

BILL ANALYSIS

Senate Research Center

S.B. 15
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The manner in which state agencies engage in contracts with private and not-for-profit vendors is of vital concern for the state because it directly affects the use of state appropriated financial resources and, in some cases, the termination of state employee positions. Accounts have arisen that allege that some state agency employees engaged in improper actions when engaging in contracts on behalf of the state. Examples like these highlight the need for increased oversight and training in the contracting process.

S.B. 15 improves the processes by which the state solicits, negotiates, enters into, and manages contracts with private and not-for-profit vendors by improving the training processes for employees involved in contracting, improving contract reporting mechanisms for state agencies, requiring needed provisions to address amendments, and addressing ethical issues specific to contracting.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Building and Procurement Commission in SECTION 1.02 (Section 2262.0015, Government Code) and SECTION 1.05 (Section 2262.066, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Amends Section 2262.001, Government Code, to redefine "contract manager" and define "executive director."

SECTION 1.02. Amends Subchapter A, Chapter 2262, Government Code, by adding Section 2262.0015, as follows:

Sec. 2262.0015. **APPLICABILITY TO CERTAIN CONTRACTS.** Requires the Texas Building and Procurement Commission (commission) by rule to establish threshold requirements that exclude small or routine contracts, including purchase orders, from the application of this chapter (Statewide Contract Manager).

SECTION 1.03. Amends the heading to Section 2262.053, Government Code, to read as follows:

Sec. 2262.053. **TRAINING FOR CONTRACT MANAGERS.**

SECTION 1.04. Amends Section 2262.053, Government Code, by amending Subsections (a) and (d) and adding Subsections (e) and (f), as follows:

(a) Requires the commission or a private vendor selected by the commission, in coordination with the comptroller of public accounts, Department of Information Resources, state auditor, and Health and Human Services Commission (HHSC), to develop a training program for contract managers.

(d) Makes a nonsubstantive change.

(e) Requires the commission to certify contract managers who have completed the contract management training required under this section and keep a list of those contract managers.

(f) Requires the program developed under this section to include a separate class on ethics and contracting.

SECTION 1.05. Amends Subchapter B, Chapter 2262, Government Code, by adding Section 2262.0535 and Sections 2262.055 through 2262.067, as follows:

Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) Requires the commission or a private vendor selected by the commission to adapt the program developed under Section 2262.053 to develop an abbreviated program for training the members of the governing bodies of state agencies. Authorizes the training to be provided together with other required training for members of state agency governing bodies.

(b) Requires all members of the governing body of a state agency to complete at least one course of the training developed under this section. Provides that this subsection does not apply to a state agency that does not enter into any contracts.

Sec. 2262.055. FEES FOR TRAINING. Requires the commission to set and collect a fee from state agencies that receive training under this subchapter in an amount that recovers the commission's costs for the training.

Sec. 2262.056. STATE AGENCY REPOSITORY. Requires each state agency to maintain in a central location all contracts for that agency.

Sec. 2262.057. CONTRACTS DATABASE. (a) Requires the commission to store in a database information on contracts provided by state agencies under this section.

(b) Requires each state agency to periodically provide to the commission certain information regarding contracts entered into by the agency.

(c) Requires the commission to set appropriate criteria to determine when and what information should be updated.

(d) Requires the commission to make the database available to state agencies and searchable in a certain manner.

Sec. 2262.058. REPORTING CONTRACTOR PERFORMANCE. (a) Requires each state agency, after a contract is completed or otherwise terminated, to review the contractor's performance under the contract.

(b) Requires the state agency, using the forms developed by the team under Sections 2262.104 and 2262.105, to report to the commission on the results of the review regarding the contractor's performance under the contract.

Sec. 2262.059. CONTRACTOR PERFORMANCE DATABASE. (a) Requires the commission to store in a database contractor performance reviews as provided by this section.

(b) Requires the commission to evaluate the contractor's performance based on the information reported under Section 2262.058 and criteria established by the commission.

(c) Requires the commission to establish an evaluation process that allows vendors who receive an unfavorable performance review to protest any classification given by the commission.

(d) Requires the commission to develop a database that incorporates the performance reviews and aggregates the reviews for each contractor.

(e) Authorizes a state agency to use the performance review database to determine whether to award a contract to a contractor reviewed in the database.

Sec. 2262.060. EXCLUDING CONTRACTOR FROM SOLICITATION PROCESS. Authorizes a state agency, based on its own contractor performance reviews and on information in the database developed under Section 2262.059, to exclude a contractor from the solicitation process for a contract if the agency determines the contractor has performed poorly on a previous state contract without regard to whether the contractor has been barred under Section 2155.077 (Barring Vendor from Participating in State Contracts).

Sec. 2262.061. PERFORMANCE MEASURES; REPORTS. (a) Requires each state agency to develop a plan for incorporating performance measures into all contracts entered into by the agency.

(b) Provides that this includes ensuring that performance measures are written into each contract prior to execution.

(c) Requires each state agency, not later than March 1 of each year, to report to the Contract Advisory Team (team), governor, lieutenant governor, and speaker of the house of representatives regarding performance measures in the agency's contracts. Requires the report to describe the agency's efforts to include performance-based provisions in the agency's contracts.

(d) Requires the state agency to make the report accessible to the public on the agency's website.

Sec. 2262.062. CONTRACT MANAGERS. (a) Requires each state agency that enters into contracts other than interagency contracts to establish a career ladder program for contract management in the agency.

(b) Requires an employee hired as a contract manager to oversee and authorizes the employee, as appropriate, to engage in procurement planning, contract solicitation, contract formation, price establishment, and other contract activities.

(c) Requires each state agency to determine, in consultation with the state auditor, the amount and significance of contract management duties sufficient for an employee to be considered a contract manager under this chapter.

Sec. 2262.063. APPROVAL OF CONTRACTS. (a) Requires each state agency to establish formal guidelines regarding who may approve a contract for the agency.

(b) Requires each state agency to promulgate administrative rules to establish a monetary threshold above which agency contracts and amendments to agency contracts require written authorization by the agency executive director.

(c) Requires, for state agency contracts valued in excess of \$1 million, the agency executive director to authorize a contract amendment in writing.

(d) Requires each state agency to annually report to the commission a list of each person authorized to approve contracts at the agency. Requires the list to include the person's name, position, and supervisory responsibility, if any.

Sec. 2262.064. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE PROHIBITED. Prohibits a state agency from negotiating a contract with only one employee engaging in the negotiation.

Sec. 2262.065. CONSISTENT PRICING BY CONTRACTORS. (a) Authorizes the commission to solicit a contract for the creation of a mechanism for tracking and comparing prices that state agencies pay for similar products or services.

(b) Authorizes, on behalf of the state, a contractor awarded a contract under Subsection (a) to renegotiate state agency contracts for products or services to obtain the best value for the state when the tracking and comparing mechanism shows a disparity in the price paid for similar products or services. Authorizes a contract under Subsection (a) to allow the selected contractor to keep a percentage of the savings obtained in the renegotiated contracts.

(c) Requires a state agency to give a contractor selected under Subsection (a) the information the contractor requires for the purpose of tracking and comparing prices that state agencies pay for similar products and services.

(d) Prohibits a contractor selected under Subsection (a) from selling information it receives under Subsection (c) or otherwise making use of the information for a purpose other than performing its contract with the state.

Sec. 2262.066. EXCEPTION TO RENEGOTIATION REQUIREMENT.

(a) Authorizes a state agency to exclude a contract from the application of Section 2262.065 if it determines that renegotiation of the contract under that section will affect the state negatively. Requires the state agency to notify the commission, lieutenant governor, and speaker of the house of representatives regarding this determination and explain why renegotiation of the contract is contrary to the state's overall interest.

(b) Requires the commission to adopt rules and procedures to document this process, including a requirement that the executive directors of the commission and the state agency making the determination formally approve the determination by signature or other appropriate method.

Sec. 2262.067. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN CONTRACTS. (a) Requires a state agency, if it determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of \$10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions, to create an optimized model for the identified functions or services to determine how and at what cost the agency could most efficiently provide the functions or services.

(b) Requires the model to show consideration of all relevant factors.

(c) Requires an agency that develops an optimized model under this section to use it as the basis for cost comparison when deciding whether to outsource the identified functions or services.

(d) Provides that a model developed under this section is confidential and is not subject to disclosure under Chapter 552 (Public Information) until a final determination has been made to award the contract for which the model was developed.

SECTION 1.06. Amends Subchapter C, Chapter 2262, Government Code, by adding Sections 2262.104 and 2262.105, as follows:

Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) Requires the team to develop and publish a uniform set of definitions for use as applicable in state contracts.

(b) Requires the team to develop and publish a uniform and automated set of forms that a state agency may use in the different stages of the contracting process.

Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE. Requires the team, as part of the uniform forms published under Section 2262.104, to develop forms for use by state agencies in reporting a contractor's performance under Section 2262.058.

SECTION 1.07. Amends Chapter 2262, Government Code, by adding Subchapters D, E, and F, as follows:

SUBCHAPTER D. CONTRACT PROVISIONS

Sec. 2262.151. USE OF UNIFORM FORMS. Authorizes a state agency to use the forms developed under Section 2262.104 as templates, guides, or samples for contracts entered into by the agency.

Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE. (a) Requires the team to develop recommendations for contract terms regarding penalties for contractors who do not comply with a contract, including penalties for contractors who do not disclose conflicts of interest under Section 2262.201. Authorizes the team to develop recommended contract terms that are generally applicable to state contracts and terms that are applicable to important types of state contracts.

(b) Authorizes a state agency to include applicable recommended terms in a contract entered into by the agency.

Sec. 2262.153. REQUIRED PROVISION RELATING TO SUBCONTRACTOR COMPLIANCE. Requires each state agency contract to require that each contractor provide a list of all subcontractors and include a provision that serves certain functions.

Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT; STATE AGENCY EMPLOYEES. Requires the team to develop a standard contract provision requiring a contractor and subcontractor to disclose each employee who meets certain criteria. Requires a state agency to include the provision in a contract entered into by the agency.

Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT; OUTSOURCING. (a) Requires each contract entered into by a state agency to include a provision requiring disclosure of any services materially necessary to fulfill the contract, including services performed by a subcontractor, that will be or are performed in a country other than the United States. Provides that this section does not apply to services that are incidental to fulfilling the contract.

(b) Requires the contract to include a provision allowing the state agency to terminate the contract and solicit a new contract under certain circumstances.

(c) Requires a state agency that decides not to solicit a new contract under circumstances in which the agency is authorized to do so under a contract provision required by Subsection (b) to report this decision to certain entities.

Sec. 2262.156. HIRING PREFERENCE PROVISION FOR CERTAIN LARGE CONTRACTS. Requires, if a state agency determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of \$10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions, the contract or contract amendment to contain a provision that requires the contractor to give preference in hiring to former employees of a state agency who meet certain criteria.

[Reserves Sections 2262.157-2262.200 for expansion.]

SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. Requires each contractor who responds to a state agency's contract solicitation to disclose in its response all potential conflicts of interest to the agency. Requires the team to develop guidelines to aid contractors and state agencies in identifying potential conflicts of interest.

Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING CLASS. Requires each executive director of a state agency to annually complete the ethics and contracting class developed under Section 2262.053. Provides that this section does not apply to a state agency that does not enter into any contracts.

[Reserves Sections 2262.203-2262.250 for expansion.]

SUBCHAPTER F. CHANGES TO CONTRACTS

Sec. 2262.251. CONTRACT AMENDMENTS AND CHANGE ORDERS.

(a) Provides that an amendment to a contract, including a change order, is subject to the same approval processes as the original contract.

(b) Prohibits a state agency from amending a contract unless the agency complies with the same approval processes for the amendment as required for the original contract and a contract manager for the agency states in writing why the amendment is necessary.

(c) Provides that this section does not require a new solicitation for a new contract.

Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) Requires a state agency, if a proposed contract amendment or extension changes the monetary value of a contract by more than 10 percent, to obtain review and approval from the team and the agency's executive director before the agency amends or extends the contract.

(b) Provides that this section does not apply to contract extensions that are specifically established as a component of the original procurement.

SECTION 1.08. Transfers and amends Section 2262.003, Government Code, to Subchapter D, Chapter 2262, Government Code, as added by this Act, and redesignates it as Section 2262.156, Government Code, as follows:

Sec. 2262.156. New heading: REQUIRED PROVISION RELATING TO AUDITING. Makes no changes to existing text.

SECTION 1.09. (a) Provides that Sections 2262.064 and 2262.067, Government Code, as added by this article, apply only to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act.

(b) Provides that Section 2262.201(a), Government Code, as added by this article, applies only in relation to a contract for which a state agency first solicits bids, proposals, offers, or qualifications on or after the date that the Contract Advisory Team's guidelines regarding potential conflicts of interest take effect.

SECTION 1.10. Requires the commission, not later than March 1, 2006, to develop the training program, including the ethics and contracting class, required by Section 2262.053, Government Code, as amended by this article, and Section 2262.0535, Government Code, as added by this article.

SECTION 1.11. Provides that a member of a governing body of a state agency is not required to complete the training developed under Section 2262.0535, Government Code, as added by this article, until September 1, 2007.

SECTION 1.12. Provides that an executive director of a state agency is not required to comply with Section 2262.202, Government Code, as added by this article, until September 1, 2007.

SECTION 1.13. Provides that a contract manager is not required to be certified under Chapter 2262, Government Code, as amended by this article, until September 1, 2007.

SECTION 1.14. (a) Requires the Contract Advisory Team, as soon as practicable, and not later than March 1, 2006, to develop the forms, criteria, recommendations, and provisions required by this article, including Sections 2262.104, 2262.105, 2262.152, 2262.154, and 2262.201(b), Government Code, as added by this article.

(b) Provides that a state agency is not required to comply with Sections 2262.056 through 2262.063 and Sections 2262.153, 2262.154, 2262.155, and 2262.156, Government Code, as added by this article, until September 1, 2007. Authorizes a state agency to comply earlier if the forms, electronic requirements, database, or other items are available before that date.

ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

SECTION 2.01. Amends Subchapter C, Chapter 572, Government Code, by adding Section 572.062, as follows:

Sec. 572.062. CONFLICT OF INTEREST OF STATE OFFICER OR EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) Defines "legislative consultant," "legislative employee," "member of the governor's executive staff," "state agency legislative liaison," and "state agency procurement agent."

(b) Provides that this section applies to an appointed officer, executive head of a state agency, member of the governor's executive staff, legislative employee, state agency legislative liaison, state agency procurement agent, or legislative consultant.

(c) Provides that, for purposes of this section, a person to whom this section applies has a conflict of interest if the person has a personal financial or other interest in the subject matter of a governmental decision or action that compromises or has the appearance of compromising the person's professional judgment or integrity.

(d) Requires a person to whom this section applies who has a conflict of interest with respect to a governmental decision or action to disclose the conflict in writing delivered to the state officer or state agency employing or contracting with the person and abstain from further participation in the governmental decision or action.

(e) Provides that a person who violates this section is liable for a civil penalty of not less than \$500 and not more than the value of a monetary gain the person receives because of the governmental decision or action.

(f) Provides that Subsection (e) does not prohibit the imposition of a civil penalty under Chapter 571 or removal of an appointed officer under Section 572.058 for conduct that violates both this section and Section 572.058.

SECTION 2.02. Makes application of Section 572.060, Government Code, as added by this article, prospective to September 1, 2005.

ARTICLE 3. CHANGES RELATED TO STATE AUDIT CONTRACTS

SECTION 3.01. Amends Section 2113.102(a), Government Code, to prohibit a state agency from using appropriated money to contract with a person to audit the agency except under certain circumstances.

ARTICLE 4. PREFERENCE IN GOVERNMENTAL PURCHASING DECISIONS FOR VENDORS THAT PROVIDE HEALTH BENEFITS TO EMPLOYEES

SECTION 4.01. Amends Section 44.031(b), Education Code, to authorize the school district, except as provided by this subchapter, in determining to whom to award a contract, to consider whether the vendor provides health benefits coverage to employees.

SECTION 4.02. Amends Subchapter B, Chapter 44, Education Code, by adding Section 44.0421, as follows:

Sec. 44.0421. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) Requires a school district procuring goods or services to give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Article 3.80, Article 20A.09N, or Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees if certain conditions are satisfied.

(b) Prohibits a district from giving preference under this section to a vendor that provides health benefits coverage to its employees over a vendor with 50 or fewer employees that does not provide health benefits coverage to its employees and employees' dependents.

SECTION 4.03. Amends Section 51.9335(b), Education Code, as follows:

(b) Requires an institution of higher education, in determining what is the best value to the institution, to consider whether the vendor provides health benefits coverage to employees.

SECTION 4.04. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.9336, as follows:

Sec. 51.9336. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) Defines "institution of higher education."

(b) Requires an institution of higher education procuring goods or services to give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Article 3.80, Article 20A.09N, or Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees if certain conditions are satisfied.

(c) Prohibits an institution of higher education from giving preference under this section to a vendor that provides health benefits coverage to its employees over a vendor with 50 or fewer employees that does not provide health benefits coverage to its employees and employees' dependents.

SECTION 4.05. Amends Section 73.115(b), Education Code, to require the University of Texas at Houston to consider, as provided by Section 51.9336, whether the vendor provides health benefits coverage to employees in determining what is the best value to the institution.

SECTION 4.06. Amends Section 74.008(b), Education Code, to require the University of Texas at Galveston Medical Branch (medical branch), in determining what is the best value to the medical branch, to consider, as provided by Section 51.9336, whether the vendor provides health benefits coverage to employees.

SECTION 4.07. Amends Section 2155.074(b), Government Code, as follows:

(b) Authorizes the commission or other state agency, subject to Subsection (c) and Section 2155.075, to consider whether the vendor provides health benefits coverage to employees.

SECTION 4.08. Amends Subchapter H, Chapter 2155, Government Code, by adding Section 2155.452, as follows:

Sec. 2155.452. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) Requires the commission and all state agencies procuring goods or services to give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Article 3.80, Article 20A.09N, or Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees if certain conditions are satisfied.

(b) Prohibits the commission or a state agency from giving preference under this section to a vendor that provides health benefits coverage to its employees over a vendor with 50 or fewer employees that does not provide health benefits coverage to its employees and employees' dependents.

SECTION 4.09. Amends Section 252.043(b), Local Government Code, to authorize a municipality, in determining the best value for the municipality, to consider whether the bidder provides health benefits coverage to employees.

SECTION 4.10. Amends Subchapter C, Chapter 252, Local Government Code, by adding Section 252.0431, as follows:

Sec. 252.0431. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) Requires a municipality procuring goods or services to give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Article 3.80, Article 20A.09N, or Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees if certain conditions are satisfied.

(b) Prohibits a municipality from giving preference under this section to a vendor that provides health benefits coverage to its employees over a vendor with 50 or fewer employees that does not provide health benefits coverage to its employees and employees' dependents.

SECTION 4.11. Amends Subchapter C, Chapter 271, Local Government Code, by adding Section 271.0571, as follows:

Sec. 271.0571. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) Requires a municipality or a county procuring goods or services to give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees if certain conditions are satisfied.

(b) Prohibits a municipality or county from giving preference under this section to a vendor that provides health benefits coverage to its employees over a vendor with 50 or fewer employees that does not provide health benefits coverage to its employees and employees' dependents.

SECTION 4.12. Amends Section 271.113, Local Government Code, by adding Subsection (c), as follows:

(c) Authorizes a municipality or county, in addition to other considerations under this section, in determining to whom to award a contract, to consider whether the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees.

SECTION 4.13. Amends Subchapter H, Chapter 271, Local Government Code, by adding Section 271.1131, as follows:

Sec. 271.1131. PREFERENCE FOR VENDORS THAT PROVIDE HEALTH BENEFITS COVERAGE. (a) Requires a municipality or county procuring goods or services to give preference to goods or services of a vendor that demonstrates that the vendor provides health benefits coverage that is at least equivalent to a standard health benefit plan offered in accordance with Chapter 1507, Insurance Code, to each of the vendor's full-time employees and dependents of full-time employees if certain conditions are satisfied.

(b) Prohibits a municipality or county from giving preference under this section to a vendor that provides health benefits coverage to its employees over a vendor with 50 or fewer employees that does not provide health benefits coverage to its employees and employees' dependents.

SECTION 4.14. Makes application of this Act prospective.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Effective date: November 1, 2005.