

- SUBJECT:** Oversight and requirements applicable to certain state contracts
- COMMITTEE:** Appropriations — committee substitute recommended
- VOTE:** 17 ayes — Zerwas, Longoria, Ashby, Capriglione, S. Davis, Dean, Giddings, Gonzales, González, Howard, Koop, Phelan, Raney, Roberts, J. Rodriguez, Sheffield, Walle
- 0 nays
- 10 absent — G. Bonnen, Cospers, Dukes, Miller, Muñoz, Perez, Rose, Simmons, VanDeaver, Wu
- WITNESSES:** For — Terri Hall, Texas TURF and Texans for Toll-free Highways; (*Registered, but did not testify:* Don Dixon)
- Against — None
- On — (*Registered, but did not testify:* Amy Comeaux, Bobby Pounds, Jette Withers, and Robert Wood, Comptroller of Public Accounts; Gary Jesse, Ron Pigott, and Jami Synder, Health and Human Services Commission; David Griffith and Sylvia Kauffman, Health and Human Services Commission-Inspector General; Kyle McKay, Legislative Budget Board)
- BACKGROUND:** Government Code, sec. 441.1855 requires a state agency to retain each contract entered into and all contract solicitation documents, except in certain instances. The agency can destroy the contract and documents seven years after the contract was completed or expired or after any issues relating to the contract were resolved.
- In determining the best value for the state, sec. 2155.074(c) requires an agency to receive approval from the comptroller before considering factors other than purchase price and meeting specifications when the agency procures through competitive bidding goods or services with a value exceeding \$100,000.

Sec. 2262.051 requires the Texas Building and Procurement Commission to consult with the Department of Information Resources, the comptroller, and the state auditor to develop a contract management guide for use by state agencies. The guide must include certain information and model provisions and establish certain procedures required of state agencies.

Sec. 531.02414 states that the medical transportation program provides nonemergency transportation services to and from covered health care services to recipients under Medicaid and select others in need.

Concerns have been raised about state contract mishandling that has resulted in inefficiently spending taxpayer dollars.

DIGEST:

CSHB 18 would amend and create new provisions related to contract procurement, management, auditing, oversight, and evaluation.

**Retention of contract-related documents.** In addition to contract solicitation documents, the bill would require state agencies for each contract entered to retain documents related to contract planning, evaluation, monitoring, modification, and closeout, including certain items listed in the bill.

Agencies would be required to retain the documents only until the contract was completed or expired. If issues arose involving the contract, agencies still would have to retain the required documents for at least seven years after the issue was resolved.

**Best value standard.** The bill would require a state agency to receive approval from the comptroller in an open meeting before considering factors other than price and meeting specifications in relation to a procurement of goods and services with a value of more than \$100 million. The agency would have to retain a copy of the meeting minutes with the final executed contract.

**Contract managers for major contracts.** A state agency would be

required to assign a contract manager to oversee each major contract.

**Contract outside tactical team.** Using appropriated funds, a state agency would be required to contract with a team of outside legal counsel or professional consultants to improve information resources contract management practices for contracts valued at \$100 million or more. An agency generally would be required to comply with a recommendation made by the team.

In selecting a provider of professional consulting services, an agency could not award a contract for the services through competitive bidding. The selection and award would have to be based on demonstrated competence and qualifications and for a fair and reasonable price.

**Report on performance.** Before a purchase of services, each state agency would have to create a report evaluating the feasibility of the agency to perform the service that was the subject of the proposed purchase. The report would have to be included in the procurement analysis for the purchase.

**Required contract provisions.** An attorney representing a state agency would be required to assist with drafting a contract to include, at the minimum, items listed in the bill and other provisions recommended in the contract management guide.

**Payment to vendor.** A state agency could not make a payment to a vendor without a contract, invoice, or other documentation that clearly demonstrated the agency's obligation to make a payment. An agency could not pay an invoice from a vendor unless the invoice correctly correlated to a contract with the vendor or make a payment to the vendor more than once per month.

Before paying a vendor, a state agency would have to receive the approval and signature of two employees or, if assigned to the contract, the signature of the contract manager and one other employee. If a payment was made without the required signatures, the agency could revoke the

payment at any time.

**Overpayments by state agency.** If a state agency made an overpayment to a vendor, the vendor would have to return the overpaid amount within 91 days after it was discovered; otherwise, the vendor would be subject to a civil penalty equal to three times the amount of the overpayment. The state agency would be required to refer the matter to the attorney general for action. Any civil penalty recovered would be deposited in the state treasury.

**Report on contract spending.** The Legislative Budget Board would be required to submit by September 15 of each year a report detailing how much of each state agency's budget for the previous state fiscal year was spent on contracts.

**Reporting of contract violation.** A state employee or a member of the public could report to the comptroller a contracting violation, which the comptroller would be required to investigate. A state agency could not take adverse personnel action against an employee who reported a violation to the comptroller.

If an investigation into a violation that occurred before March 8, 2017, resulted in savings to the state, the comptroller could pay the employee or member of the public that reported the violation 30 percent of the savings.

**Barring vendor from state contracts.** The comptroller would be required, rather than permitted, to bar a vendor from participating in state purchasing and service contracts if more than two contracts with the vendor had been terminated based on unsatisfactory performance during the preceding three years.

**Contract management guide.** The comptroller, rather than the Texas Building and Procurement Commission, would be required to develop the contract management guide in consultation with state agencies that award major contracts, in addition to those already required in statute. Additional provisions aimed at developing and implementing improved procurement

practices would be included in the guide, as listed in the bill.

The comptroller would be required to also consult vendors and other interested parties in developing rules, guides, manuals, and other criteria for statewide contract management.

**State audit plan.** In devising the state audit plan, the state auditor would be required to consider the performance of audits of programs operated by health and human services agencies that had not recently received audit coverage and had expenditures of less than \$100 million per year.

**HHSC contract monitoring reports.** The inspector general of the Health and Human Services Commission (HHSC) would be required to appoint oversight personnel to audit, review, and investigate high-risk contracts and procurement and contracting processes. The oversight personnel would submit a quarterly report to the inspector general, the attorney general, and the governor and post the report on HHSC's website.

**Delivery of medical transportation program services.** HHSC would be required to use the most cost-effective delivery model to provide the medical transportation program based on the price and quality of the services delivered through the model, in addition to any other requirements established by the bill and by applicable state and federal procurement laws.

The delivery model could be through managed transportation — a public transportation provider, local private provider, a transit district, or regional contracted broker — or a fee-for-service.

If the medical transportation program was provided through a managed model, HHSC would be required to procure providers with certain characteristics and through a competitive bidding process.

**Assessment of medical transportation program.** As part of a required quality review assessment of the medical transportation program, HHSC would be required to hire an independent vendor to conduct surveys of the

satisfaction rates of those receiving the program's services and the unmet needs of those not receiving services.

**Effective date and applicability.** The bill would take effect September 1, 2017, and would apply only to a contract a state agency first advertised or otherwise took action on or to a payment made on or after that date.

The bill's provisions related to the medical transportation program would apply only to a contract entered into or renewed on or after the effective date. If an agency determined that a waiver or authorization from a federal agency was necessary for implementation, the agency could delay implementation until the waiver or authorization was granted.

**NOTES:**

According to the Legislative Budget Board, the bill would result in a negative impact of \$1 million to general revenue related funds through fiscal 2018-19. Provisions in the bill relating to contract oversight could result in a positive, although indeterminate, fiscal impact.