

- SUBJECT:** Review process for high risk contracts by state agencies
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 7 ayes — Swinford, Paxton, Christian, B. Cook, Farrar, Flynn, Veasey  
0 nays  
2 absent — Van Arsdale, Parker
- WITNESSES:** For — None  
Against — None  
On — Skip Bartek, Texas Building and Procurement Commission
- BACKGROUND:** In 2001, the 77th Legislature enacted SB 311 by Zaffirini, Sunset legislation abolishing the General Services Commission and replacing it with the Texas Building and Procurement Commission (TBPC) to oversee acquisition and maintenance of state buildings and purchasing of goods and services for state agencies.
- SB 311 also enacted Government Code, ch. 2262 to create a Contract Advisory Team as part of TBPC to review solicitations of major contracts by state agencies. The team includes representatives from the Attorney General's Office, Comptroller's Office, Department of Information Services, TBPC, and the Governor's Office.
- DIGEST:** HB 2733 would amend Government Code, ch. 2262 to create the State Office of Contract Management as part of TBPC to help state agencies manage high-risk contracts, which would be defined as those with a value of \$10 million or contract worth less than \$10 million that has been defined as high risk. The requirement would also apply to highway construction and engineering contracts made by Texas Department of Transportation or to informal resolutions of contract claims made under Transportation Code, sec. 201.112.
- Review process.** The State Office of Contract Management would be required to develop a procedure to:

- identify high-risk factors in state contracts;
- provide state agencies with a procedure to waive the high-risk review;
- review and approve those waivers;
- provide recommendations and assistance to state personnel during the contract management process; and
- coordinate and consult with the quality assurance team on all high-risk information resources projects.

**Contract and solicitation cancellation.** The contract management office would be required to consult with the Legislative Budget Board and Governor's Office before it made a recommendation to cancel a solicitation or a contract. The recommendation would be based on whether:

- a proposed solicitation is not in the best interest of the state;
- a proposed contract would place the state an unacceptable risk if executed; or
- an executed contract is experiencing performance failure or payment irregularities.

The bill would affect contracts for which solicitation of bids, offers, qualifications, proposals, or similar expressions of interest made after September 1, 2007, as well as contracts extended, modified or subject to change orders after that date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

HB 2733 would create a mechanism to provide the centralized contract management oversight needed to assure consistency and mitigate the risks inherent to contracting. Contracting involves three phases: solicitation and procurement; contract negotiation and execution; and contract administration and monitoring. The Legislative Budget Board's January 2007 report *Texas State Government Effectiveness and Efficiency: Selected Issues and Recommendations* notes that all three stages must be skillfully managed to mitigate risk, contain costs, and ensure high quality. A sole focus on any one stage would not prevent problems from risks or predatory practices from occurring in subsequent phases. The bill would

help assure a comprehensive approach to contract solicitation, negotiation and administration for high risk and high value contracts.

Current state law requires that the Contract Advisory Team, which includes representatives of five state agencies and two technical assistance members, review contract solicitation with an estimated value of \$1 million or more. HB 2733 would allow for the creation of a contract management office staffed by certified contract management and legal personnel and would focus limited resources to overseeing contracts of \$10 million or more or those with identifiable risk factors. The bill would remove the requirement that the Contract Advisory Team review contracts worth more than \$1 million, and the new contract management office would free this existing team to focus on reviewing contracts and findings made by the state auditor and making recommendations to improve contract management training.

The LBB report recommends that Texas improve its oversight in the critical stages of contract negotiation and performance monitoring. It cites an analysis of historical audits by the state of Florida that showed that 56 percent of contract management failures come during the final stages of the process, with 45 percent of all problems related to performance monitoring failures. Texas has not conducted a comprehensive historical analysis but faces similar problems in the contract negotiation and performance monitoring phases of the process.

Defined review processes for all phases of the contract management process would improve state contracting, but it will not completely eliminate the inherent risks involved in contracting with private vendors. HB 2733 would provide the contract management office — after consultation with the LBB and Governor's Office — a well defined procedure to cancel a solicitation or bid if was deemed not in the best interest of the state.

In March, Texas ended a five-year contract with Accenture LLP. Much of the problems with the contract were related to negotiation and performance monitoring. The Accenture contract was ended by mutual consent of the contractor and the state and occurred during a legislative session. HB 2733 would provide a means to address major problems with contracts when the vendor does not agree to terminate the contract or if the Legislature is not in session.

HB 2733 also would provide review of highway engineering and construction projects and provide an additional check and balance on operations of the Texas Department of Transportation.

**OPPONENTS  
SAY:**

No government office or procedure can completely eliminate risk in state contracts. It is uncertain whether professional contract managers would be able to prevent problems such as encountered with the Accenture contract. Extending the ability of the state to cancel contracts would pose its own risks. The review and approval process may increase contract costs by creating substantial delays in the contracting process.

**NOTES:**

The fiscal note estimates that the bill would require \$1.5 million for seven TBPC employees in fiscal 2008 and a total of 12 in fiscal 2009 to manage the new state contract management office.

A related bill, HB 3560 by Swinford, which would transfer state purchasing and procurement duties from TBPC to the Comptroller's Office, was on the May 2 House calendar.