copies of reviews conducted under Government Code, Section 2262.101(a)(1) within 10 days of completing such reviews. The bill would require the CAT to provide the LBB with copies of agency responses provided under Code, Section 2262.101(d) within 10 days of receipt of such responses.

The bill would establish in statute LBB staff responsibilities to review contracts for violations of the State of Texas Contract Management Guide, the State Procurement Manual, and applicable contracting laws, rules, policies, and procedures. These responsibilities are currently authorized in the 2016-17 General Appropriations Act. Institution of higher education contracts that are paid for solely with institutional, hospital, or clinic fees are exempt from these reviews.

The bill would require the Director of the LBB to notify state agencies of any identified violations, and would provide 10 business days for agencies to respond to these notifications. If the LBB

determines that the agency response does not address the violations identified, the bill would authorize LBB staff to establish corrective action plans with state agencies.

The bill would authorize the Director of the LBB to notify the Governor, the CPA, and the LBB of any violations identified, and to recommend enforcement mechanisms to address violations. The bill would authorize the LBB to implement enforcement mechanisms based on legislative authorities, and allow the LBB the discretion to increase or reduce the severity of these enforcement mechanisms based on agency compliance with corrective action plans.

The bill would move the definition of a "major information system" from 2054.008 to 2054.0965. Moving the definition would not affect contract reporting.

The bill would repeal contract reporting requirements from Government Code, Sections 2054.008 (information technology), 2166.2551 (construction), 2254.006 (professional services), and 2254.0301 (consulting services). The bill would also repeal Government Code, Section 322.0202(f) concerning previous exemptions from providing contract and solicitation attachments.

The bill clarifies that notwithstanding any other law, a contract obligation of a state agency may be limited or amended by the General Appropriations Act.

The bill would amend the Government Code to specify that the SAO shall consider the performance of certain health and human service program audits, and certain Texas Alcoholic Beverage Commission programs, when devising the state audit plan.

The bill would require that vendors return overpayments made by the state within 120 calendar days or be subject to a penalty of ten percent of overage amount per year until repaid. The bill would provide a dispute process.

The bill would require public approval by the CPA for a state agency to consider factors other than price when establishing best value standards for contracts with a value that exceed \$100 million.

The bill would prohibit payment on invoices that do not directly correlate to a corresponding contract, would require that all payments be reviewed and signed by two state employees, and would authorize the state to revoke a payment that was made without the two required signatures at any time.

The bill would require an attorney representing an agency to assist in the drafting of agency contracts, and that contracts include a minimum list of provisions.

The bill would prohibit a state agency from issuing payment to a vendor without documentation that clearly demonstrates the agency's obligation to make a payment.

The bill would require that at a minimum each contract that has a value of at least \$1 million have a contract manager assigned to manage the oversight of the contract.

The bill would require state agencies to contract with an outside team to consult on improving information resource practices for contracts valued at \$100 million or more. State agencies would be required 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.

The bill would require the CPA to conduct an interim study of the effectiveness of the process to

debar vendors from participation in state contracts, and to produce a report no later than December 1, 2018.

The bill would require responses to governmental requests for design-build proposals to be submitted by the earlier of the 180th day or the deadline set by the governmental entity.

The bill would expand the application of the Civil Practice and Remedies Code from those contracts subject to Section 201.112 (contract claims resolution), Transportation Code to all contracts that to which TxDOT is a party. The bill would authorize the inclusion of attorney's fees in the award of damages to resolve certain contract claims against the if the contract relates to engineering, architectural, or construction services, or materials for such services, and the amount in controversy is less than \$250,000.

The bill would adjust the membership of CAT to remove one small agency with less than 100 employees, and give the CPA authority to designate additional CAT members as necessary.

The bill would require the Texas Workforce Commission (TWC) to assist community rehabilitation programs in developing a plan to increase the wages paid to its workers with disabilities to the federal minimum wage not later than September 1, 2019. TWC would be allowed to extend the period for compliance with the program participation requirements of the bill. The bill would prohibit community rehabilitation programs from participating in the Purchasing From People With Disabilities program unless each worker is paid at least the federal minimum wage.

The bill would require any governmental entity advertising a construction contract non-competitively to record and publish in the solicitation detailed methodology for the scoring of criteria to be used in making such an award.

This bill would take effect September 1, 2017.

Methodology

The CPA estimates that it would need 3 additional FTEs and \$287,000 per fiscal year to implement the provisions of this bill. This administrative cost estimate reflects the funds that would be necessary to hire two contract specialist IVs and one attorney IV to support the increased workload anticipated due to the lowering of the CAT contract review threshold from \$10 million to \$5 million. Using data from the LBB contract database, the proposed change would have yielded 156 additional contracts eligible for review. The CPA indicates that, other than this administrative cost, the fiscal impact on the State cannot be estimated including the amount and timing of any fees that would be collected from other state governments or agencies.

Institutions of higher education and agencies estimated costs associated with the mandatory redaction from contracts posted to their websites of confidential information under law, information exempt from public disclosure under Chapter 522 as determined by the Attorney General, and social security numbers. All but the last of these three redaction requirements are required under current law, and the third is allowable under current law. Therefore, this analysis assumes that the cost associated with the mandatory redaction of social security numbers could be absorbed within existing resources.

It is estimated that some costs would be incurred for the establishment of Contract Outside Tactical Teams for contracts over \$100.0 million under the requirements of the bill. This analysis assumes that these costs are absorbable within existing agency resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 304 Comptroller of Public Accounts, 323 Teacher Retirement System, 529 Health and Human Services Commission, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Texas Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, KK, JPU, JMO, SD, TBo