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H.B. No. 3658

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to state agency contracting and state employees, officers,  
3 contractors, and other persons involved with the contracting.

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

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

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

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

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

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

1           (2) regarding any procurement that began at the  
2 regulatory agency while the officer, employee, contractor, or  
3 subcontractor served at, was employed by, or performed work for the  
4 agency.

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

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

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

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

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

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

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

22                   (4) monitor and enforce a contract;

23                   (5) make payments consistent with the contract;

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

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

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

3 (9) create a risk evaluation and mitigation strategy;

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

6 (11) develop an accurate and comprehensive statement  
7 of work; ~~and~~

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

10 (13) determine best value for the state through the  
11 exercise of informed business judgment based on price and non-price  
12 factors expected to result in best value, including the factors  
13 described by Section 2155.074.

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

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

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

27 (b) In determining the best value for the state, the

1 purchase price and whether the goods or services meet  
2 specifications are principal considerations that must be balanced  
3 with other relevant factors, including the factors described by  
4 this section [~~the most important considerations~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

12                   (1) cost of acquisition;

13                   (2) cost of personnel;

14                   (3) cost of operation; and

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

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

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

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

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

27           SECTION 7. Section 2155.089(c), Government Code, is amended

1 to read as follows:

2 (c) This section does not apply to:

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

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

9 (3) a contract entered into by:

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

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

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

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

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

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

24 (1) instructions for ensuring that:

25 (A) health and human services agency employees  
26 who are involved in implementing a specific procurement are also  
27 involved in evaluating and scoring the responses submitted to the

1 solicitation for the procurement;

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

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

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

11 (3) procedures for:

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

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

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

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

23 (a) In consultation with the attorney general, the  
24 Department of Information Resources, business and industry  
25 representatives, and the state auditor, the comptroller shall  
26 develop or periodically update a contract management guide for use  
27 by state agencies. Participation by the state auditor under this

1 subsection is subject to approval by the legislative audit  
2 committee for inclusion in the audit plan under Section 321.013(c).

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

5 (1) develop and negotiate a contract;

6 (2) select a contractor; ~~and~~

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

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

12 (5) ensure that:

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

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

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

20 (7) establish procedures for:

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

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

27 (C) ensuring an appropriate number of interested



1 vendors are granted access to a pre-bid, pre-offer, or pre-proposal  
2 conference; and

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

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

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

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

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

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

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

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

1 by this Act.

2 (b) Not later than October 1, 2021, each state agency shall  
3 adopt the procedure and requirements as provided by Section  
4 659.2552, Government Code, as added by this Act.

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

15 (b) Notwithstanding Section 656.052, Government Code, as  
16 amended by this Act, or Section 2262.058, Government Code, as added  
17 by this Act, a state agency employee is not required to comply with  
18 the training requirements under those sections before March 1,  
19 2022.

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

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