

By: Nelson, et al.  
(Price, Cook, Raymond, Kuempel)

S.B. No. 20

Substitute the following for S.B. No. 20:

By: Cook

C.S.S.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to state agency contracting; authorizing fees; creating an offense.

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

SECTION 1. Section 321.013, Government Code, is amended by adding Subsections (k) and (l) to read as follows:

(k) In devising the audit plan under Subsection (c), the State Auditor shall consider the performance of audits on contracts entered into by the Health and Human Services Commission that exceed \$100 million in annual value, including a contract between the commission and a managed care organization. The State Auditor shall collaborate with the financial managers in the Medicaid/CHIP Division of the commission in performing an audit described by this subsection. An audit described by this subsection:

(1) may be limited in scope to target an area of the contract that the State Auditor determines poses the highest financial risk to this state; and

(2) must determine whether the entity contracting with the commission has spent state money in accordance with the purposes authorized in the contract.

(l) The State Auditor may contract with a private auditor to audit a contract under Subsection (k).

SECTION 2. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.03057 to read as follows:

1 Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY.

2 (a) The comptroller, in cooperation with the governor's budget and  
3 policy staff, shall conduct a study examining the feasibility and  
4 practicality of consolidating state purchasing functions into  
5 fewer state agencies or one state agency. The study must examine  
6 the cost savings to this state that may be achieved through:

7 (1) abolishing offices or departments of state  
8 agencies that have a dedicated office or department for purchasing;  
9 and

10 (2) consolidating or reducing the number of vendors  
11 authorized to contract with this state to allow this state to better  
12 leverage its purchasing power.

13 (b) The comptroller shall prepare and deliver to the  
14 governor, the lieutenant governor, and each member of the  
15 legislature a report on the findings of the study conducted under  
16 Subsection (a), including:

17 (1) a detailed projection of expected savings or costs  
18 to this state in consolidating state purchasing;

19 (2) a report on the process for the legislature or the  
20 executive branch to implement the consolidation of state  
21 purchasing;

22 (3) a list of state agencies, including dedicated  
23 offices or departments in those agencies, with purchasing  
24 responsibilities; and

25 (4) the total cost to this state of the purchasing  
26 responsibilities for each state agency, including the dedicated  
27 office or department in the agency with purchasing responsibility.

1       (c) The comptroller shall prepare, deliver, and post on the  
2 comptroller's Internet website the report required by this section  
3 not later than December 31, 2016.

4       (d) The comptroller may contract with a public or private  
5 entity to conduct the study required by this section.

6       (e) This section expires January 1, 2018.

7       SECTION 3. Subchapter L, Chapter 441, Government Code, is  
8 amended by adding Section 441.1855 to read as follows:

9       Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS  
10 BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a  
11 state agency:

12           (1) shall retain in its records each contract entered  
13 into by the state agency and all contract solicitation documents  
14 related to the contract; and

15           (2) may destroy the contract and documents only after  
16 the seventh anniversary of the date:

17                   (A) the contract is completed or expires; or

18                   (B) all issues that arise from any litigation,  
19 claim, negotiation, audit, open records request, administrative  
20 review, or other action involving the contract or documents are  
21 resolved.

22       SECTION 4. Subchapter C, Chapter 572, Government Code, is  
23 amended by adding Section 572.069 to read as follows:

24       Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER  
25 OR EMPLOYEE RESTRICTED; CRIMINAL PENALTY. (a) A former state  
26 officer or employee of a state agency who during the period of state  
27 service or employment participated on behalf of a state agency as an

1 evaluation team member or other decision maker in determining the  
2 person to whom a contract should be awarded during the procurement  
3 or contract negotiation may not accept employment from that person  
4 before the second anniversary of the date the officer's or  
5 employee's service or employment with the state agency ceased.

6 (b) An individual commits an offense if the individual  
7 violates this section. An offense under this subsection is a Class  
8 A misdemeanor.

9 SECTION 5. Subchapter C, Chapter 2054, Government Code, is  
10 amended by adding Section 2054.067 to read as follows:

11 Sec. 2054.067. POSTING OF CERTAIN DOCUMENTS RELATING TO  
12 CONTRACT SOLICITATIONS. (a) The department shall post all  
13 solicitation documents related to a contract of the department,  
14 including contracts under Chapter 2157, to the centralized  
15 accounting and payroll system authorized under Sections [2101.035](#)  
16 and [2101.036](#), or any successor system used to implement the  
17 enterprise resource planning component of the uniform statewide  
18 accounting project.

19 (b) The documents posted under Subsection (a) must include  
20 documents showing the criteria by which the department evaluated  
21 each vendor responding to the contract solicitation and, if  
22 applicable, an explanation of why the vendor was selected by the  
23 department under Section [2157.068](#)(b).

24 SECTION 6. Section [2101.001](#)(1), Government Code, is amended  
25 to read as follows:

26 (1) "Enterprise resource planning" includes the  
27 administration of a state agency's:

- 1 (A) general ledger;
- 2 (B) accounts payable;
- 3 (C) accounts receivable;
- 4 (D) budgeting;
- 5 (E) inventory;
- 6 (F) asset management;
- 7 (G) billing;
- 8 (H) payroll;
- 9 (I) projects;
- 10 (J) grants;
- 11 (K) human resources, including administration of
- 12 performance measures, time spent on tasks, and other personnel and
- 13 labor issues; and
- 14 (L) purchasing, including solicitations and
- 15 contracting.

16 SECTION 7. Section 2101.035, Government Code, is amended by  
 17 adding Subsection (i) to read as follows:

18 (i) State agencies shall report contract and purchasing  
 19 information in the uniform manner required by the comptroller.

20 SECTION 8. Section 2101.036, Government Code, is amended by  
 21 adding Subsection (e) to read as follows:

22 (e) Notwithstanding Subsection (d), a state agency in the  
 23 legislative branch may elect to participate in the enterprise  
 24 resource planning system developed under this section.

25 SECTION 9. Subchapter C, Chapter 2101, Government Code, is  
 26 amended by adding Section 2101.041 to read as follows:

27 Sec. 2101.041. STATE AGENCY REPORTING OF CONTRACTING

1 INFORMATION. (a) The comptroller by rule shall determine the  
2 contracting information that state agencies must report or provide  
3 using the centralized accounting and payroll system, or any  
4 successor system used to implement the enterprise resource planning  
5 component of the uniform statewide accounting project, developed  
6 under Sections 2101.035 and 2101.036.

7 (b) In making the determination required by this section,  
8 the comptroller shall consider requiring a state agency to report  
9 or provide:

10 (1) a brief summary of each contract that is quickly  
11 and easily searchable, including the contract's purpose, timeline,  
12 and deliverables;

13 (2) contract planning and solicitation documents;

14 (3) the criteria used to determine the vendor awarded  
15 the contract;

16 (4) if the contract was awarded based on best value to  
17 the state:

18 (A) a list of the factors considered in  
19 determining best value with the weight given each factor; and

20 (B) a statement regarding how the vendor awarded  
21 the contract provides the best value to the state in relation to  
22 other vendors who bid or otherwise responded to the contract  
23 solicitation;

24 (5) any statements of work and work orders prepared  
25 for or under the contract;

26 (6) the proposed budget for the contract;

27 (7) any conflict of interest documents signed by state

1 agency purchasing personnel participating in the planning,  
2 soliciting, or monitoring of the contract; and

3 (8) criteria used or to be used by the state agency in  
4 monitoring the contract and vendor performance under the contract.

5 SECTION 10. Subchapter B, Chapter 2155, Government Code, is  
6 amended by adding Section 2155.0755 to read as follows:

7 Sec. 2155.0755. VERIFICATION OF USE OF BEST VALUE STANDARD.

8 (a) The contract manager or procurement director of each state  
9 agency shall:

10 (1) approve each state agency contract for which the  
11 agency is required to purchase goods or services using the best  
12 value standard;

13 (2) ensure that, for each contract, the agency  
14 documents the best value standard used for the contract; and

15 (3) acknowledge in writing that the agency complied  
16 with the agency's and comptroller's contract management guide in  
17 the purchase.

18 (b) For each purchase of goods or services for which a state  
19 agency is required to use the best value standard, the comptroller  
20 shall ensure that the agency includes in the vendor performance  
21 tracking system established under Section 2262.055 information on  
22 whether the vendor satisfied that standard.

23 SECTION 11. Section 2155.077, Government Code, is amended  
24 by amending Subsections (a) and (b) and adding Subsection (a-2) to  
25 read as follows:

26 (a) The commission may bar a vendor from participating in  
27 state contracts that are subject to this subtitle, including

1 contracts for which purchasing authority is delegated to a state  
2 agency, for:

3 (1) substandard performance under a contract with the  
4 state or a state agency;

5 (2) material misrepresentations in a bid or proposal  
6 to the state or a state agency or during the course of performing a  
7 contract with the state or a state agency;

8 (3) fraud; [~~or~~]

9 (4) breaching a contract with the state or a state  
10 agency; or

11 (5) repeated unfavorable performance reviews under  
12 Section 2155.089 or receipt of an unfavorable classification given  
13 by the comptroller under Section 2262.055.

14 (a-2) The comptroller shall bar a vendor from participating  
15 in state contracts that are subject to this subtitle, including  
16 contracts for which purchasing authority is delegated to a state  
17 agency, if more than two contracts between the vendor and the state  
18 have been terminated by the state.

19 (b) Except as provided by Subsection (d), the commission  
20 shall bar a vendor from participating in state contracts under  
21 Subsection (a) or (a-2) for a period that is commensurate with the  
22 seriousness of the vendor's action and the damage to the state's  
23 interests.

24 SECTION 12. Section 2155.078, Government Code, is amended  
25 by amending Subsections (a) and (b) and adding Subsection (a-1) to  
26 read as follows:

27 (a) The commission shall establish and administer a system



1 of training, continuing education, and certification for state  
2 agency purchasing personnel. The training and continuing education  
3 for state agency purchasing personnel must include ethics training.  
4 The commission may establish and offer appropriate training to  
5 vendors on a cost recovery basis. The commission may adopt rules to  
6 administer this section, including rules relating to monitoring a  
7 certified purchaser's compliance with the continuing education  
8 requirements of this section.

9 (a-1) The training, continuing education, and certification  
10 required under Subsection (a) must include:

11 (1) training on the selection of an appropriate  
12 procurement method by project type; and

13 (2) training conducted by the Department of  
14 Information Resources on purchasing technologies.

15 (b) Notwithstanding [~~Except as provided by~~] Subsection (n),  
16 all state agency purchasing personnel, including agencies exempted  
17 from the purchasing authority of the commission, must receive the  
18 training and continuing education to the extent required by rule of  
19 the commission. The training and continuing education must include  
20 ethics training. A state agency employee who is required to receive  
21 the training may not participate in purchases by the employing  
22 agency unless the employee has received the required training or  
23 received equivalent training from a national association  
24 recognized by the commission. The equivalent training may count,  
25 as provided by Subsection (k), toward the continuing education  
26 requirements.

27 SECTION 13. Subchapter B, Chapter 2155, Government Code, is

1 amended by adding Section 2155.089 to read as follows:

2 Sec. 2155.089. REPORTING VENDOR PERFORMANCE. (a) After a  
3 contract is completed or otherwise terminated, each state agency  
4 shall review the vendor's performance under the contract.

5 (b) The state agency shall report to the comptroller, using  
6 the tracking system established by Section 2262.055, on the results  
7 of the review regarding a vendor's performance under a contract.

8 (c) This section does not apply to:

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

11 (2) a contract of the Employees Retirement System of  
12 Texas or the Teacher Retirement System of Texas except for a  
13 contract with a nongovernmental entity for claims administration of  
14 a group health benefit plan under Subtitle H, Title 8, Insurance  
15 Code.

16 SECTION 14. Subchapter I, Chapter 2155, Government Code, is  
17 amended by adding Section 2155.5035 to read as follows:

18 Sec. 2155.5035. USE OF SCHEDULE BY STATE AGENCY. (a) A  
19 state agency purchasing goods or services under a contract listed  
20 on the schedule:

21 (1) for a purchase with a value of \$50,000 or less, may  
22 directly award a contract to a vendor included on the schedule  
23 without submission of a request for pricing to other vendors on the  
24 list;

25 (2) for a purchase with a value of more than \$50,000  
26 but not more than \$150,000, shall submit a request for pricing to at  
27 least three vendors included on the schedule in the category to

1 which the purchase relates or to all vendors in the category for a  
2 category with fewer than three vendors;

3 (3) for a purchase with a value of more than \$150,000  
4 but not more than \$1 million, shall submit a request for pricing to  
5 at least six vendors included on the schedule in the category to  
6 which the purchase relates or all vendors in the category for a  
7 category with fewer than six vendors; and

8 (4) may not purchase under the contract services in a  
9 state fiscal year that have a total value exceeding \$1 million.

10 (b) The price listed for a good or service under a multiple  
11 award contract is a maximum price. A state agency may negotiate a  
12 lower price for goods or services under a contract listed on a  
13 schedule developed under this chapter.

14 SECTION 15. Section 2156.181(a), Government Code, is  
15 amended to read as follows:

16 (a) The commission may enter into one or more compacts,  
17 interagency agreements, or cooperative purchasing agreements  
18 directly with one or more state governments, agencies of other  
19 states, or other governmental entities or may participate in,  
20 sponsor, or administer a cooperative purchasing agreement through  
21 an entity that facilitates those agreements for the purchase of  
22 goods or services if the commission determines that the [entering  
23 into an] agreement would be in the best interest of the state.

24 SECTION 16. Subchapter B, Chapter 2157, Government Code, is  
25 amended by adding Section 2157.0685 to read as follows:

26 Sec. 2157.0685. CONTRACT REQUIREMENTS FOR CERTAIN  
27 SERVICES. (a) In this section, "statement of work" means a

1 document that states the requirements for a contract, including  
2 deliverables, performance specifications, and other requirements,  
3 specific to the vendor under that contract that are not specified in  
4 a contract awarded by the department under Section 2157.068 for  
5 contracts more than \$50,000.

6 (b) For a contract awarded by the department under Section  
7 2157.068 that requires a state agency to develop and execute a  
8 statement of work to initiate services under the contract, the  
9 state agency must:

10 (1) consult with the department before submission of  
11 the statement of work to a vendor; and

12 (2) post each statement of work entered into by the  
13 agency on the agency's Internet website in the manner required by  
14 department rule.

15 (c) A statement of work executed by a state agency under a  
16 contract awarded by the department under Section 2157.068 is not  
17 valid and money may not be paid to the vendor under the terms of the  
18 statement of work if the department:

19 (1) has not reviewed the statement of work; or

20 (2) disapproves the statement of work before the  
21 contract solicitation.

22 SECTION 17. Section 2261.001(a), Government Code, is  
23 amended to read as follows:

24 (a) This chapter, other than Subchapter F, applies only to  
25 each procurement of goods or services made by a state agency that is  
26 neither made by the comptroller nor made under purchasing authority  
27 delegated to the agency by or under Section 51.9335 or 73.115,

1 Education Code, or Section 2155.131 or 2155.132.

2 SECTION 18. Chapter 2261, Government Code, is amended by  
3 adding Subchapter F to read as follows:

4 SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR  
5 CERTAIN CONTRACTS

6 Sec. 2261.251. APPLICABILITY OF SUBCHAPTER. (a)  
7 Notwithstanding Section 2261.001, this subchapter applies to the  
8 Texas Department of Transportation.

9 (b) This subchapter does not apply to a contract of the  
10 Employees Retirement System of Texas or the Teacher Retirement  
11 System of Texas except for a contract with a nongovernmental entity  
12 for claims administration of a group health benefit plan under  
13 Subtitle H, Title 8, Insurance Code.

14 Sec. 2261.252. REQUIRED POSTING OF CERTAIN CONTRACTS;  
15 ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each  
16 contract for the purchase of goods or services from a private  
17 vendor, each state agency shall post on its Internet website:

18 (1) each contract the agency enters into, including  
19 contracts entered into without inviting, advertising for, or  
20 otherwise requiring competitive bidding before selection of the  
21 contractor, until the contract expires or is completed;

22 (2) the statutory or other authority under which a  
23 contract that is not competitively bid under Subdivision (1) is  
24 entered into without compliance with competitive bidding  
25 procedures; and

26 (3) the request for proposals related to a  
27 competitively bid contract included under Subdivision (1) until the

1 contract expires or is completed.

2 (b) A state agency monthly may post contracts described by  
3 Subsection (a) that are valued at less than \$15,000.

4 (c) Each state agency by rule shall establish a procedure to  
5 identify each contract that requires enhanced contract or  
6 performance monitoring and submit information on the contract to  
7 the agency's governing body or, if the agency is not governed by a  
8 multimember governing body, the officer who governs the agency.  
9 The agency's contract management office or procurement director  
10 shall immediately notify the agency's governing body or governing  
11 official, as appropriate, of any serious issue or risk that is  
12 identified with respect to a contract monitored under this  
13 subsection.

14 (d) This section does not apply to a memoranda of  
15 understanding, interagency contract, interlocal agreement, or  
16 contract for which there is not a cost.

17 Sec. 2261.253. CONTRACTS WITH VALUE EXCEEDING \$1 MILLION.

18 (a) For each contract for the purchase of goods or services that  
19 has a value exceeding \$1 million, a state agency shall develop and  
20 implement contract reporting requirements that provide information  
21 on:

22 (1) compliance with financial provisions and delivery  
23 schedules under the contract;

24 (2) corrective action plans required under the  
25 contract and the status of any active corrective action plan; and

26 (3) any liquidated damages assessed or collected under  
27 the contract.

1       (b) Each state agency shall verify:

2               (1) the accuracy of any information reported under  
3 Subsection (a) that is based on information provided by a  
4 contractor; and

5               (2) the delivery time of goods or services scheduled  
6 for delivery under the contract.

7       (c) Except as provided by Subsection (d), a state agency may  
8 enter into a contract for the purchase of goods or services that has  
9 a value exceeding \$1 million only if:

10               (1) the governing body of the state agency approves  
11 the contract and the approved contract is signed by the presiding  
12 officer of the governing body; or

13               (2) for a state agency that is not governed by a  
14 multimember governing body, the officer who governs the agency  
15 approves and signs the contract.

16       (d) The governing body or governing official of a state  
17 agency, as appropriate, may delegate to the executive director of  
18 the agency the approval and signature authority under Subsection  
19 (c).

20       (e) A highway construction, engineering services, or  
21 maintenance contract that is in compliance with all applicable laws  
22 related to procuring engineering services or construction bidding  
23 and that is awarded by the Texas Department of Transportation under  
24 Subchapter A, Chapter 223, Transportation Code, is not required to  
25 be signed by a member of the Texas Transportation Commission or the  
26 executive director of the department. This exception does not  
27 apply to expedited highway improvement contracts under Subchapter

1 C, Chapter 223, Transportation Code, a comprehensive development  
2 agreement entered into under Subchapter E, Chapter 223,  
3 Transportation Code, a design-build contract entered into under  
4 Subchapter F, Chapter 223, Transportation Code, or any other  
5 contract entered into by the Texas Department of Transportation.

6 Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.  
7 For each state agency contract for the purchase of goods or services  
8 that has a value exceeding \$5 million, the contract management  
9 office or procurement director of the agency must:

10 (1) verify in writing that the solicitation and  
11 purchasing methods and contractor selection process comply with  
12 state law and agency policy; and

13 (2) submit to the governing body of the agency, or  
14 governing official of the agency if the agency is not governed by a  
15 multimember governing body, information on any potential issue that  
16 may arise in the solicitation, purchasing, or contractor selection  
17 process.

18 Sec. 2261.255. ACCOUNTABILITY AND RISK ANALYSIS PROCEDURE;  
19 CONTRACT MANAGEMENT HANDBOOK. (a) Each state agency shall develop  
20 and comply with a purchasing accountability and risk analysis  
21 procedure. The procedure must provide for:

22 (1) assessing the risk of fraud, abuse, or waste in the  
23 contractor selection process, contract provisions, and payment and  
24 reimbursement rates and methods for the different types of goods  
25 and services for which the agency contracts;

26 (2) identifying contracts that require enhanced  
27 contract monitoring or the immediate attention of contract



1 management staff; and

2 (3) establishing clear levels of purchasing  
3 accountability and staff responsibilities related to purchasing.

4 (b) Each state agency shall publish a contract management  
5 handbook that establishes consistent contracting policies and  
6 practices to be followed by the agency and that is consistent with  
7 the comptroller's contract management guide. The procedures  
8 described by Subsections (a)(2) and (3) must be approved by the  
9 comptroller and be included in the agency's handbook. The agency's  
10 handbook may include standard contract provisions and formats for  
11 the agency to incorporate in contracts.

12 Sec. 2261.256. CONTRACT DATABASE. (a) Each state agency  
13 that becomes a participant in the centralized accounting and  
14 payroll systems as authorized by Sections [2101.035](#) and [2101.036](#)  
15 shall use the system to identify and record each contract entered  
16 into by the agency as specified by the rules, policies, or  
17 procedures developed by the comptroller.

18 (b) The comptroller shall provide as necessary information  
19 and state agency contract data contained in the centralized  
20 accounting and payroll systems to other state agencies with  
21 oversight duties, including the Legislative Budget Board, the state  
22 auditor's office, and the Department of Information Resources.

23 SECTION 19. Section [2262.053](#)(d), Government Code, is  
24 amended to read as follows:

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

1 SECTION 20. Section 2262.0535, Government Code, is amended  
2 by adding Subsection (c) to read as follows:

3 (c) The comptroller may assess a fee for the training  
4 provided under this section in an amount sufficient to recover the  
5 comptroller's costs under this section.

6 SECTION 21. Section 2262.055, Government Code, is amended  
7 by amending Subsections (a) and (b) and adding Subsections (d) and  
8 (e) to read as follows:

9 (a) The comptroller shall evaluate the vendor's performance  
10 based on information reported by state agencies under Section  
11 2155.089 and criteria established by the comptroller.

12 (b) The comptroller by rule shall establish an evaluation  
13 process that:

14 (1) rates vendors on an A through F scale, with A being  
15 the highest grade; and

16 (2) allows vendors who receive a grade lower than a C  
17 [an unfavorable performance review] to protest any classification  
18 given by the comptroller.

19 (d) A state agency shall use the vendor performance tracking  
20 system to determine whether to award a contract to a vendor reviewed  
21 in the tracking system. A state agency may not award a contract to a  
22 vendor who receives a grade lower than a C from the comptroller  
23 under Subsection (b).

24 (e) The comptroller shall make the vendor performance  
25 tracking system accessible to the public on the comptroller's  
26 Internet website.

27 SECTION 22. Section 2155.502(d), Government Code, is

1 repealed.

2           SECTION 23. As soon as is practicable after the effective  
3 date of this Act, the comptroller of public accounts, and each  
4 affected state agency as necessary, shall adopt the rules,  
5 processes, and procedures and take the actions necessary to  
6 implement the changes in law made by this Act.

7           SECTION 24. Section 572.069, Government Code, as added by  
8 this Act, applies only to a state officer or employee whose service  
9 or employment with a state agency ceases on or after the effective  
10 date of this Act.

11           SECTION 25. Section 2262.055(d), Government Code, as added  
12 by this Act, applies only in relation to a contract for which the  
13 request for bids or proposals or other applicable expression of  
14 interest is made public on or after October 1, 2015.

15           SECTION 26. The changes in law made by this Act apply only  
16 to a contract entered into on or after the effective date of this  
17 Act. A contract entered into before that date is governed by the  
18 law in effect immediately before the effective date of this Act, and  
19 the former law is continued in effect for that purpose.

20           SECTION 27. This Act takes effect September 1, 2015.