

Amend HB 15 (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill as appropriate:

SECTION _____. Section 2102.005, Government Code, is amended to read as follows:

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

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

(2) periodic audits of:

(A) the agency's major systems and controls, including:

(i) ~~[(A)]~~ accounting systems and controls;

(ii) ~~[(B)]~~ administrative systems and controls; ~~and~~

(iii) ~~[(C)]~~ electronic data processing systems and controls; and

(iv) contract management processes and controls; and

(B) one or more of the agency's contracts with high-risk factors.

SECTION _____. Section 2113.102(a), Government Code, is amended to read as follows:

(a) A state agency may not use appropriated money to contract with a person to audit ~~[the financial records or accounts of]~~ the agency except:

(1) as provided by ~~+~~

~~[(1)]~~ Subsections (b), (c), and (d); and

(2) in accordance with Section 321.020 ~~[Chapter 466, pertaining to the state lottery,~~

~~[(3)] Chapter 2306, pertaining to the Texas Department of Housing and Community Affairs, and~~

~~[(4)] Chapter 361, Transportation Code, pertaining to the Texas Turnpike Authority division of the Texas Department of Transportation]~~.

SECTION _____. Section 2162.103(a), Government Code, is

amended to read as follows:

(a) In comparing the cost of providing a service, the council shall consider the:

(1) cost of supervising the work of a private contractor; ~~and~~

(2) cost of a state agency's performance of the service, including:

(A) the costs of the comptroller, attorney general, and other support agencies; and

(B) other indirect costs related to the agency's performance of the service;

(3) installation costs and any other initial costs associated with a contract with a private contractor;

(4) other costs associated with the transition to using a private contractor's services; and

(5) cost savings to the state if a private contractor were awarded the contract.

SECTION _____. Sections 2261.001(a) and (c), Government Code, are amended to read as follows:

(a) This chapter applies only to each procurement of goods or services made by a state agency that is neither made by the comptroller nor made under purchasing authority delegated to the agency by or under Section 51.9335 or 73.115, Education Code, or Section ~~[2155.131 or]~~ 2155.132.

(c) The comptroller on request shall determine whether a procurement or type of procurement:

(1) is made under purchasing authority delegated to an agency by or under Section ~~[2155.131 or]~~ 2155.132; or

(2) is made under some other source of purchasing authority.

SECTION _____. Section 2261.002, Government Code, is amended to read as follows:

Sec. 2261.002. DEFINITIONS. In this chapter:

(1) "Contract" includes an agreement or other written expression of terms of agreement, including an amendment, a modification, a renewal, or an extension, for the purchase of goods or services that is entered into or paid for, wholly or partly, by a

state agency during a fiscal year and a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

(2) "Contract deliverable" means a unit or increment of work required by a contract, including goods, services, reports, or documents.

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties for the state agency.

(4) "Executive director" means the administrative head of a state agency.

(5) "General counsel" means the general counsel of a state agency.

(6) "Major contract" means a contract, including a renewal of a contract, that has a value of at least \$1 million. The term includes a service contract.

(7) "State agency" has the meaning assigned by Section 2151.002.

SECTION _____. Subchapter A, Chapter 2261, Government Code, is amended by adding Sections 2261.004, 2261.005, 2261.006, 2261.007, 2261.008, and 2261.009 to read as follows:

Sec. 2261.004. STATE AGENCY REPOSITORY AND RECORDS.

(a) Each state agency shall maintain in a central location all contracts for that agency.

(b) Each state agency shall maintain a comprehensive list of all contracts for that agency.

(c) In this subsection, "contract" includes a sole source contract. Each state agency shall maintain accurate records of all essential information relating to agency contracts, including information on:

(1) a contract delay or changes to a contract in which total expenditures under the contract increase by more than 20 percent from the original contract amount; and

(2) cost overruns, including a written explanation of

why expenditures have increased under a contract.

(d) Notwithstanding Section 441.185, contracts and other related information required to be maintained under this section by a state agency must be retained for the duration of the contract.

Sec. 2261.005. CONTRACT REPORTING. (a) In this section, "contract" includes a construction contract.

(b) The following sections prescribe reporting requirements for certain contracts:

- (1) Section 322.020;
- (2) Section 2054.008;
- (3) Section 2166.2551;
- (4) Section 2254.006;
- (5) Section 2254.028; and
- (6) Section 2254.0301.

Sec. 2261.006. PROFESSIONAL SERVICES. A state agency shall procure professional services in accordance with Subchapter A, Chapter 2254.

Sec. 2261.007. CONTRACT GUIDELINES AND PROCEDURES. Each state agency shall establish formal guidelines and procedures for all employees involved in the contracting process:

- (1) regarding who may approve a contract for the agency;
- (2) for contract planning and solicitation;
- (3) for contract negotiations;
- (4) for contract management; and
- (5) for contract oversight.

Sec. 2261.008. INTERAGENCY AGREEMENTS AND CONTRACTS. An interagency agreement or contract of a state agency is governed by Chapter 771.

Sec. 2261.009. INTERLOCAL CONTRACTS. An interlocal contract to which a state agency is a party is governed by Chapter 791.

SECTION _____. Subchapter B, Chapter 2261, Government Code, is amended by adding Section 2261.054 to read as follows:

Sec. 2261.054. BEST VALUE STANDARD FOR CONTRACTING FOR GOODS AND SERVICES. In determining the best value for the state, the purchase price and whether the goods or services meet

specifications are the most important considerations. A state agency may consider, subject to Sections 2155.074(c) and 2155.075, other relevant factors, including:

- (1) installation costs;
- (2) life cycle costs;
- (3) the quality and reliability of the goods and services;
- (4) 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 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 on the state or a subdivision of the state, including potential tax revenue and employment; and
- (9) other factors relevant to determining the best value for the state in the context of a particular purchase.

SECTION _____. The heading to Subchapter C, Chapter 2261, Government Code, is amended to read as follows:

SUBCHAPTER C. CONTRACT FORMATION AND PROVISIONS

SECTION _____. Subchapter C, Chapter 2261, Government Code, is amended by adding Sections 2261.103, 2261.104, 2261.105, 2261.106, and 2261.107 to read as follows:

Sec. 2261.103. USE OF UNIFORM FORMS. A state agency may use any forms developed by the comptroller as templates, guides, or samples for contracts entered into by the agency.

Sec. 2261.104. ESSENTIAL CONTRACT PROVISIONS. (a) The following are required provisions in each contract to which the provisions are applicable, other than a grant:

- (1) legal authority;
- (2) statement of work;
- (3) indemnification or damage claims;
- (4) consideration;

- (5) specifications;
- (6) funding out clause;
- (7) antitrust;
- (8) payment;
- (9) dispute resolution;
- (10) term of contract;
- (11) confidential information;
- (12) abandonment or default;
- (13) right to audit;
- (14) force majeure;
- (15) independent contractor; and
- (16) termination.

(b) If a state agency determines that the circumstances of a proposed contract require more protection for the state than the provisions in Subsection (a) provide, the agency shall include a provision in the contract providing for that protection.

Sec. 2261.105. CONTRACT PROVISIONS REQUIRED BY STATE LAW.

(a) In any contract for the acquisition of goods or services to which a state agency is a party, a provision required by other applicable law to be included in the contract is considered to be a part of the executed contract without regard to whether:

- (1) the provision appears on the face of the contract;

or

(2) the contract includes any provision to the contrary.

(b) If a state agency determines that the circumstances of a proposed contract require more protection for the state than the provisions described by Subsection (a) provide, the agency shall include a provision in the contract providing for that protection.

Sec. 2261.106. CONTRACT RENEWAL. A state agency shall establish a standardized process for renewing all contracts of the agency.

Sec. 2261.107. CONTRACT DURATION. (a) A state agency:

(1) must establish a reasonable term for a contract before solicitation of the contract; and

(2) shall make an effort to keep the maximum length of a contract to four years without reissuing a competitive

solicitation, including any contract renewals or extensions.

(b) A contract term established under Subsection (a)(1) must be included in a solicitation document.

(c) A state agency may not enter into a contract that has an indefinite term.

SECTION _____. Subchapter D, Chapter 2261, Government Code, is amended by adding Section 2261.152 to read as follows:

Sec. 2261.152. CONTRACT PAYMENT. (a) For each contract for goods or services that is subject to this chapter, a state agency shall require that payment under the contract be linked to clear and measurable achievements, such as length of time of work, contract deliverables, or performance measures.

(b) A state agency may not make a final payment on a contract for goods or services that is subject to this chapter unless the agency verifies that all contract deliverables have been received.

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

SUBCHAPTER E. CONTRACT MONITORING AND [CONTRACTOR] OVERSIGHT

SECTION _____. Section 2261.202, Government Code, is amended to read as follows:

Sec. 2261.202. CONTRACT MONITORING RESPONSIBILITIES. (a) As one of its contract management policies, each state agency that makes procurements to which this chapter applies shall establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of agency staff, including internal audit staff and other inspection, investigative, or audit staff.

(b) The policy must establish clear lines of accountability, staff roles and responsibilities, and decision-making authority for program staff, contract management staff, and executive management staff.

SECTION _____. Subchapter E, Chapter 2261, Government Code, is amended by adding Sections 2261.204, 2261.205, 2261.206, 2261.207, 2261.208, 2261.209, 2261.210, 2261.211, 2261.212, and 2261.213 to read as follows:

Sec. 2261.204. INFORMATION ON CONTRACTOR PERFORMANCE. After a contract with a value of \$25,000 or more is completed or

otherwise terminated, each state agency shall review the contractor's performance under the contract and report to the comptroller on the results of the review using forms made available to the state agency.

Sec. 2261.205. CONTRACTING STAFF. (a) Each state agency that enters into contracts other than interagency contracts shall establish a career ladder program for contract management in the agency.

(b) An employee hired as a contract manager may participate in procurement planning, contract solicitation, contract formation, price establishment, and other contract activities.

(c) Each state agency shall determine, in consultation with the state auditor, the amount and significance of contract management duties sufficient for an employee to be considered a contract manager, program staff, or a contract specialist.

Sec. 2261.206. APPROVAL OF CONTRACTS. (a) Each state agency shall adopt a policy to establish a monetary threshold above which agency contracts and amendments to or extensions of agency contracts require written authorization by the agency executive director.

(b) Each state agency shall annually report to the comptroller a list of persons authorized to approve contracts at the agency. The list must include each person's name, position, and supervisory responsibility, if any.

Sec. 2261.207. NEGOTIATION OF MAJOR CONTRACT BY SINGLE EMPLOYEE PROHIBITED. A state agency may not negotiate a major contract with only one employee engaging in the negotiation.

Sec. 2261.208. CONTRACT REVIEW; REPORTING. (a) A contractor's performance must be periodically reviewed throughout the term of a contract.

(b) A state agency shall ensure ongoing communication between executive management staff, contract management staff, and program staff of the results of the reviews performed under Subsection (a) with specific attention to contracts that are:

(1) anticipated to be completed later than originally estimated; or

(2) expected to cost more than the amount that was

originally budgeted.

(c) To implement this section, a state agency shall create a system for agency-wide reporting on the status of, activity on, and contractor performance for each contract.

Sec. 2261.209. CONTRACT ADMINISTRATION TEAM. (a) This section applies to a state agency that has a contract with a value of \$5 million or more.

(b) A state agency to which this section applies shall create a contract administration team to:

(1) ensure and verify the performance of agency contracts with a value of \$5 million or more; and

(2) maintain within the agency contract oversight expertise to effectively manage contractors.

Sec. 2261.210. CONTRACT MONITORING PROCESS. A state agency shall establish and implement a monitoring process for agency contracts that includes:

(1) identifying the appropriate criteria for use in measuring contract performance;

(2) creating a schedule for monitoring contract performance;

(3) comparing work accomplished to work planned to be accomplished;

(4) analyzing contract performance variances; and

(5) addressing contracting performance problems with corrective action.

Sec. 2261.211. RISK MANAGEMENT PROCESS. (a) A state agency shall establish and implement a:

(1) process for evaluating the potential risk to the state, such as product risk, process risk, financial risk, and schedule risk, if contract implementation or performance problems occur, including a process for:

(A) risk identification or identifying items that may prevent the agency from achieving contracting goals or objectives;

(B) risk analysis or assessing the impact and likelihood of a risk;

(C) risk evaluation or developing strategies or

approaches to address risks that have been identified and analyzed;

(D) risk treatment or the managerial approach to risk;

(E) risk reduction or planning and performing actions to mitigate risk due to a managerial decision to reduce risk;

(F) contingency planning or developing plans for corrective action to be taken if a potential risk occurs; and

(G) risk monitoring or tracking the implementation of a risk reduction plan until the risk is sufficiently mitigated; and

(2) procedure for corrective action to be used when contract implementation or performance problems occur.

(b) In creating the process required by Subsection (a)(1), the state agency shall consider:

(1) the complexity and subject matter of agency contracts;

(2) the dollar value of agency contracts, including contract extensions and amendments, and whether the procurement will result in a major contract;

(3) the anticipated payment methodology;

(4) the experience of agency staff with the type of procurement;

(5) whether the results of the procurement will impact the public or only impact the agency;

(6) time constraints or the expected duration of the procurement; and

(7) the type, availability, and experience of staff resources required to implement the objectives of the procurement.

(c) Based on the assessed risk of a state agency contract, the agency shall, for each contract:

(1) determine the appropriate frequency and method of contract monitoring;

(2) allocate contract monitoring resources; and

(3) develop a contract auditing plan.

Sec. 2261.212. CONTRACT COMMUNICATION. (a) A state agency shall maintain effective communication procedures regarding

contract performance.

(b) The chief financial officer of a state agency, or an individual designated by the executive director with similar contract administration duties and responsibilities, shall report at least monthly to the executive director on the status of agency contracts. The report must include a clear indication of:

(1) any contract cost overruns or contracts that are performing poorly; and

(2) contracts that may cause the state to delay or default on service delivery.

Sec. 2261.213. REPORT ON CERTAIN PURCHASES. (a) Not later than December 1 of each year, the comptroller shall publish a report on the number and dollar value of sole source and emergency purchases made in the previous fiscal year.

(b) Each state agency shall timely provide to the comptroller the information the comptroller requires for the purpose of creating the report under Subsection (a) in the manner and form specified by the comptroller.

(c) The comptroller shall establish requirements for the provision of information under Subsection (b) in consultation with the Contract Management and Oversight Team created under Subchapter E, Chapter 2262, the Health and Human Services Commission, and the Texas Department of Transportation.

(d) The comptroller may not require a state agency to provide information under Subsection (b) on a contract related to health and human services if:

(1) the value of the contract cannot be determined at the time of execution of the contract; and

(2) any qualified vendor is eligible for the contract.

SECTION _____. Chapter 2261, Government Code, is amended by adding Subchapters F, G, H, and I to read as follows:

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2261.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE ORDERS. (a) This section does not apply to a contract amendment, extension, or change order that does not change the cost or terms of the contract.

(b) An extension of or amendment to a state agency contract,

including a change order, is subject to the same agency approval processes as the original contract.

(c) A state agency may not extend or amend a contract unless the agency complies with the same agency approval processes for the extension or amendment as required for the original contract and the agency states in writing why the extension or amendment is necessary or advantageous to the state.

(d) This section does not affect whether a state agency is required to undertake a new solicitation process in the manner required for a new contract in order to extend or amend a contract.

(e) For state agency contracts valued in excess of \$1 million, the agency executive director must authorize a contract amendment in writing.

Sec. 2261.252. LARGE CHANGE IN CONTRACT VALUE; COST OVERRUNS. (a) If a proposed contract amendment or extension changes the monetary value of a major contract by at least 20 percent or \$1 million, the state agency must submit the amendment or extension for review to the agency's executive director before the agency amends or extends the contract.

(b) Subsection (a) does not apply to a proposed contract amendment required by a state or federal statute.

(c) The executive director shall be timely notified of any unanticipated contract cost overrun.

Sec. 2261.253. CERTAIN CONTRACT EXTENSIONS AND RENEWALS. This subchapter does not apply to contract extensions or renewals that are specifically established as a component of the original procurement.

SUBCHAPTER G. TRAINING

Sec. 2261.301. TRAINING FOR CONTRACT MANAGERS. (a) A state agency shall require a contract manager to complete the training program for contract managers developed and administered by the comptroller.

(b) A state agency shall maintain a list of contract managers who have completed the training program for contract managers.

(c) A state agency may develop qualified contract manager training to supplement the training required under this section.

Sec. 2261.302. TRAINING FOR GOVERNING BODIES. All members of the governing body of a state agency shall complete at least one abbreviated course of the training program for contract managers developed and administered by the comptroller. This section does not apply to a state agency that does not enter into any contracts.

SUBCHAPTER H. CONTRACT PLANNING AND SOLICITATION

Sec. 2261.351. CONTRACT PLANNING. Before a state agency solicits a contract, the agency must:

(1) identify, justify, and document the need for the good or service;

(2) identify general contracting objectives, assumptions, and constraints;

(3) consider alternatives to soliciting the contract;
and

(4) determine the preferred method of delivery for the good or service.

Sec. 2261.352. SOLICITATION OF CONTRACT. (a) A solicitation for a contract must include the following:

(1) a description of the work;

(2) a specific and measurable standard of performance;

(3) a list of the test conditions, methods, or procedures for verifying that the contract deliverable meets the standard;

(4) a method or process to monitor and ensure quality in the contract deliverable;

(5) an acceptance process for each contract deliverable that is expected to be delivered;

(6) a compensation structure that is consistent with the type and value of work performed; and

(7) a remedy, if appropriate, for failure to meet contract deliverables.

(b) In preparing a contract solicitation, a state agency must include in the requirements for the contract deliverables:

(1) the quality level of the good or service;

(2) the amount of completion that is required;

(3) the suitability of the good or service for the work to be done for the agency; and

(4) a defined and documented method of evaluation to be used in making the award and in determining the best value bid for the procurement.

SUBCHAPTER I. CONTRACT CLOSING

Sec. 2261.401. CLOSING PROCEDURE. A state agency shall create and follow a procedure for contract closing that includes procedures for:

(1) verification that all:

(A) required goods or services have been delivered or performed, inspected, and accepted; and

(B) existing options have been exercised or have expired;

(2) issuance of a contract completion notice by one of the parties;

(3) acquisition of all required forms, reports, and clearances;

(4) verification that other applicable terms have been met;

(5) verification that there are no outstanding claims or disputes; and

(6) final payment.

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

(c) The guide must provide required and recommended contracting processes and procedures and information regarding the primary duties of ~~[a]~~ contract management ~~[manager]~~, including how to:

(1) develop and negotiate a contract;

(2) fairly and objectively select a contractor; ~~and~~

(3) monitor contractor and subcontractor performance under a contract and ensure compliance with provisions in a contract that hold the contractor accountable for performance results;

(4) develop an accurate and comprehensive statement of work and conform contract documents to the statement of work;

(5) evaluate and ensure compliance with contract deliverables and performance metrics and any associated remedies

and incentives;

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

(7) communicate any serious issue or risk that is identified with a contract in a timely manner to the agency's governing body or the single state officer who governs the agency;

(8) create a risk management process under Section 2261.211;

(9) build and maintain a working relationship with the contractor, including instruction on communication and timely management of problems;

(10) create a procedure for selecting and applying a preferred dispute resolution method;

(11) implement an escalation process to address contract disagreements;

(12) evaluate and approve requests for payments that are consistent with the contract; and

(13) develop a process for contract closure and performance evaluation of a contractor under a contract.

(d) The guide must include model provisions for state agency contracts. The guide must:

(1) distinguish between essential provisions that a state agency must include in a contract to protect the interests of this state and recommended provisions that a state agency may include in a contract;

(2) recognize the unique contracting needs of an individual state agency or program and provide procedures for documenting agency decisions that do not follow required contracting processes and procedures but are ~~[sufficient flexibility to accommodate those needs,~~] consistent with protecting the interests of this state; and

(3) include maximum contract periods under which a new competitive solicitation is not necessary ~~[, and~~

~~[(4) include the model contract management process developed under Section 2262.104 and recommendations on the appropriate use of the model].~~

SECTION _____. Section 2262.053(d), Government Code, is

amended to read as follows:

(d) The comptroller shall administer training under this section and may assess a fee for the training in an amount sufficient to recover the comptroller's costs under this section.

SECTION _____. Except as otherwise provided by this Act, this Act applies only in relation to a contract:

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

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

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