By:  Capriglione, Shaheen, King of Parker H.B. No. 3658

A BILL TO BE ENTITLED

AN ACT

relating to state agency contracting and state employees, officers, contractors, and other persons involved with the contracting.

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

SECTION 1.  The heading to Section 572.054, Government Code, is amended to read as follows:

Sec. 572.054.  REPRESENTATION BY FORMER OFFICER OR EMPLOYEE OR CONTRACTOR OR SUBCONTRACTOR OF REGULATORY AGENCY RESTRICTED; CRIMINAL OFFENSE.

SECTION 2.  Section 572.054, Government Code, is amended by amending Subsections (b) and (d) and adding Subsection (i) to read as follows:

(b)  A former state officer or employee of a regulatory agency or a person who for more than 30 days performed full-time or part-time work for a regulatory agency under a contract or subcontract [~~who ceases service or employment with that agency on or after January 1, 1992,~~] may not represent any person or receive compensation for services rendered on behalf of any person:

(1)  regarding a particular matter in which the former officer, [~~or~~] employee, contractor, or subcontractor participated during the period of state service, [~~or~~] employment, or contract, either through personal involvement or because the case or proceeding was a matter within the officer's, [~~or~~] employee's, contractor's, or subcontractor's official responsibility; and

(2)  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.

(d)  Subsection (b) does not apply to a rulemaking proceeding that was concluded more than six months before the officer's, [~~or~~] employee's, contractor's, or subcontractor's service, [~~or~~] employment, or contract ceased.

(i)  Each regulatory agency shall include in any applicable contract a provision that references this section and its requirements.

SECTION 3.  Section 656.052(b), Government Code, is amended to read as follows:

(b)  The training must provide the contract manager with information regarding how to:

(1)  fairly and objectively select and negotiate with the most qualified contractor;

(2)  establish prices that are cost-effective and that reflect the cost of providing the service;

(3)  include provisions in a contract that hold the contractor accountable for results;

(4)  monitor and enforce a contract;

(5)  make payments consistent with the contract;

(6)  comply with any requirements or goals contained in the contract management guide;

(7)  use and apply advanced sourcing strategies, techniques, and tools;

(8)  maintain required documentation for contracting decisions, changes to a contract, and problems with a contract;

(9)  create a risk evaluation and mitigation strategy;

(10)  create a plan for potential problems with the contract;

(11)  develop an accurate and comprehensive statement of work; [~~and~~]

(12)  complete the contract and evaluate performance under the contract; and

(13)  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, including the factors described by Section 2155.074.

SECTION 4.  Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.2552 to read as follows:

Sec. 659.2552.  SALARY INCREASE FOR CONTRACT EVALUATORS. A state agency may establish a procedure and requirements for providing a salary increase to an agency employee who acts as an evaluator for an agency procurement in addition to the employee's regularly assigned duties. The procedure and requirements established under this section must provide for the salary increase only if the employee meets the qualifications for employment in the agency division overseeing the implementation of the procurement.

SECTION 5.  Section 2155.074, Government Code, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b)  In determining the best value for the state, the purchase price and whether the goods or services meet specifications are principal considerations that must be balanced with other relevant factors, including the factors described by this section [~~the most important considerations~~].

(b-1)  For a procurement in an amount equal to $20 million or less [~~However~~], the comptroller or other state agency may, subject to Subsection (c) and Section 2155.075, consider other relevant factors, including:

(1)  required contract outcomes [~~installation costs~~];

(2)  best quality for economic value of the contract [~~life cycle costs~~];

(3)  timely performance under the contract [~~the quality and reliability of the goods and services~~];

(4)  the impact of a purchase on the agency's administrative resources [~~the delivery terms~~];

(5)  indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;

(6)  the impact on the agency's flexibility in developing alternative procurement and business relationships [~~the cost of any employee training associated with a purchase~~];

(7)  the effect of a purchase on agency productivity;

(8)  the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment; [~~and~~]

(9)  the encouragement of continued participation by quality contractors; and

(10)  other factors relevant to determining the best value for the state in the context of a particular purchase.

(b-2)  For a procurement in an amount that exceeds $20 million, the comptroller or other state agency shall, subject to Subsection (c) and Section 2155.075, consider the factors listed in Subsection (b-1) and the purchase price.

(b-3)  Each determination of best value under this section must include a total cost of ownership assessment that considers the:

(1)  cost of acquisition;

(2)  cost of personnel;

(3)  cost of operation; and

(4)  total amount of money required for the purchase during the expected performance period.

SECTION 6.  Section 2155.075(a), Government Code, is amended to read as follows:

(a)  For a purchase made through competitive bidding, the comptroller or other state agency making the purchase must specify in the request for bids:

(1)  the factors other than price that the comptroller or agency will consider in determining which bid offers the best value for the state; and

(2)  the proposal criteria the comptroller or agency will use when considering the factors described by Subdivision (1).

SECTION 7.  Section 2155.089(c), Government Code, is amended to read as follows:

(c)  This section does not apply to:

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

(2)  a contract of the Employees Retirement System of Texas except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Subtitle H, Title 8, Insurance Code; or

(3)  a contract entered into by:

(A)  the comptroller under Section 2155.061; [~~or~~]

(B)  the Department of Information Resources under Section 2157.068; or

(C)  a university system or an institution of higher education, as those terms are defined by Section 61.003, Education Code.

SECTION 8.  Section 2155.144, Government Code, is amended by adding Subsections (e) and (j-5) to read as follows:

(e)  Each health and human services agency and the Health and Human Services Commission shall ensure the agency's contract managers complete the training developed under Section 656.052 and comply with the requirements of Section 2262.058.

(j-5)  The contract management handbook published under Subsection (j) must include:

(1)  instructions for ensuring that:

(A)  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;

(B)  appropriate health and human services agency employees answer questions from vendors in a timely manner; and

(C)  vendors that participate or are interested in participating in a procurement by an agency have access to at least two agency employees who serve as contacts for the agency;

(2)  a model communications procedure for vendors and agency employees, developed in collaboration with representatives from vendors and state agencies, to be included in the agency's solicitations; and

(3)  procedures for:

(A)  notifying other responsive vendors if an agency employee or another vendor violates the communications requirements for a solicitation;

(B)  determining when an agency employee or vendor has failed to comply with the communication provisions of a solicitation; and

(C)  ensuring an appropriate number of interested vendors are granted access to a pre-bid, pre-offer, or pre-proposal conference.

SECTION 9.  Sections 2262.051(a) and (c), Government Code, are amended to read as follows:

(a)  In consultation with the attorney general, the Department of Information Resources, business and industry representatives, and the state auditor, the comptroller shall develop or periodically update a contract management guide for use by state agencies. Participation by the state auditor under this subsection is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c).

(c)  The guide must provide information regarding the primary duties of a contract manager, including how to:

(1)  develop and negotiate a contract;

(2)  select a contractor; [~~and~~]

(3)  monitor contractor and subcontractor performance under a contract;

(4)  appoint as evaluators for procurements agency employees who serve in agency divisions overseeing the implementation of the procurements;

(5)  ensure that:

(A)  appropriate state agency employees answer questions from vendors in a timely manner; and

(B)  vendors that participate or are interested in participating in a procurement by a state agency have access to at least two agency employees who serve as contacts for the agency;

(6)  develop a communications procedure for vendors and agency employees to be included in the agency's solicitations; and

(7)  establish procedures for:

(A)  notifying other responsive vendors if an agency employee or another vendor violates the communication requirements for the solicitation;

(B)  determining when an agency employee or vendor has failed to comply with the communication provisions of a solicitation;

(C)  ensuring an appropriate number of interested vendors are granted access to a pre-bid, pre-offer, or pre-proposal conference; and

(D)  ensuring that agency personnel who are involved in implementing a specific procurement are also involved in evaluating and scoring the responses submitted to the solicitation for the procurement.

SECTION 10.  Subchapter B, Chapter 2262, Government Code, is amended by adding Section 2262.058 to read as follows:

Sec. 2262.058.  CERTAIN CONTRACT MANAGERS. For a contract manager who participates in the procurement of a contract with a value of $20 million or more, the contract manager shall:

(1)  participate in additional training specific to the category of goods or services to be procured; and

(2)  develop a document to be retained with the records for the procurement that includes:

(A)  a summary of the contract manager's qualifications, including certifications, years of experience, and any other relevant qualifications related to the procurement; and

(B)  a written statement certified by the contract manager that the contract manager developed and implemented appropriate control mechanisms to ensure vendor proposals or other expressions of interest are scored as outlined in the solicitation for the procurement.

SECTION 11.  (a) As soon as practicable after the effective date of this Act, the comptroller of public accounts shall adopt the rules and update the contract management handbook and contract management guide as necessary to implement the changes in law made by this Act.

(b)  Not later than October 1, 2021, each state agency shall adopt the procedure and requirements as provided by Section 659.2552, Government Code, as added by this Act.

SECTION 12.  (a) The changes in law made by this Act apply only to a contract for which a state agency first advertises or otherwise solicits offers, bids, proposals, qualifications, or other applicable expressions of interest on or after the effective date of this Act. A contract for which a state agency first advertises or otherwise solicits offers, bids, proposals, qualifications, or other applicable expressions of interest before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b)  Notwithstanding Section 656.052, Government Code, as amended by this Act, or Section 2262.058, Government Code, as added by this Act, a state agency employee is not required to comply with the training requirements under those sections before March 1, 2022.

SECTION 13.  If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 14.  This Act takes effect September 1, 2021.