

## **BILL ANALYSIS**

Senate Research Center

H.B. 15  
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Finance  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Recent reports have indicated that there may be widespread abuse in certain state government contracting, and interested parties assert that legislative action to provide increased oversight and management over state contracts would be beneficial. H.B. 15 seeks to address this concern by increasing oversight of certain high-risk state contracts.

H.B. 15 amends current law relating to the management and oversight of state contracts, including contracts for information technology commodity items.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the comptroller of public accounts of the State of Texas is modified in SECTION 9 (Section 2262.0015, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 821.009(b), Government Code, to require a representative of the Office of the Attorney General (OAG), notwithstanding any other law and in addition to the requirements of Subchapter E (Contract Management and Oversight Team), Chapter 2262 (Statewide Contract Management), Government Code, before a contract described by Subsection (a) may be entered into by the Teacher Retirement System of Texas (TRS), to review the form and terms of the contract and may make recommendations to TRS for changes to the contract if the attorney general determines that OAG has sufficient subject matter expertise and resources available to provide this service.

SECTION 2. Amends Section 825.103(g), Government Code, as follows:

(g) Provides that, notwithstanding any other law and except as provided by Section 2262.202 (Applicability of Subchapter), Chapters 2261 (State Contracting Standards and Oversight) and 2262, Government Code, do not apply to TRS. Requires the Contract Management and Oversight Team, rather than the Contract Advisory Team, to assist TRS at the request of TRS. Authorizes the retirement system to use the training program for contract management provided under Chapter 2262, Government Code.

SECTION 3. Amends Section 2054.065(a)(2), Government Code, to redefine "team" to mean the Contract Management and Oversight Team established under Subchapter E, Chapter 2262, Government Code, rather than the Contract Advisory Team established under Subchapter C, Chapter 2262, Government Code.

SECTION 4. Amends Sections 2165.356(a) and (b), Government Code, as follows:

(a) Requires the Texas Facilities Commission (TFC), not later than the 60th day before the date TFC is scheduled to vote on approval of a qualifying project contract, to submit to the Contract Management and Oversight Team, Subchapter E, Chapter 2262, rather than the Contract Advisory Team, established under Subchapter C, Chapter 2262, Government Code, documentation of the modifications to a proposed qualifying project made during TFC's evaluation and negotiation process for the project, including a copy of:

- (1) the final draft of the contract;
- (2) the detailed qualifying project proposal; and
- (3) any executed interim or other agreement.

(b) Makes a conforming change.

SECTION 5. Amends Section 2166.2551, Government Code, as follows:

Sec. 2166.2551. CONTRACT NOTIFICATION. Requires TFC or an agency whose project is exempted from all or part of this chapter under Section 2166.003 (Exceptions), Government Code, to provide written notice to the Legislative Budget Board (LBB) of a contract for a construction project if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000, rather than exceeds \$14,000. Requires that the notice be on a form prescribed by the LBB and filed not later than the 10th day after the date the agency enters into the contract.

SECTION 6. Amends Section 2254.006, Government Code, as follows:

Sec. 2254.006. CONTRACT NOTIFICATION. Requires a state agency, including an institution of higher education as defined by Section 61.003 (Definitions), Education Code, to provide written notice to the LBB of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000, rather than exceeds \$14,000. Requires that the notice be on a form prescribed by the LBB and filed not later than the 10th day after the date the agency enters into the contract.

SECTION 7. Amends Section 2254.0301(a), Government Code, as follows:

(a) Requires a state agency to provide written notice to the LBB of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$50,000, rather than exceeds \$14,000. Requires that the notice be on a form prescribed by the LBB and filed not later than the 10th day after the date the entity enters into the contract.

SECTION 8. Amends Section 2262.001(1), Government Code, to define "team."

SECTION 9. Amends Section 2262.0015, Government Code, as follows:

Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS. (a) Requires the comptroller of public accounts of the State of Texas (comptroller) by rule to establish threshold requirements that exclude small or routine contracts, including purchase orders, from the application of Subchapters A, B, and D, rather than from the application of this chapter.

(b) Provides that Subchapters A (General Provisions), B (Contract Management), and D (Contract Forms and Provisions), Government Code, do not apply, rather than this chapter does not apply, to an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on November 1, 2013.

SECTION 10. Amends Section 2262.002(b), Government Code, as follows:

(b) Provides that, except as otherwise provided by this chapter, this chapter does not apply to contracts of the Texas Department of Transportation (TxDOT) that:

- (1) relate to highway construction or highway engineering; or
- (2) are subject to Section 201.112 (Contract Claims), Transportation Code.

SECTION 11. Amends Chapter 2262, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. CONTRACT MANAGEMENT AND OVERSIGHT TEAM

Sec. 2262.201. DEFINITIONS. Defines "high-risk contract," "major information resources project," "quality assurance team," and "solicitation."

Sec. 2262.202. APPLICABILITY OF SUBCHAPTER. (a) Provides that this subchapter applies to contracts of TxDOT that:

- (1) do not relate to highway construction or highway engineering; or
- (2) are not subject to Section 201.112, Transportation Code.

(b) Provides that this subchapter does not apply to a contract of the Employees Retirement System of Texas (ERS) or the Teacher Retirement System of Texas (TRS) except for a contract with a nongovernmental entity for claims administration of a group health benefit plan under Subtitle H, Title 8, Insurance Code.

Sec. 2262.203. ESTABLISHMENT; GENERAL DUTIES. Requires the LBB to establish a Contract Management and Oversight Team (team) to:

- (1) develop criteria for identifying high-risk factors in contracts;
- (2) consult with state agencies on and review high-risk contracts as provided by Section 2262.204, Government Code;
- (3) provide recommendations and assistance to state agency personnel throughout the contract management process;
- (4) coordinate and consult with the quality assurance team on all high-risk contracts relating to a major information resources project; and
- (5) coordinate and consult with the comptroller of public accounts of the State of Texas (comptroller) to:
  - (A) develop criteria for high-risk contracts under Section 2262.201(1)(E);
  - (B) identify strategies to mitigate contract risks; and
  - (C) monitor contract activity using information from the centralized accounting and payroll system or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project developed under Sections 2101.035 (Administration of USAS) and 2101.036 (State Agency Internal Accounting Systems), Government Code.

Sec. 2262.204. NOTICE AND REVIEW; WAIVER. (a) Requires each state agency to provide written notice to the team not later than the 30th day before the date the agency publicly releases solicitation documents for a high-risk contract.

- (b) Requires a state agency to submit to the team information and documentation requested by the team that relate to a high-risk contract, including information on contract development, vendor selection, and ongoing contract oversight.
- (c) Requires the team to review information and documentation submitted under Subsection (b) and make recommendations to ensure that potential risks related to the high-risk contract have been identified and mitigated.

(d) Requires a state agency to implement the team's recommendations and provide any additional documentation required by the team to demonstrate that risks related to the high-risk contract have been mitigated. Requires the agency to provide written notice to the team before the 31st day after the date the agency received the recommendation if a recommendation made by the team is not implemented.

(e) Requires the team, if, after receiving notice provided under Subsection (d), the team determines that significant risks related to the high-risk contract remain, to provide written notice of that fact to the LBB, the governor, and the comptroller with a description of the risk and recommendations to mitigate the risk, including cancellation of the high-risk contract.

(f) Authorizes the team to adopt criteria for waiving the consultation and review requirements of this section.

Sec. 2262.205. SOLICITATION AND CONTRACT CANCELLATION. Authorizes the LBB, the governor, or the comptroller, after review of the written notice provided by the team under Section 2262.204(e), to recommend that a state agency cancel a solicitation or a high-risk contract if:

(1) a proposed contract would place the state at an unacceptable risk if executed; or

(2) an executed contract is experiencing performance failure or payment irregularities.

SECTION 12. Repealer: Subchapter C (Contract Advisory Team), Chapter 2262, Government Code.

SECTION 13. (a) Provides that the Contract Advisory Team is abolished.

(b) Provides that the validity of an action taken by the Contract Advisory Team before the team was abolished by this Act is not affected by the abolition.

(c) Provides that all powers and duties of the Contract Advisory Team are transferred to the Contract Management and Oversight team established by this Act.

(d) Provides that a rule, form, policy, procedure, or decision of the Contract Advisory Team continues in effect as a rule, form, policy, procedure, or decision of Contract Management and Oversight Team until superseded by an act of the Contract Management and Oversight Team.

(e) Provides that a reference in law to the Contract Advisory Team means the Contract Management and Oversight Team.

(f) Provides that any action or proceeding involving the Contract Advisory Team is transferred without change in status to the Contract Management and Oversight Team, and the Contract Management and Oversight Team assumes, without a change in status, the position of the Contract Advisory Team in a negotiation or proceeding to which the Contract Advisory Team is a party.

SECTION 14. Provides that Sections 2166.2551, 2254.006, and 2254.0301(a), Government Code, as amended by this Act, apply only to a state agency contract for which the agency is required to provide notice to the LBB that is entered into on or after the effective date of this Act.

SECTION 15. Effective date: September 1, 2015.