

By: Capriglione

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

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 shall establish a procedure and requirements for
18 determining the eligibility for a salary increase of an agency
19 employee who acts as an evaluator of an agency procurement through a
20 decision, approval, disapproval, recommendation, advice,
21 investigation, or similar action from the issuance of a
22 solicitation through the award of the contract.

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

26 (b) In determining the best value for the state, the
27 purchase price and whether the goods or services meet

1 specifications are principal considerations that must be balanced
2 with other relevant factors, including the factors described by
3 this section [~~the most important considerations~~].

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

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

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

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

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

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

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

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

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

27 (9) the encouragement of continued participation by

1 quality contractors; and

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

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

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

11 (1) cost of acquisition;

12 (2) cost of personnel;

13 (3) cost of operation; and

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

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

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

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

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

26 SECTION 7. Section 2155.144, Government Code, is amended by
27 adding Subsections (e) and (j-5) to read as follows:

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

5 (j-5) The contract management handbook published under
6 Subsection (j) must include instructions for ensuring that health
7 and human services agency employees who are involved in
8 implementing a specific procurement are also involved in evaluating
9 and scoring the responses submitted to the solicitation for the
10 procurement.

11 SECTION 8. Sections 2262.051(a) and (c), Government Code,
12 are amended to read as follows:

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

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

- 22 (1) develop and negotiate a contract;
23 (2) select a contractor; ~~and~~
24 (3) monitor contractor and subcontractor performance
25 under a contract;
26 (4) appoint as evaluators for procurements agency
27 employees who serve in agency divisions overseeing the

1 implementation of the procurements; and

2 (5) ensure agency employees involved in the
3 implementation of a specific procurement are also involved in the
4 evaluation of vendor responses submitted to the solicitation for
5 the procurement.

6 SECTION 9. Subchapter B, Chapter 2262, Government Code, is
7 amended by adding Section 2262.058 to read as follows:

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

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

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

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

18 (B) a written statement certified by the contract
19 manager that the contract manager read and understands all
20 submitted vendor proposals or other expressions of interest.

21 SECTION 10. (a) As soon as practicable after the effective
22 date of this Act, the comptroller of public accounts shall adopt the
23 rules and update the contract management handbook and contract
24 management guide as necessary to implement the changes in law made
25 by this Act.

26 (b) Not later than October 1, 2021, each state agency shall
27 adopt the procedure and requirements as provided by Section

1 659.2552, Government Code, as added by this Act.

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

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

17 SECTION 12. If before implementing any provision of this
18 Act a state agency determines that a waiver or authorization from a
19 federal agency is necessary for implementation of that provision,
20 the agency affected by the provision shall request the waiver or
21 authorization and may delay implementing that provision until the
22 waiver or authorization is granted.

23 SECTION 13. This Act takes effect September 1, 2021.