

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 27, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB533 by Nelson (Relating to state agency contracting and procurement.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for SB533, Conference Committee Report: a negative impact of (\$574,000) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$287,000)
2019	(\$287,000)
2020	(\$287,000)
2021	(\$287,000)
2022	(\$287,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from General Revenue Fund	Change in Number of State Employees from FY 2017
	1	
2018	(\$287,000)	3.0
2019	(\$287,000)	3.0
2020	(\$287,000)	3.0
2021	(\$287,000)	3.0
2022	(\$287,000)	3.0

Fiscal Analysis

The bill would amend the Government Code and Education Code, relating to state agency contracting.

The bill would amend Chapter 572 of the Government Code, regarding personal financial disclosure, standards of conduct, and conflict of interest. The bill would prohibit a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of the state agency in a procurement or contract negotiation involving a person from accepting employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn (current law prohibits the officer or employee from accepting employment from that person before the second anniversary of the date the officer or employee's service or employment with the state agency ceased).

The bill would amend Chapter 2054 of the Government Code, regarding information resources. The bill would transfer the authority to recommend Department of Information Resources (DIR) oversight of major information projects from the Quality Assurance Team (QAT) in coordination with the Governor, to the Governor, Lieutenant Governor, or Speaker of the House. DIR would be allowed to contract with a vendor to provide those services.

Under current law, the State Auditor, Legislative Budget Board, and DIR have certain duties related to QAT. The bill would add the Comptroller to those agencies; require those agencies with the Comptroller to create an automated project review system; require QAT to provide certain annual training for state agency procurement and contract management staff; and specify that the State Auditor serves on QAT as an advisor.

The bill would require that state agencies prepare, in consultation with DIR, a technical architectural assessment for each major information resources project or major contract. The bill would impose certain additional requirements on state agency project plans for major information resources projects or major contracts

The bill would amend Chapter 2155 of the Government Code, regarding general rules and procedures for purchasing. The bill would require state agencies to adopt a policy on the interaction between their employees and vendors. The bill would clarify that the provisions of Subtitle D (state purchasing and general services) of Title 10 (general government) of the Government Code do not prohibit the exchange of information between a state agency and a vendor related to future solicitations or to monitor an existing contract.

The bill would require the Comptroller to employ a chief procurement officer to serve as the chief procurement officer for this state. The chief procurement officer would have authority over state agency procurement. The chief procurement officer would coordinate with DIR and QAT to conduct contract solicitation reviews for certain information technology projects and with the Contract Advisory Team (CAT) to conduct reviews of certain solicitation and contract documents for contracts that have a value of \$5 million or more.

The bill would allow the Comptroller, subject to Government Code provisions pertaining to interstate compacts and cooperative agreements for procurements or other law, to authorize state agencies and political subdivisions of other states to purchase goods or services through Comptroller contracts, for which the Comptroller could charge a reasonable administrative fee.

The bill would amend Chapter 2157 of the Government Code, regarding the purchase of automated information systems. The bill would require state agencies to submit a request for pricing for an information technology commodity contract with a value of more than \$50,000, but not more than \$1 million, to at least three vendors (current law imposes that restriction on such contracts with a value of more than \$50,000, but not more than \$150,000). The bill would require state agencies to submit a request for pricing for an information technology commodity contract with a value of more than \$1 million, but not more than \$5 million, to at least six vendors (current

law imposes that restriction on such contracts with a value of more than \$150,000, but not more than \$1 million). The bill would prohibit a state agency from entering a contract to purchase an information technology commodity if the value of the contract exceeds \$5 million (current law imposes that prohibition on such contracts with a value of more than \$1 million).

The bill would amend Chapter 2261 of the Government Code, regarding state contracting standards and oversight. The bill would require a state agency employee or official to disclose any potential conflict of interest during the procurement process or the term of a contract with a private vendor. The requirement would apply only to a contract for the purchase of goods and services solicited through a purchase order where the amount of the purchase order exceeds \$25,000. The bill would make the requirement inapplicable to the conflicts of interest of the members of the governing board of an institution of higher education; such conflicts of interest are currently addressed by certain provisions of the Education Code.

A state agency would not have to post certain contract information on the agency's website if: (1) the contract has been posted on LBB's major contracts database; or (2) the contract is entered into by an institution of higher education other than a public junior college, valued at less than \$15,000, and paid with money other than funds appropriated to the institution by the State of Texas. The bill would require a state agency that posts a contract on its website to redact certain information. The bill would specify that this requirement does not exempt the information from certain requirements included in Government Code provisions pertaining to the right of access to public information.

The bill would amend Chapter 2262 of the Government Code, regarding statewide contract management. Under current law, CAT reviews and makes recommendations on solicitation and contract documents for contracts having a value of at least \$10 million. The bill would lower that threshold to \$5 million. The bill would allow the chief procurement officer to add members to CAT by designating members from agencies that agree to participate.

The bill would amend Chapter 2269 of the Government Code, regarding contracting and delivery procedures for construction projects. The bill requires a state agency that considers a construction contract using a procurement method authorized by Government Code provisions pertaining to contracting and delivery procedures for construction projects, other than that competitive bidding, to publish in the request for proposals or qualifications, a detailed methodology for scoring each criterion.

The bill would require a response to a request by a governmental entity for detailed proposals from design-build firms, identified under Government Code provisions pertaining to the evaluation of such firms, to be submitted on or before the earlier of the time for submission requested by the governmental entity or the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms (current law requires the response to be submitted on or before the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms).

The bill would amend Chapter 8 of the Education Code, regarding regional education service centers. The bill would require the Texas Education Agency to comply with the Comptroller's contract management guide in contracts with a regional educational service center.

The bill would require the Comptroller not later than January 1, 2018 to: 1) employ a chief procurement officer; and 2) adopt any rules necessary to implement the changes in law made by the bill.

This bill would take effect September 1, 2017.

Methodology

The Comptroller estimates that it would need 3 additional FTEs and \$287,000 per fiscal year to implement the provisions of this bill. This administrative cost estimate reflects the funds that would be necessary to hire two contract specialists IVs and one attorney IV to support the increased workload anticipated due to the lowering of the CAT contract review threshold from \$10 million to \$5 million. Using data from the LBB contract database, the proposed change would have yielded 156 additional contracts eligible for review. The Comptroller indicates that, other than this administrative cost, the fiscal impact on the State cannot be estimated including the amount and timing of any fees that would be collected from other state governments or agencies.

DIR and the State Auditor indicate that any costs associated with the bill could be absorbed within the respective agency's existing resources.

The Texas Education Agency indicates that the bill would have no fiscal impact on the agency.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 308 State Auditor's Office, 313 Department of Information Resources, 701 Texas Education Agency

LBB Staff: UP, KK, JPU, DRE, LCO, MW