

- SUBJECT:** Review, oversight, and reporting of certain state agency contracts
- COMMITTEE:** Appropriations — committee substitute recommended
- VOTE:** 20 ayes — Zerwas, Longoria, Ashby, Capriglione, Cospers, S. Davis, Dean, Gonzales, Howard, Koop, Perez, Phelan, Raney, Roberts, J. Rodriguez, Sheffield, Simmons, VanDeaver, Walle, Wu
- 0 nays
- 7 absent — G. Bonnen, Dukes, Giddings, González, Miller, Muñoz, Rose
- WITNESSES:** For — (*Registered, but did not testify:* Terri Hall, Texas TURF)
- Against — (*Registered, but did not testify:* Caroline Joiner, TechNet)
- On — (*Registered, but did not testify:* Amy Comeaux, Bobby Pounds, Jette Withers, and Robert Wood, Comptroller of Public Accounts; Ron Pigott, Health and Human Services Commission; John Montgomery and Jacob Pugh, Legislative Budget Board)
- BACKGROUND:** Government Code, sec. 322.020 requires state agencies to provide the Legislative Budget Board (LBB) with copies of certain major contracts and related information. The LBB is required to post on the internet information about the contracts in a major contracts database. The section defines major contracts as certain contracts on information services, building and construction, professional services, and consulting services and certain other contracts with values exceeding \$50,000.
- Several sections of the Government Code require state agencies and institutions of higher education to report to the LBB information about contracts. Government Code, sec. 2054.008 requires state agencies and university systems to provide notice to the LBB about certain contracts for major information systems. Sec. 2254.006 requires state agencies and institutions of higher education to notify the LBB of contracts relating to certain professional services. Sec. 2254.0301 requires state agencies to

report to the LBB certain consulting services. Sec. 2166.2551 requires state agencies to provide notice to the LBB of certain construction projects.

Government Code, ch. 2262 governs statewide contract management. Sec. 2262.101 creates the state's contract advisory team to assist state agencies in improving contract management practices. The team reviews solicitation documents and contract documents for contracts of at least \$10 million and reviews finding or recommendations from the state auditor about an agency's compliance with the state's contract management guide. The six-member team is composed of representatives from certain state agencies and the offices of the comptroller and the governor. Government Code, sec. 2262.051 governs the development of a contract management guide for state agencies and requires agencies to comply with it.

Government Code, sec. 2054.158 requires the state auditor, the LBB, and the Department of Information Resources to create a quality assurance team. The team's responsibilities include developing and recommending policies and procedures to improve state agency information resources technology projects.

DIGEST:

CSHB 20 would revise statutes relating to contract reporting and contract monitoring.

Contract reporting. The bill would amend the definition of "contract" in Government Code, sec. 322.020 that identifies the types of contracts that must be reported to the Legislative Budget Board (LBB) for the contract database. It would eliminate current references to contracts for specific types of goods or services and to contracts exceeding \$50,000. Instead, the definition for a contract that must be reported would be a contract, grant, or agreement for the purchase or sale of goods and services entered into or paid for by a state agency or an amendment, modification, renewal, or extension of the contract, grant, or agreement.

Reporting provisions would apply to all state agencies and to contracts that exceed \$50,000, other than a contract of an institution of higher

education that is paid for solely with institutional funds or hospital and clinic fees, or is for sponsored research. It also would apply to major consulting contracts, defined as a consulting services contract over \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

The bill would establish requirements for reporting contracts and modifications to the LBB. Within 30 days of awarding or modifying a contract, state agencies would have to provide written notice to the LBB and provide it with copies of certain documents, including the contract and modifications and solicitations related to the contracts. These requirements would not apply to certain Texas Department of Transportation contracts, including ones for highway construction or engineering, or to Medicaid provider enrollment contracts. Agencies would be able to redact from these documents certain information made confidential under the state's Public Information Act.

Institutions of higher education would have to report to the LBB certain contracts paid with appropriated funds, including certain major information system that exceed \$1 million, construction projects exceeding \$50,000, and professional services exceeding \$50,000.

The LBB would continue to be required to post on the internet copies of each contract.

Contract oversight. The bill would authorize the LBB to review contracts, report on violations, and establish corrective plans. The LBB would be able to review contracts for compliance with the state's contract management guide, the comptroller's procurement policy manuals, and contracting laws, policies, and procedures. This would not apply to institutions of higher education contracts paid for solely with institutional funds or hospital or clinic fees.

The LBB would be required to notify agencies of violations, and agencies would have to 10 days to respond to such a notice. If the LBB determined that a response did not adequately address or resolve a violation, the LBB

director could notify the LBB, the agency, the comptroller, and the governor. CSHB 20 would establish what the notice would be required to contain, including potential remedies for the violation and any enforcement mechanism that may be assessed under provisions established by the bill. State agencies would be required to develop a written, corrective plan within 30 days of receiving the notice.

The bill would authorize the LBB to take certain enforcement actions against state agencies found to be in violation of the state's contract management guide, the comptroller's procurement policy manuals, and contracting laws, policies, and procedures. The LBB could establish a schedule of enforcement mechanisms that could be taken against state agencies, including enhanced monitoring, consultations, audits, and recommended cancellations. The LBB director could recommend to the LBB an enforcement mechanism for contract violations. The LBB could increase the severity of enforcement mechanisms for repeat violations or dismiss them after successfully implementing corrective actions.

CSHB 20 would require state agencies to post on their websites a link to the LBB's contracts database. The bill would eliminate a current requirement that state agencies post on their websites a list of their contracts and certain information about them. The bill also would establish requirements for institutions of higher education to post on their websites certain information about contracts of more than \$15,000 if paid with institutional funds or hospital and clinic fees.

The bill would require the contract advisory team to give the LBB a copy of certain recommendations the team makes about solicitation and contract documents for contracts of at least \$10 million and agency responses to the recommendations.

The bill would take effect September 1, 2017, and would apply to contracts entered into or amended, modified, renewed, or extended on or after that date.

SUPPORTERS CSHB 20 would simplify and consolidate requirements for contract

SAY: reporting for state agencies and higher education institutions. This would reduce confusion over the requirements, make compliance easier, and increase transparency. The bill also would improve monitoring of contracts, which would help agencies comply with best practices and state laws and policies. These changes would help the state better manage its contracts and help mitigate contract risk. Many of the issues that CSHB 20 would resolve were identified in the Legislative Budget Board's (LBB) *January 2017 Staff Reports*.

Contract reporting. The bill would address confusion about what kind of contracts must be reported to the LBB for its existing contract database. There are several reporting requirements about specific types of contracts scattered throughout the Government Code, and there are reporting requirements in the general appropriations act. It can be difficult for agencies to follow the requirements due to different reporting thresholds, conflicting reporting time frames, and numerous exemptions.

The bill would reduce confusion by broadening the definition of contracts that must be reported to the LBB to include all major types of state purchases and to harmonize information with the general appropriations act. The bill would eliminate reporting requirements about specific types of contracts in favor of a general requirement that would apply to all major contracts. The bill would address confusion about reporting time frames by instituting a 30-day, uniform requirement.

CSHB 20 also would revise requirements for posting contracting information on the internet by eliminating a requirement that individual agencies post information on their sites. Compliance with this requirement has varied, and it has led to some duplication of efforts or incomplete posting of information. The bill would simplify this requirement across the state by requiring all information to be sent to the LBB and having agencies post a link to the LBB-maintained contract database. This would consolidate the information into one database while maintaining transparency and public access.

Contract oversight. CSHB 20 would address fragmented and limited

oversight of state contracts and difficulties in implementing oversight findings. For example, not all contracts are reviewed before important dates, not all oversight recommendations are followed, and agencies do not consistently use best practices. In addition, oversight entities are specialized and oversight findings are not followed because they are non-binding. The bill would fill these gaps and improve the enforcement of existing contracting requirements.

The bill would address these issues by codifying the LBB's existing authority to review contracts, which currently is in the general appropriations act. This would ensure these reviews remained an ongoing responsibility and would be based on existing authority. The bill would establish a process for the LBB to work with agencies that were in violation of contracting guides, manuals, laws, and policies. The bill would facilitate communications about contracting issues among the LBB, state agencies, the comptroller, and the governor. This would help ensure that oversight findings and best practices were implemented and that corrective actions were taken when necessary.

CSHB 20 would address issues with the flow of information about contracts by requiring the state's existing Contract Advisory Team to give the LBB copies of its reviews and agency responses. Currently, the team's findings are not always being implemented, so this information exchange would allow the LBB to monitor these situations.

The LBB would be the correct entity for these tasks. The board is composed of elected officials who have responsibility for many of the state's fiscal policies, and contracting is a large part of the state's budget. The LBB staff has budget expertise in all state programs, experience monitoring fiscal matters, and has been keeping information on state contracts since 1999. CSHB 20 would codify and simplify current practices based on existing authority, not create any new bureaucracy.

OPPONENTS
SAY:

The Legislative Budget Board may not be the best entity to take on an expanded role in contract monitoring. A better approach might be to establish a chief procurement officer for the state with authority over all

contracts. This could allow the consolidation of monitoring and compliance in one easily identifiable executive branch entity that could focus on this one issue.