

By: Nelson

S.B. No. 127

A BILL TO BE ENTITLED

AN ACT

relating to oversight of and requirements applicable to state agency contracting and procurement.

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. (a) Notwithstanding Section 441.185 or 441.187, a state agency:

(1) shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and

(2) may destroy the contract and documents only after the seventh anniversary of the date:

(A) the contract is completed or expires; or

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

(b) A contract solicitation document that is an electronic document must be retained under Subsection (a) in the document's electronic form. A state agency may print and retain the document in paper form only if the agency provides for the preservation, examination, and use of the electronic form of the document in

1 accordance with Subsection (a), including any formatting or
2 formulas that are part of the electronic format of the document.

3 (c) In this section:

4 (1) "Contract solicitation document" includes any
5 document, whether in paper form or electronic form, that is used by
6 a state agency to evaluate responses to a competitive solicitation
7 for a contract issued by the agency.

8 (2) "Electronic document" means:

9 (A) information that is created, generated,
10 sent, communicated, received, or stored by electronic means; or

11 (B) the output of a word processing, spreadsheet,
12 presentation, or business productivity application.

13 SECTION 2. Section 2102.005, Government Code, is amended to
14 read as follows:

15 Sec. 2102.005. INTERNAL AUDITING REQUIRED. (a) A state
16 agency shall conduct a program of internal auditing that includes:

17 (1) an annual audit plan that is prepared using risk
18 assessment techniques and that identifies the individual audits to
19 be conducted during the year; and

20 (2) periodic audits of the agency's major systems and
21 controls, including:

22 (A) accounting systems and controls;

23 (B) administrative systems and controls; and

24 (C) electronic data processing systems and
25 controls.

26 (b) In conducting the internal auditing program under
27 Subsection (a), a state agency shall consider methods for ensuring

1 compliance with contract processes and controls and for monitoring
2 agency contracts.

3 SECTION 3. Section 2155.089, Government Code, is amended by
4 amending Subsections (a) and (b) and adding Subsection (b-1) to
5 read as follows:

6 (a) Each [~~After a contract is completed or otherwise~~
7 ~~terminated, each~~] state agency shall review a [~~the~~] vendor's
8 performance under a [~~the~~] contract:

9 (1) at least once each year during the term of the
10 contract;

11 (2) at each key milestone identified for the contract;
12 and

13 (3) after the contract is completed or otherwise
14 terminated.

15 (b) The state agency shall report to the comptroller, using
16 the tracking system established by Section 2262.055, on the results
17 of each [~~the~~] review conducted under Subsection (a) regarding a
18 vendor's performance under a contract.

19 (b-1) A state agency may not extend a vendor's contract
20 until after the agency reports the results of each review of the
21 vendor conducted under Subsection (a)(1) or (2), as applicable, in
22 the manner prescribed by Subsection (b).

23 SECTION 4. Subchapter B, Chapter 2261, Government Code, is
24 amended by adding Sections 2261.0525 and 2261.054 to read as
25 follows:

26 Sec. 2261.0525. CERTIFICATION OF VENDOR ASSESSMENT
27 PROCESS. (a) Before a state agency may accept a bid from, or award

1 a contract to, a vendor, the agency's contract manager or
2 procurement director must review the process and all documents used
3 by the agency to assess each vendor who responded to the contract
4 solicitation. The contract manager or procurement director must
5 certify in writing that:

6 (1) the agency accurately assessed each vendor's
7 response to the solicitation using the evaluation criteria
8 published in the solicitation or, if applicable, the written
9 evaluation criteria established by the agency; and

10 (2) the final scoring of responses was accurate.

11 (b) A state agency shall justify in writing any change in
12 the scoring of a vendor that occurs following the initial
13 assessment and scoring of responses. The written justification
14 must be reviewed by the agency's contract manager or procurement
15 director. The contract manager or procurement director shall
16 certify in writing that the change in scoring was appropriate.

17 (c) A state agency's contract manager or procurement
18 director may delegate to a person in the agency's contract
19 management office the certification authority under this section,
20 provided that the person's position at the agency is at least equal
21 to the position of contract manager or procurement director.

22 (d) A written certification or justification required by
23 this section must be placed in the contract file.

24 Sec. 2261.054. STATEMENT REGARDING VENDOR SELECTION
25 REQUIRED FOR CERTAIN CONTRACT AWARDS. If a state agency accepts a
26 bid from, or awards a contract to, a vendor who did not receive the
27 highest score in an assessment process certified under Section

1 2261.0525, the agency shall state in writing in the contract file
2 the reasons for accepting the bid or making the award.

3 SECTION 5. The heading to Subchapter E, Chapter 2261,
4 Government Code, is amended to read as follows:

5 SUBCHAPTER E. CONTRACTOR OVERSIGHT AND LIABILITY

6 SECTION 6. Subchapter E, Chapter 2261, Government Code, is
7 amended by adding Section 2261.204 to read as follows:

8 Sec. 2261.204. LIABILITY PROVISIONS. (a) Each state
9 agency shall include in the contract file for each of its contracts
10 for goods or services subject to this chapter a written explanation
11 of the agency's decision to include or not include in the contract a
12 provision for liquidated damages or another form of liability for
13 breach of the contract by the contractor.

14 (b) A contract file must also include, if applicable, a
15 written justification for any provision in the contract that limits
16 the liability of a contractor for breach of the contract.

17 (c) If an extension of a state agency's contract described
18 by Subsection (a) modifies a provision for liquidated damages or
19 another provision relating to a contractor's liability for breach
20 of the contract, the agency must amend the written explanation or
21 justification required by this section to include a justification
22 for the modification.

23 SECTION 7. Subchapter F, Chapter 2261, Government Code, is
24 amended by adding Section 2261.258 to read as follows:

25 Sec. 2261.258. MONITORING ASSESSMENT BY STATE AUDITOR. (a)
26 Before July 1 of each year, the state auditor shall assign one of
27 the following ratings to each of the 25 largest state agencies as

1 determined by the total appropriations made to the agencies in the
2 General Appropriations Act for that state fiscal year:

- 3 (1) additional monitoring warranted;
- 4 (2) no additional monitoring warranted; or
- 5 (3) reduced monitoring warranted.

6 (b) In assigning a rating to a state agency as required
7 under Subsection (a), the state auditor shall consider the
8 following information, as applicable:

9 (1) results of an audit of:

10 (A) the agency conducted by the state auditor
11 under Chapter 321; or

12 (B) the agency's contracts and contract
13 processes and controls conducted by the agency's internal auditors
14 or by the state auditor;

15 (2) results of a purchase audit conducted by the
16 comptroller under Section 2155.325;

17 (3) information reported by the quality assurance team
18 established under Section 2054.158 relating to the agency's major
19 information resources projects;

20 (4) information from the Contract Advisory Team
21 established under Subchapter C, Chapter 2262, relating to reviews
22 of the agency's contracts and contract solicitation documents;

23 (5) information relating to agency findings from a
24 review of the agency conducted by:

25 (A) the Legislative Budget Board; and

26 (B) the Sunset Advisory Commission under Chapter
27 325 (Texas Sunset Act);

1 (6) the agency's self-reported improvements to the
2 agency's contracting processes; and

3 (7) any additional internal analysis provided by the
4 agency.

5 (c) On or before September 1 of each year, the state auditor
6 shall submit to the comptroller a report that:

7 (1) lists each state agency that was assigned a rating
8 under Subsection (a); and

9 (2) for a state agency that was assigned a rating under
10 Subsection (a)(1) or (3), specifies that additional or reduced
11 monitoring, as applicable, is required during one or more of the
12 following periods:

13 (A) contract solicitation development;

14 (B) contract formation and award; or

15 (C) contract management and termination.

16 (d) The comptroller shall develop guidelines for the
17 additional or reduced monitoring of a state agency during the
18 periods described by Subsections (c)(2)(A), (B), and (C) for a
19 contract that falls under the monetary thresholds for review or
20 monitoring by the Contract Advisory Team or the quality assurance
21 team.

22 (e) The state auditor may request any information necessary
23 from a state agency, the Contract Advisory Team, or the quality
24 assurance team to comply with the requirements of this section, and
25 the agency or team, as applicable, shall provide the requested
26 information.

27 (f) The state auditor and the comptroller shall share

1 information as necessary to fulfill their respective duties under
2 this section.

3 (g) The state auditor's duties under this section must be
4 included in the audit plan and approved by the legislative audit
5 committee under Section 321.013.

6 SECTION 8. Subchapter B, Chapter 2262, Government Code, is
7 amended by adding Section 2262.053 to read as follows:

8 Sec. 2262.053. CONTRACT FILE CHECKLIST; CERTIFICATION OF
9 AGENCY COMPLIANCE. (a) Each state agency shall include in the
10 contract file for each of its contracts a checklist to ensure the
11 agency's compliance with state laws and rules relating to the
12 acquisition of goods and services by the agency.

13 (b) The comptroller shall develop and periodically update a
14 model contract file checklist and make the checklist available for
15 use by state agencies. The comptroller shall periodically update
16 the checklist.

17 (c) The comptroller may adopt rules necessary to develop or
18 update the model contract file checklist.

19 (d) The model contract file checklist must address each
20 stage of the procurement process and must include, at a minimum, a
21 description of:

22 (1) the documents that are required to be maintained
23 during each stage of the procurement process in accordance with
24 applicable state laws and comptroller rules; and

25 (2) the procedures and documents that are required to
26 be completed during the following stages of the procurement
27 process:

1 (A) contract solicitation development;

2 (B) contract formation and award; and

3 (C) contract management.

4 (e) A state agency may develop its own contract file
5 checklist based on the procurement and contracting needs of that
6 agency, provided that the checklist developed by the agency is
7 consistent with the comptroller's model contract file checklist and
8 meets any requirements established by comptroller rule under
9 Subsection (c).

10 (f) Before a state agency accepts a bid from, or awards a
11 contract to, a vendor for the purchase of goods or services, the
12 agency's contract manager or procurement director must:

13 (1) review the contents of the contract file for the
14 contract, including the checklist, to ensure that all documents
15 required by state law or applicable agency rules are complete and
16 present in the file; and

17 (2) certify in a written document to be included in the
18 contract file that the review required under Subdivision (1) was
19 completed.

20 (g) The comptroller by rule shall prescribe the time at
21 which a state agency's contract manager or procurement director
22 must make the certification required by Subsection (f).

23 SECTION 9. As soon as practicable after the effective date
24 of this Act, the comptroller of public accounts, and each affected
25 state agency as necessary, shall adopt the rules, processes, and
26 procedures and take the actions necessary to implement the changes
27 in law made by this Act.

1 SECTION 10. This Act applies only in relation to a contract:

2 (1) for which a state agency first advertises or
3 otherwise solicits bids, proposals, offers, or qualifications on or
4 after the effective date of this Act;

5 (2) that is extended or modified on or after the
6 effective date of this Act; or

7 (3) for which a change order is submitted on or after
8 the effective date of this Act.

9 SECTION 11. Notwithstanding Section 2261.258, Government
10 Code, as added by this Act, the first report required under that
11 section is due on or before September 1, 2020.

12 SECTION 12. This Act takes effect September 1, 2019.