

BILL ANALYSIS

H.B. 3658
By: Capriglione
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Overly complex and unwieldy procurement processes can hinder the efficient use of tax dollars and create an uncertain environment for vendors and taxpayers. Past efforts to address contracting issues with various state agencies have strengthened oversight and reporting requirements. However, lawmakers must still do more to ensure consistency across-the-board and strengthen the confidence in state agency procurement decisions.

As currently written, state law places too much emphasis on selecting a contractor based on the lowest price alone, instead of using proven business metrics to score proposals based on the greatest long-term cost savings and public benefits. The intent of the existing best value statute is to enumerate those items that state agencies can review as part of scoring a response to a request for proposal or other procurements beyond price. However, contrary to the intent of the statute, these items are largely based on cost and still skew purchases to the cheapest purchase instead of the best value.

Additionally, the safeguards that were put in place during past sessions to ensure the professionalism of procurement evaluators need to be enhanced. State agencies need additional tools to hire trained and experienced evaluators and to also ensure that procurement decisions are not jeopardized by a potential conflict of interest.

H.B. 3658 seeks to update provisions governing state agency contracting to improve confidence in state agency evaluation teams and better align contract proposal scoring criteria to achieve the best value for the state and taxpayers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 10 of this bill.

ANALYSIS

H.B. 3658 amends the Government Code to expand the scope of the prohibition against a former state officer or employee of a regulatory agency representing a person or receiving compensation for services rendered on behalf of a person regarding a particular matter in which the former officer or employee participated during the period of state service or employment as follows:

- makes the prohibition applicable also to a contractor or subcontractor who for more than 30 days performed full-time or part-time work for a regulatory agency; and

- includes among the prohibited conduct representing a person or receiving compensation for services rendered on behalf of a person regarding any procurement that began at the regulatory agency while the officer, employee, contractor, or subcontractor served at, was employed by, or performed work for the agency.

The bill limits the rulemaking proceedings excluded from that prohibition by changing the date on which the proceeding must have concluded before the applicable service, employment, or contract ceased from any time prior to that conclusion to more than six months before. The bill requires each regulatory agency to include in any applicable contract a provision that references the prohibited conduct and related conflict of interest provisions.

H.B. 3658 revises provisions establishing the best value standard for state procurement to change the manner in which best value is determined by, as follows:

- removing a provision specifying that the purchase price and whether the goods or services being purchased meet specifications are the most important considerations and instead providing that those are principal considerations that must be balanced with other relevant factors;
- revising the list of other relevant factors that currently may be considered in determining best value to remove certain factors and include the following:
 - required contract outcomes;
 - best quality for economic value of the contract;
 - timely performance under the contract;
 - the impact of a purchase on the agency's administrative resources;
 - the impact on the agency's flexibility in developing alternative procurement and business relationships; and
 - the encouragement of continued participation by quality contractors;
- limiting only to procurements in an amount equal to \$20 million or less for which the consideration of the list of other relevant factors is optional and requiring the comptroller of public accounts or other applicable state agency procuring goods or services in an amount that exceeds \$20 million to consider all of the other factors provided as well as the purchase price; and
- requiring each determination of best value to include a total cost of ownership assessment that considers the costs of acquisition, personnel, and operation and the total amount of money required for the purchase during the expected performance period.

The bill requires the comptroller or other applicable state agency making a purchase through competitive bidding to specify in the request for bids the proposal criteria the comptroller or agency will use when considering factors other than price in determining best value.

H.B. 3658 requires the training program for state contract managers developed by the comptroller to provide a contract manager with information regarding how to determine best value for the state through the exercise of informed business judgment based on price and non-price factors expected to result in best value. The bill requires a contract manager who participates in the procurement of a contract with a value of \$20 million or more to participate in additional training specific to the category of goods or services to be procured and to develop a document to be retained with the records for the procurement that includes the following:

- a summary of the contract manager's qualifications; and
- a written statement certified by the contract manager that the manager read and understands all submitted vendor proposals or other expressions of interest.

An agency employee is not required to comply with these training requirements before March 1, 2022. The bill requires each health and human services agency and the Health and Human Services Commission to ensure its contract managers complete the comptroller's contract manager training program and comply with the additional requirements for the procurement of a contract with a value of \$20 million or more.

H.B. 3658 requires the contract management handbook for human services agencies to include instructions for ensuring that health and human services agency employees who are involved in implementing a specific procurement are also involved in evaluating and scoring the responses

submitted to the solicitation for the procurement. The bill requires that the comptroller's general contract management guide for use by state agencies include that same information, as well as information about how to appoint as evaluators for procurements agency employees who serve in agency divisions overseeing the implementation of the procurements. The bill includes business and industry representatives among the parties with whom the comptroller must consult when developing or updating the guide.

H.B. 3658 requires each applicable state agency, not later than October 1, 2021, to establish a procedure and requirements for determining the eligibility for a salary increase of an agency employee who acts as an evaluator of an agency procurement through a decision, approval, disapproval, recommendation, advice, investigation, or similar action from the issuance of a solicitation through the award of the contract.

H.B. 3658 requires the comptroller to adopt the rules and update the contract management handbook and contract management guide as necessary to implement the bill's changes in law.

EFFECTIVE DATE

September 1, 2021.