

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 28, 2015

Date

Honorable Dan Patrick
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on Senate Bill 20 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Jane Nelson
Senator for Jane Nelson, chair

J. J. Hines
Senator J. J. Hines

Joan Huffman
Senator Joan Huffman

Robert Nichols
Senator Robert Nichols

Charles Schwertner
On the part of the Senate
Senator Charles Schwertner

Four Price
Rep. Four Price, chair

Byron Cook
Rep. Byron Cook

Marsha Erney
Rep. Marsha Erney

John Kuempel
Rep. John Kuempel

Richard Peña Riquelme
On the part of the House
Rep. Richard Peña Riquelme

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to state agency contracting.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 321.013, Government Code, is amended by adding Subsections (k) and (l) to read as follows:

(k) In devising the audit plan under Subsection (c), the State Auditor shall consider the performance of audits on contracts entered into by the Health and Human Services Commission that exceed \$100 million in annual value, including a contract between the commission and a managed care organization. The State Auditor shall collaborate with the financial managers in the Medicaid/CHIP Division of the commission in performing an audit described by this subsection. An audit described by this subsection:

(1) may be limited in scope to target an area of the contract that the State Auditor determines poses the highest financial risk to this state; and

(2) must determine whether the entity contracting with the commission has spent state money in accordance with the purposes authorized in the contract.

(1) The State Auditor may contract with a private auditor to audit a contract under Subsection (k).

SECTION 2. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.03057 to read as follows:

Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY.

1 (a) The comptroller, in cooperation with the governor's budget and
2 policy staff, shall conduct a study examining the feasibility and
3 practicality of consolidating state purchasing functions into
4 fewer state agencies or one state agency. The study must examine
5 the cost savings to this state that may be achieved through:

6 (1) abolishing offices or departments of state
7 agencies that have a dedicated office or department for purchasing;
8 and

9 (2) consolidating or reducing the number of vendors
10 authorized to contract with this state to allow this state to better
11 leverage its purchasing power.

12 (b) The comptroller shall prepare and deliver to the
13 governor, the lieutenant governor, and each member of the
14 legislature a report on the findings of the study conducted under
15 Subsection (a), including:

16 (1) a detailed projection of expected savings or costs
17 to this state in consolidating state purchasing;

18 (2) a report on the process for the legislature or the
19 executive branch to implement the consolidation of state
20 purchasing;

21 (3) a list of state agencies, including dedicated
22 offices or departments in those agencies, with purchasing
23 responsibilities; and

24 (4) the total cost to this state of the purchasing
25 responsibilities for each state agency, including the dedicated
26 office or department in the agency with purchasing responsibility.

27 (c) The comptroller shall prepare, deliver, and post on the

1 comptroller's Internet website the report required by this section
2 not later than December 31, 2016.

3 (d) The comptroller may contract with a public or private
4 entity to conduct the study required by this section.

5 (e) This section expires January 1, 2018.

6 SECTION 3. Subchapter L, Chapter 441, Government Code, is
7 amended by adding Section 441.1855 to read as follows:

8 Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS
9 BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a
10 state agency:

11 (1) shall retain in its records each contract entered
12 into by the state agency and all contract solicitation documents
13 related to the contract; and

14 (2) may destroy the contract and documents only after
15 the seventh anniversary of the date:

16 (A) the contract is completed or expires; or

17 (B) all issues that arise from any litigation,
18 claim, negotiation, audit, open records request, administrative
19 review, or other action involving the contract or documents are
20 resolved.

21 SECTION 4. Subchapter C, Chapter 572, Government Code, is
22 amended by adding Section 572.069 to read as follows:

23 Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER
24 OR EMPLOYEE RESTRICTED. A former state officer or employee of a
25 state agency who during the period of state service or employment
26 participated on behalf of a state agency in a procurement or
27 contract negotiation involving a person may not accept employment

1 from that person before the second anniversary of the date the
2 officer's or employee's service or employment with the state agency
3 ceased.

4 SECTION 5. Subchapter C, Chapter 2054, Government Code, is
5 amended by adding Section 2054.067 to read as follows:

6 Sec. 2054.067. POSTING OF CERTAIN DOCUMENTS RELATING TO
7 CONTRACT SOLICITATIONS. (a) The department shall post all
8 solicitation documents related to a contract of the department,
9 including contracts under Chapter 2157, to the centralized
10 accounting and payroll system authorized under Sections 2101.035
11 and 2101.036, or any successor system used to implement the
12 enterprise resource planning component of the uniform statewide
13 accounting project.

14 (b) The documents posted under Subsection (a) must include
15 documents showing the criteria by which the department evaluated
16 each vendor responding to the contract solicitation and, if
17 applicable, an explanation of why the vendor was selected by the
18 department under Section 2157.068(b).

19 SECTION 6. Section 2101.001(1), Government Code, is amended
20 to read as follows:

21 (1) "Enterprise resource planning" includes the
22 administration of a state agency's:

- 23 (A) general ledger;
- 24 (B) accounts payable;
- 25 (C) accounts receivable;
- 26 (D) budgeting;
- 27 (E) inventory;

- 1 (F) asset management;
- 2 (G) billing;
- 3 (H) payroll;
- 4 (I) projects;
- 5 (J) grants;
- 6 (K) human resources, including administration of
- 7 performance measures, time spent on tasks, and other personnel and
- 8 labor issues; and
- 9 (L) purchasing, including solicitations and
- 10 contracting.

11 SECTION 7. Section 2101.035, Government Code, is amended by
12 adding Subsection (i) to read as follows:

13 (i) State agencies shall report contract and purchasing
14 information in the uniform manner required by the comptroller.

15 SECTION 8. Section 2101.036, Government Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) Notwithstanding Subsection (d), a state agency in the
18 legislative branch may elect to participate in the enterprise
19 resource planning system developed under this section.

20 SECTION 9. Subchapter C, Chapter 2101, Government Code, is
21 amended by adding Section 2101.041 to read as follows:

22 Sec. 2101.041. STATE AGENCY REPORTING OF CONTRACTING
23 INFORMATION. (a) The comptroller by rule shall determine the
24 contracting information that state agencies must report or provide
25 using the centralized accounting and payroll system, or any
26 successor system used to implement the enterprise resource planning
27 component of the uniform statewide accounting project, developed

1 under Sections 2101.035 and 2101.036.

2 (b) In making the determination required by this section,
3 the comptroller shall consider requiring a state agency to report
4 or provide:

5 (1) a brief summary of each contract that is quickly
6 and easily searchable, including the contract's purpose, timeline,
7 and deliverables;

8 (2) contract planning and solicitation documents;

9 (3) the criteria used to determine the vendor awarded
10 the contract;

11 (4) if the contract was awarded based on best value to
12 the state:

13 (A) a list of the factors considered in
14 determining best value with the weight given each factor; and

15 (B) a statement regarding how the vendor awarded
16 the contract provides the best value to the state in relation to
17 other vendors who bid or otherwise responded to the contract
18 solicitation;

19 (5) any statements of work and work orders prepared
20 for or under the contract;

21 (6) the proposed budget for the contract;

22 (7) any conflict of interest documents signed by state
23 agency purchasing personnel participating in the planning,
24 soliciting, or monitoring of the contract;

25 (8) criteria used or to be used by the state agency in
26 monitoring the contract and vendor performance under the contract;

27 (9) a justification for each change order, contract

1 amendment, contract renewal or extension, or other proposed action
2 that would result in an increase in the monetary value of a contract
3 with an initial value exceeding \$10 million; and

4 (10) additional supporting documentation and
5 justification for a change order, contract amendment, contract
6 renewal or extension, or other proposed action of a contract
7 described by Subdivision (9) that would result in an increase in the
8 contract's monetary value by more than 20 percent.

9 SECTION 10. Subchapter B, Chapter 2155, Government Code, is
10 amended by adding Section 2155.0755 to read as follows:

11 Sec. 2155.0755. VERIFICATION OF USE OF BEST VALUE STANDARD.

12 (a) The contract manager or procurement director of each state
13 agency shall:

14 (1) approve each state agency contract for which the
15 agency is required to purchase goods or services using the best
16 value standard;

17 (2) ensure that, for each contract, the agency
18 documents the best value standard used for the contract; and

19 (3) acknowledge in writing that the agency complied
20 with the agency's and comptroller's contract management guide in
21 the purchase.

22 (b) For each purchase of goods or services for which a state
23 agency is required to use the best value standard, the comptroller
24 shall ensure that the agency includes in the vendor performance
25 tracking system established under Section 2262.055 information on
26 whether the vendor satisfied that standard.

27 SECTION 11. Section 2155.077, Government Code, is amended

1 by amending Subsections (a) and (b) and adding Subsection (a-2) to
2 read as follows:

3 (a) The commission may bar a vendor from participating in
4 state contracts that are subject to this subtitle, including
5 contracts for which purchasing authority is delegated to a state
6 agency, for:

7 (1) substandard performance under a contract with the
8 state or a state agency;

9 (2) material misrepresentations in a bid or proposal
10 to the state or a state agency or during the course of performing a
11 contract with the state or a state agency;

12 (3) fraud; [~~or~~]

13 (4) breaching a contract with the state or a state
14 agency; or

15 (5) repeated unfavorable performance reviews under
16 Section 2155.089 or repeated unfavorable classifications received
17 by the vendor under Section 2262.055 after considering the
18 following factors:

19 (A) the severity of the substandard performance
20 by the vendor;

21 (B) the impact to the state of the substandard
22 performance;

23 (C) any recommendations by a contracting state
24 agency that provides an unfavorable performance review;

25 (D) whether debarment of the vendor is in the
26 best interest of the state; and

27 (E) any other factor that the comptroller

1 considers relevant, as specified by comptroller rule.

2 (a-2) The comptroller may bar a vendor from participating in
3 state contracts that are subject to this subtitle, including
4 contracts for which purchasing authority is delegated to a state
5 agency, if more than two contracts between the vendor and the state
6 have been terminated by the state for unsatisfactory vendor
7 performance during the preceding three years.

8 (b) Except as provided by Subsection (d), the commission
9 shall bar a vendor from participating in state contracts under
10 Subsection (a) or (a-2) for a period that is commensurate with the
11 seriousness of the vendor's action and the damage to the state's
12 interests.

13 SECTION 12. Section 2155.078, Government Code, is amended
14 by amending Subsections (a) and (b) and adding Subsection (a-1) to
15 read as follows:

16 (a) The commission shall establish and administer a system
17 of training, continuing education, and certification for state
18 agency purchasing personnel. The training and continuing education
19 for state agency purchasing personnel must include ethics training.
20 The commission may establish and offer appropriate training to
21 vendors on a cost recovery basis. The commission may adopt rules to
22 administer this section, including rules relating to monitoring a
23 certified purchaser's compliance with the continuing education
24 requirements of this section.

25 (a-1) The training, continuing education, and certification
26 required under Subsection (a) must include:

27 (1) training on the selection of an appropriate

1 procurement method by project type; and
2 (2) training conducted by the Department of
3 Information Resources on purchasing technologies.

4 (b) Notwithstanding [~~Except as provided by~~] Subsection (n),
5 all state agency purchasing personnel, including agencies exempted
6 from the purchasing authority of the commission, must receive the
7 training and continuing education to the extent required by rule of
8 the commission. The training and continuing education must include
9 ethics training. A state agency employee who is required to receive
10 the training may not participate in purchases by the employing
11 agency unless the employee has received the required training or
12 received equivalent training from a national association
13 recognized by the commission. The equivalent training may count,
14 as provided by Subsection (k), toward the continuing education
15 requirements.

16 SECTION 13. Subchapter B, Chapter 2155, Government Code, is
17 amended by adding Section 2155.089 to read as follows:

18 Sec. 2155.089. REPORTING VENDOR PERFORMANCE. (a) After a
19 contract is completed or otherwise terminated, each state agency
20 shall review the vendor's performance under the contract.

21 (b) The state agency shall report to the comptroller, using
22 the tracking system established by Section 2262.055, on the results
23 of the review regarding a vendor's performance under a contract.

24 (c) This section does not apply to:

25 (1) an enrollment contract described by 1 T.A.C.
26 Section 391.183 as that section existed on September 1, 2015; or

27 (2) a contract of the Employees Retirement System of

1 Texas or the Teacher Retirement System of Texas except for a
2 contract with a nongovernmental entity for claims administration of
3 a group health benefit plan under Subtitle H, Title 8, Insurance
4 Code.

5 SECTION 14. Section 2156.181(a), Government Code, is
6 amended to read as follows:

7 (a) The commission may enter into one or more compacts,
8 interagency agreements, or cooperative purchasing agreements
9 directly with one or more state governments, agencies of other
10 states, or other governmental entities or may participate in,
11 sponsor, or administer a cooperative purchasing agreement through
12 an entity that facilitates those agreements for the purchase of
13 goods or services if the commission determines that the [~~entering~~
14 ~~into an~~] agreement would be in the best interest of the state.

15 SECTION 15. Section 2157.068, Government Code, is amended
16 by adding Subsections (e-1) and (e-2) to read as follows:

17 (e-1) A state agency contracting to purchase a commodity
18 item shall use the list maintained as required by Subsection (e) as
19 follows:

20 (1) for a contract with a value of \$50,000 or less, the
21 agency may directly award the contract to a vendor included on the
22 list without submission of a request for pricing to other vendors on
23 the list;

24 (2) for a contract with a value of more than \$50,000
25 but not more than \$150,000, the agency must submit a request for
26 pricing to at least three vendors included on the list in the
27 category to which the contract relates; and

1 (3) for a contract with a value of more than \$150,000
2 but not more than \$1 million, the agency must submit a request for
3 pricing to at least six vendors included on the list in the category
4 to which the contract relates or all vendors on the schedule if the
5 category has fewer than six vendors.

6 (e-2) A state agency may not enter into a contract to
7 purchase a commodity item if the value of the contract exceeds \$1
8 million.

9 SECTION 16. Subchapter B, Chapter 2157, Government Code, is
10 amended by adding Section 2157.0685 to read as follows:

11 Sec. 2157.0685. CONTRACT REQUIREMENTS FOR CERTAIN
12 SERVICES. (a) In this section, "statement of work" means a
13 document that states the requirements for a contract, including
14 deliverables, performance specifications, and other requirements,
15 specific to the vendor under that contract that are not specified in
16 a contract awarded by the department under Section 2157.068 for
17 contracts more than \$50,000.

18 (b) For a contract awarded by the department under Section
19 2157.068 that requires a state agency to develop and execute a
20 statement of work to initiate services under the contract, the
21 state agency must:

22 (1) consult with the department before submission of
23 the statement of work to a vendor; and

24 (2) post each statement of work entered into by the
25 agency on the agency's Internet website in the manner required by
26 department rule.

27 (c) A statement of work executed by a state agency under a

1 contract awarded by the department under Section 2157.068 is not
2 valid and money may not be paid to the vendor under the terms of the
3 statement of work unless the department first signs the statement
4 of work.

5 SECTION 17. Section 2261.001(a), Government Code, is
6 amended to read as follows:

7 (a) This chapter, other than Subchapter F, applies only to
8 each procurement of goods or services made by a state agency that is
9 neither made by the comptroller nor made under purchasing authority
10 delegated to the agency by or under Section 51.9335 or 73.115,
11 Education Code, or Section 2155.131 or 2155.132.

12 SECTION 18. Chapter 2261, Government Code, is amended by
13 adding Subchapter F to read as follows:

14 SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR
15 CERTAIN CONTRACTS

16 Sec. 2261.251. APPLICABILITY OF SUBCHAPTER. (a)
17 Notwithstanding Section 2261.001, this subchapter applies to the
18 Texas Department of Transportation and to an institution of higher
19 education acquiring goods or services under Section 51.9335 or
20 73.115, Education Code.

21 (b) This subchapter does not apply to a contract of the
22 Employees Retirement System of Texas or the Teacher Retirement
23 System of Texas except for a contract with a nongovernmental entity
24 for claims administration of a group health benefit plan under
25 Subtitle H, Title 8, Insurance Code.

26 Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF
27 INTEREST; CERTAIN CONTRACTS PROHIBITED. (a) Each state agency

1 employee or official who is involved in procurement or in contract
2 management for a state agency shall disclose to the agency any
3 potential conflict of interest specified by state law or agency
4 policy that is known by the employee or official with respect to any
5 contract with a private vendor or bid for the purchase of goods or
6 services from a private vendor by the agency.

7 (b) A state agency may not enter into a contract for the
8 purchase of goods or services with a private vendor with whom any of
9 the following agency employees or officials have a financial
10 interest:

11 (1) a member of the agency's governing body;

12 (2) the governing official, executive director,
13 general counsel, chief procurement officer, or procurement
14 director of the agency; or

15 (3) a family member related to an employee or official
16 described by Subdivision (1) or (2) within the second degree by
17 affinity or consanguinity.

18 (c) A state agency employee or official has a financial
19 interest in a person if the employee or official:

20 (1) owns or controls, directly or indirectly, an
21 ownership interest of at least one percent in the person, including
22 the right to share in profits, proceeds, or capital gains; or

23 (2) could reasonably foresee that a contract with the
24 person could result in a financial benefit to the employee or
25 official.

26 (d) A financial interest prohibited by this section does not
27 include a retirement plan, a blind trust, insurance coverage, or an

1 ownership interest of less than one percent in a corporation.

2 Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS;
3 ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each
4 contract for the purchase of goods or services from a private
5 vendor, each state agency shall post on its Internet website:

6 (1) each contract the agency enters into, including
7 contracts entered into without inviting, advertising for, or
8 otherwise requiring competitive bidding before selection of the
9 contractor, until the contract expires or is completed;

10 (2) the statutory or other authority under which a
11 contract that is not competitively bid under Subdivision (1) is
12 entered into without compliance with competitive bidding
13 procedures; and

14 (3) the request for proposals related to a
15 competitively bid contract included under Subdivision (1) until the
16 contract expires or is completed.

17 (b) A state agency monthly may post contracts described by
18 Subsection (a) that are valued at less than \$15,000.

19 (c) Each state agency by rule shall establish a procedure to
20 identify each contract that requires enhanced contract or
21 performance monitoring and submit information on the contract to
22 the agency's governing body or, if the agency is not governed by a
23 multimember governing body, the officer who governs the agency.
24 The agency's contract management office or procurement director
25 shall immediately notify the agency's governing body or governing
26 official, as appropriate, of any serious issue or risk that is
27 identified with respect to a contract monitored under this

1 subsection.

2 (d) This section does not apply to a memorandum of
3 understanding, interagency contract, interlocal agreement, or
4 contract for which there is not a cost.

5 Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$1 MILLION.

6 (a) For each contract for the purchase of goods or services that
7 has a value exceeding \$1 million, a state agency shall develop and
8 implement contract reporting requirements that provide information
9 on:

10 (1) compliance with financial provisions and delivery
11 schedules under the contract;

12 (2) corrective action plans required under the
13 contract and the status of any active corrective action plan; and

14 (3) any liquidated damages assessed or collected under
15 the contract.

16 (b) Each state agency shall verify:

17 (1) the accuracy of any information reported under
18 Subsection (a) that is based on information provided by a
19 contractor; and

20 (2) the delivery time of goods or services scheduled
21 for delivery under the contract.

22 (c) Except as provided by Subsection (d), a state agency may
23 enter into a contract for the purchase of goods or services that has
24 a value exceeding \$1 million only if:

25 (1) the governing body of the state agency approves
26 the contract and the approved contract is signed by the presiding
27 officer of the governing body; or

1 (2) for a state agency that is not governed by a
2 multimember governing body, the officer who governs the agency
3 approves and signs the contract.

4 (d) The governing body or governing official of a state
5 agency, as appropriate, may delegate to the executive director of
6 the agency the approval and signature authority under Subsection
7 (c).

8 (e) A highway construction, engineering services, or
9 maintenance contract that is in compliance with all applicable laws
10 related to procuring engineering services or construction bidding
11 and that is awarded by the Texas Department of Transportation under
12 Subchapter A, Chapter 223, Transportation Code, is not required to
13 be signed by a member of the Texas Transportation Commission or the
14 executive director of the department. This exception does not
15 apply to expedited highway improvement contracts under Subchapter
16 C, Chapter 223, Transportation Code, a comprehensive development
17 agreement entered into under Subchapter E, Chapter 223,
18 Transportation Code, a design-build contract entered into under
19 Subchapter F, Chapter 223, Transportation Code, or any other
20 contract entered into by the Texas Department of Transportation.

21 Sec. 2261.255. CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.
22 For each state agency contract for the purchase of goods or services
23 that has a value exceeding \$5 million, the contract management
24 office or procurement director of the agency must:

25 (1) verify in writing that the solicitation and
26 purchasing methods and contractor selection process comply with
27 state law and agency policy; and

1 (2) submit to the governing body of the agency, or
2 governing official of the agency if the agency is not governed by a
3 multimember governing body, information on any potential issue that
4 may arise in the solicitation, purchasing, or contractor selection
5 process.

6 Sec. 2261.256. ACCOUNTABILITY AND RISK ANALYSIS PROCEDURE;
7 CONTRACT MANAGEMENT HANDBOOK. (a) Each state agency shall develop
8 and comply with a purchasing accountability and risk analysis
9 procedure. The procedure must provide for:

10 (1) assessing the risk of fraud, abuse, or waste in the
11 contractor selection process, contract provisions, and payment and
12 reimbursement rates and methods for the different types of goods
13 and services for which the agency contracts;

14 (2) identifying contracts that require enhanced
15 contract monitoring or the immediate attention of contract
16 management staff; and

17 (3) establishing clear levels of purchasing
18 accountability and staff responsibilities related to purchasing.

19 (b) Each state agency shall publish a contract management
20 handbook that establishes consistent contracting policies and
21 practices to be followed by the agency and that is consistent with
22 the comptroller's contract management guide. The agency's handbook
23 may include standard contract provisions and formats for the agency
24 to incorporate in contracts.

25 (c) Each state agency shall post on the agency's Internet
26 website the procedures described by Subsections (a)(2) and (3) and
27 submit to the comptroller a link to the web page that includes the

1 procedures. The comptroller shall post on the comptroller's
2 Internet website the web page link submitted by each state agency.

3 Sec. 2261.257. CONTRACT DATABASE. (a) Each state agency
4 that becomes a participant in the centralized accounting and
5 payroll systems as authorized by Sections 2101.035 and 2101.036
6 shall use the system to identify and record each contract entered
7 into by the agency as specified by the rules, policies, or
8 procedures developed by the comptroller.

9 (b) The comptroller shall provide as necessary information
10 and state agency contract data contained in the centralized
11 accounting and payroll systems to other state agencies with
12 oversight duties, including the Legislative Budget Board, the state
13 auditor's office, and the Department of Information Resources.

14 SECTION 19. Section 2262.053(d), Government Code, is
15 amended to read as follows:

16 (d) The comptroller shall administer training under this
17 section and may assess a fee for the training in an amount
18 sufficient to recover the comptroller's costs under this section.

19 SECTION 20. Section 2262.0535, Government Code, is amended
20 by adding Subsection (c) to read as follows:

21 (c) The comptroller may assess a fee for the training
22 provided under this section in an amount sufficient to recover the
23 comptroller's costs under this section.

24 SECTION 21. Section 2262.055, Government Code, is amended
25 by amending Subsections (a) and (b) and adding Subsections (d) and
26 (e) to read as follows:

27 (a) The comptroller shall evaluate the vendor's performance

1 based on information reported by state agencies under Section
2 2155.089 and criteria established by the comptroller.

3 (b) The comptroller by rule shall establish an evaluation
4 process that:

5 (1) rates vendors on an A through F scale, with A being
6 the highest grade; and

7 (2) allows vendors who receive a grade lower than a C
8 [~~an unfavorable performance review~~] to protest any classification
9 given by the comptroller.

10 (d) A state agency shall use the vendor performance tracking
11 system to determine whether to award a contract to a vendor reviewed
12 in the tracking system. The comptroller by rule shall establish the
13 manner in which the rating scale established under Subsection (b)
14 affects a vendor's eligibility for state contracts and the grades
15 on the scale that disqualify a vendor from state contracting.

16 (e) The comptroller shall make the vendor performance
17 tracking system accessible to the public on the comptroller's
18 Internet website.

19 SECTION 22. Section 51.9335(d), Education Code, is amended
20 to read as follows:

21 (d) Subject to Section 51.9337, Subtitle D, Title 10,
22 Government Code, and Subchapter B, Chapter 2254, Government Code,
23 do not apply to the acquisition of goods and services under this
24 section, except that an institution of higher education must comply
25 with any provision of those laws, or a rule adopted under a
26 provision of those laws, relating to contracting with historically
27 underutilized businesses or relating to the procurement of goods

1 and services from persons with disabilities. An institution of
2 higher education may, but is not required to, acquire goods or
3 services as provided by Subtitle D, Title 10, Government Code.

4 SECTION 23. Subchapter Z, Chapter 51, Education Code, is
5 amended by adding Section 51.9337 to read as follows:

6 Sec. 51.9337. PURCHASING AUTHORITY CONDITIONAL; REQUIRED
7 STANDARDS. (a) An institution of higher education may not
8 exercise the acquisition authority granted by Section 51.9335 or
9 73.115 unless the institution complies with this section. An
10 institution that is determined under Subsection (j) to not be in
11 compliance with this section is subject to the laws governing
12 acquisition of goods and services by state agencies, including
13 Subtitle D, Title 10, Government Code, and Chapter 2254, Government
14 Code.

15 (b) The board of regents of an institution of higher
16 education by rule shall establish for each institution under the
17 management and control of the board:

18 (1) a code of ethics for the institution's officers and
19 employees, including provisions governing officers and employees
20 authorized to execute contracts for the institution or to exercise
21 discretion in awarding contracts, subject to Subsection (c);

22 (2) policies for the internal investigation of
23 suspected defalcation, misappropriation, and other fiscal
24 irregularities and an institutional or systemwide compliance
25 program designed to promote ethical behavior and ensure compliance
26 with all applicable policies, laws, and rules governing higher
27 education, including research and health care to the extent

1 applicable;

2 (3) a contract management handbook that provides
3 consistent contracting policies and practices and contract review
4 procedures, including a risk analysis procedure, subject to
5 Subsection (d);

6 (4) contracting delegation guidelines, subject to
7 Subsections (e) and (f);

8 (5) training for officers and employees authorized to
9 execute contracts for the institution or to exercise discretion in
10 awarding contracts, including training in ethics, selection of
11 appropriate procurement methods, and information resources
12 purchasing technologies; and

13 (6) internal audit protocols, subject to Subsection
14 (g).

15 (c) The code of ethics governing an institution of higher
16 education must include:

17 (1) general standards of conduct and a statement that
18 each officer or employee is expected to obey all federal, state, and
19 local laws and is subject to disciplinary action for a violation of
20 those laws;

21 (2) policies governing conflicts of interest,
22 conflicts of commitment, and outside activities, ensuring that the
23 primary responsibility of officers and employees is to accomplish
24 the duties and responsibilities assigned to that position;

25 (3) a conflict of interest policy that prohibits
26 employees from having a direct or indirect financial or other
27 interest, engaging in a business transaction or professional

1 activity, or incurring any obligation that is in substantial
2 conflict with the proper discharge of the employee's duties related
3 to the public interest;

4 (4) a conflict of commitment policy that prohibits an
5 employee's activities outside the institution from interfering
6 with the employee's duties and responsibilities to the institution;

7 (5) a policy governing an officer's or employee's
8 outside activities, including compensated employment and board
9 service, that clearly delineates the nature and amount of
10 permissible outside activities and that includes processes for
11 disclosing the outside activities and for obtaining and documenting
12 institutional approval to perform the activities;

13 (6) a policy that prohibits an officer or employee
14 from acting as an agent for another person in the negotiation of the
15 terms of an agreement relating to the provision of money, services,
16 or property to the institution;

17 (7) a policy governing the use of institutional
18 resources; and

19 (8) a policy providing for the regular training of
20 officers and employees on the policies described by this
21 subsection.

22 (d) An institution of higher education shall establish
23 contract review procedures and a contract review checklist that
24 must be reviewed and approved by the institution's legal counsel
25 before implementation. The review procedures and checklist must
26 include:

27 (1) a description of each step of the procedure that an

1 institution must use to evaluate and process contracts;

2 (2) a checklist that describes each process that must
3 be completed before contract execution; and

4 (3) a value threshold that initiates the required
5 review by the institution's legal counsel unless the contract is a
6 standard contract previously approved by the counsel.

7 (e) An institution of higher education's policies governing
8 contracting authority must clearly specify the types and values of
9 contracts that must be approved by the board of regents and the
10 types and values of contracts for which contracting authority is
11 delegated by the board to the chief executive officer and by the
12 chief executive officer to other officers and employees of the
13 institution. An officer or employee may not execute a document for
14 the board unless the officer or employee has authority to act for
15 the board and the authority is exercised in compliance with
16 applicable conditions and restrictions.

17 (f) An institution of higher education may not enter into a
18 contract with a value of more than \$1 million, including any
19 amendment, extension, or renewal of the contract that increases the
20 value of the original contract to more than \$1 million, unless the
21 institution's board of regents approves the contract, expressly
22 delegates authority to exceed that amount, or expressly adopts an
23 exception for that contract. The board must approve any amendment,
24 extension, or renewal of a contract with a value that exceeds 25
25 percent of the value of the original contract approved by the board
26 unless the authority to exceed the approved amount is expressly
27 delegated by the board or an exception is expressly adopted by the

1 board for that contract.

2 (g) The board of regents of an institution of higher
3 education shall adopt standards for internal audits conducted by
4 the institution to provide a systematic, disciplined approach to
5 evaluate and improve the effectiveness of the institution's risk
6 management, control, and governance processes related to contracts
7 and to require risk-based testing of contract administration. The
8 internal auditor must have full and unrestricted access to all
9 institutional property, personnel, and records. An internal
10 auditor must report directly to the board of regents in accordance
11 with Chapter 2102, Government Code.

12 (h) The chief auditor of an institution of higher education
13 shall annually assess whether the institution has adopted the rules
14 and policies required by this section and shall submit a report of
15 findings to the state auditor. In auditing the purchase of goods
16 and services by the institution, the state auditor shall determine
17 whether an institution has adopted the required rules and policies.

18 (i) If the state auditor determines that an institution of
19 higher education has failed to adopt the required rules and
20 policies, the auditor shall report that failure to the legislature
21 and to the institution's board of regents and shall, in
22 consultation with the institution, adopt a remediation plan to
23 bring the institution into compliance. If the institution fails to
24 comply within the time established by the state auditor, the
25 auditor shall find the institution to be in noncompliance and
26 report that finding to the legislature and comptroller.

27 (j) In accordance with a schedule adopted by the state

1 auditor in consultation with the comptroller, the authority of an
2 institution of higher education to acquire goods and services as
3 provided by Section 51.9335 or 73.115 is suspended if the
4 institution fails to comply with the remediation plan under
5 Subsection (i) within the time established by the state auditor. As
6 a result of the suspension, the laws, including Subtitle D, Title
7 10, Government Code, and Chapter 2254, Government Code, governing
8 acquisition of goods and services by state agencies from which the
9 institution is otherwise exempt, shall apply to the institution's
10 acquisition of goods and services.

11 SECTION 24. Subchapter Z, Chapter 51, Education Code, is
12 amended by adding Section 51.954 to read as follows:

13 Sec. 51.954. DISCLOSURE OF SPONSORS OF CONTRACTED RESEARCH
14 IN PUBLIC COMMUNICATIONS. (a) In any public communication the
15 content of which is based on the results of sponsored research, a
16 faculty member or other employee or appointee of an institution of
17 higher education who conducted or participated in conducting the
18 research shall conspicuously disclose the identity of each sponsor
19 of the research.

20 (b) In this section:

21 (1) "Institution of higher education" has the meaning
22 assigned by Section 61.003.

23 (2) "Public communication" means oral or written
24 communication intended for public consumption or distribution,
25 including:

26 (A) testimony in a public administrative,
27 legislative, regulatory, or judicial proceeding;

1 (B) printed matter including a magazine,
2 journal, newsletter, newspaper, pamphlet, or report; or

3 (C) posting of information on a website or
4 similar Internet host for information.

5 (3) "Sponsor" means an entity that contracts for or
6 provides money or materials for research.

7 (4) "Sponsored research" means research:

8 (A) that is conducted under a contract with, or
9 that is conducted under a grant awarded by and pursuant to a written
10 agreement with, an individual or entity other than the institution
11 conducting the research; and

12 (B) in which payments received or the value of
13 materials received under that contract or grant, or under a
14 combination of more than one such contract or grant, constitutes at
15 least 50 percent of the cost of conducting the research.

16 SECTION 25. Sections 73.115(e) and (f), Education Code, are
17 amended to read as follows:

18 (e) To the extent of any conflict, this section prevails
19 over any other law relating to the purchasing of goods and services
20 other than Section 51.9337 and ~~[except]~~ a law relating to
21 contracting with historically underutilized businesses.

22 (f) Except as otherwise provided by this section and Section
23 51.9337, Subtitle D, Title 10, Government Code, and Chapter 2254,
24 Government Code, do not apply to purchases of goods and services
25 made under this section.

26 SECTION 26. Section 2155.502(d), Government Code, is
27 repealed.

1 SECTION 27. Section 572.069, Government Code, as added by
2 this Act, applies only to a state officer or employee whose service
3 or employment with a state agency ceases on or after the effective
4 date of this Act.

5 SECTION 28. As soon as is practicable after the effective
6 date of this Act, the comptroller of public accounts, and each
7 affected state agency as necessary, shall adopt the rules,
8 processes, and procedures and take the actions necessary to
9 implement the changes in law made by this Act.

10 SECTION 29. Section 2262.055(d), Government Code, as added
11 by this Act, applies only in relation to a contract for which the
12 request for bids or proposals or other applicable expression of
13 interest is made public on or after October 1, 2015.

14 SECTION 30. The changes in law made by this Act apply only
15 to a contract entered into on or after the effective date of this
16 Act. A contract entered into before that date is governed by the
17 law in effect immediately before the effective date of this Act, and
18 the former law is continued in effect for that purpose.

19 SECTION 31. This Act takes effect September 1, 2015.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTIONS __ - __. Sections 114.002, 114.003, and 114.004, Civil Practice and Remedies Code, are amended. [FA10]

Same as Senate version.

No equivalent provision.

SECTION __. Saving provision relating to the applicability of the changes made to Chapter 114, Civil Practice and Remedies Code. [FA10]

Same as Senate version.

No equivalent provision.

SECTION __. Section 305.0041(a), Government Code, is amended. [FA9(1)]

Same as Senate version.

No equivalent provision.

SECTION __. Transition provision relating to the changes made to Section 305.0041(a), Government Code. [FA9(1)]

Same as Senate version.

SECTION 1. Section 321.013, Government Code, is amended.

SECTION 1. Same as Senate version.

SECTION 1. Same as Senate version.

SECTION 2. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.03057 to read as follows:

SECTION 2. Same as Senate version except as follows:

SECTION 2. Same as House version.

Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY.

Sec. 403.03057. CENTRALIZED STATE PURCHASING STUDY.

(a) The comptroller, in cooperation with the governor's budget and policy staff, shall conduct a study examining the feasibility and practicality of consolidating state purchasing

(a) Same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

functions into fewer state agencies or one state agency. The study must examine the cost savings to this state that may be achieved through:

- (1) abolishing offices or departments of state agencies that have a dedicated office or department for purchasing; and
- (2) consolidating or reducing the number of vendors authorized to contract with this state to allow this state to better leverage its purchasing power.

(b) The comptroller shall prepare and deliver to the governor, the lieutenant governor, and each member of the legislature a report on the findings of the study conducted under Subsection (a), including:

- (1) a detailed projection of expected savings or costs to this state in consolidating state purchasing;
- (2) a report on the process for the legislature or the executive branch to implement the consolidation of state purchasing;
- (3) a list of state agencies, including dedicated offices or departments in those agencies, with purchasing responsibilities; and
- (4) the total cost to this state of the purchasing responsibilities for each state agency, including the dedicated office or department in the agency with purchasing responsibility.

(c) The comptroller shall prepare, deliver, and post on the comptroller's Internet website the report required by this section not later than December 31, 2016.

No equivalent provision.

(d) This section expires January 1, 2018.

(b) Same as Senate version.

(c) Same as Senate version.

(d) The comptroller may contract with a public or private entity to conduct the study required by this section.

(e) Same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

SECTION 3. Subchapter L, Chapter 441, Government Code, is amended by adding Section 441.1855 to read as follows:
Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a state agency:
(1) shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and
(2) may destroy the contract and documents only after the *fourth anniversary* of the date the contract is completed or expires.

SECTION 4. Subchapter C, Chapter 572, Government Code, is amended by adding Section 572.069 to read as follows:
Sec. 572.069. CERTAIN EMPLOYMENT FOR FORMER STATE OFFICER OR EMPLOYEE RESTRICTED; *CRIMINAL PENALTY.* (a) A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.
(b) An individual commits an offense if the individual violates this section. An offense under this subsection is a

SECTION 3. Subchapter L, Chapter 441, Government Code, is amended by adding Section 441.1855 to read as follows:
Sec. 441.1855. RETENTION OF CONTRACT AND RELATED DOCUMENTS BY STATE AGENCIES. Notwithstanding Section 441.185 or 441.187, a state agency:
(1) shall retain in its records each contract entered into by the state agency and all contract solicitation documents related to the contract; and
(2) may destroy the contract and documents only after the *seventh anniversary* of the date:
(A) the contract is completed or expires; or
(B) all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the contract or documents are resolved.

No equivalent provision. [Deleted by FA3(1)]

SECTION 3. Same as House version.

SECTION 4. Same as Senate version except does not include Subsection (b) and omits the reference to a criminal penalty in the section heading.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

Class A misdemeanor.

No equivalent provision.

SECTION 5. Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.067 to read as follows:

Sec. 2054.067. POSTING OF CERTAIN DOCUMENTS RELATING TO CONTRACT SOLICITATIONS. (a) The department shall post all solicitation documents related to a contract of the department, including contracts under Chapter 2157, to the centralized accounting and payroll system authorized under Sections 2101.035 and 2101.036, or any successor system used to implement the enterprise resource planning component of the uniform statewide accounting project.

(b) The documents posted under Subsection (a) must include documents showing the criteria by which the department evaluated each vendor responding to the contract solicitation and, if applicable, an explanation of why the vendor was selected by the department under Section 2157.068(b).

SECTION 5. Same as House version.

SECTIONS 5-7. Sections 2101.001(1), 2101.035, and 2101.036, Government Code, are amended.

SECTIONS 6-8. Same as Senate version.

SECTIONS 6-8. Same as Senate version.

No equivalent provision.

SECTION __. Section 2003.0495, Government Code, was added by FA8 and then deleted by FA3,3rd.

Same as Senate version.

No equivalent provision.

SECTION 9. Subchapter C, Chapter 2101, Government Code, is amended by adding Section 2101.041 to read as

SECTION 9. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

follows:

Sec. 2101.041. STATE AGENCY REPORTING OF CONTRACTING INFORMATION. (a) The comptroller by rule shall determine the contracting information that state agencies must report or provide using 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 and 2101.036.

(b) In making the determination required by this section, the comptroller shall consider requiring a state agency to report or provide:

(1) a brief summary of each contract that is quickly and easily searchable, including the contract's purpose, timeline, and deliverables;

(2) contract planning and solicitation documents;

(3) the criteria used to determine the vendor awarded the contract;

(4) if the contract was awarded based on best value to the state:

(A) a list of the factors considered in determining best value with the weight given each factor; and

(B) a statement regarding how the vendor awarded the contract provides the best value to the state in relation to other vendors who bid or otherwise responded to the contract solicitation;

(5) any statements of work and work orders prepared for or under the contract;

(6) the proposed budget for the contract;

(7) any conflict of interest documents signed by state agency purchasing personnel participating in the planning, soliciting, or monitoring of the contract; [FA5(1)]

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

(8) criteria used or to be used by the state agency in monitoring the contract and vendor performance under the contract;

(9) a justification for each change order, contract amendment, contract renewal or extension, or other proposed action that would result in an increase in the monetary value of a contract with an initial value exceeding \$10 million; and

(10) additional supporting documentation and justification for a change order, contract amendment, contract renewal or extension, or other proposed action of a contract described by Subdivision (9) that would result in an increase in the contract's monetary value by more than 20 percent. [FA5(2)]

No equivalent provision.

SECTION 10. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.0755 to read as follows:

Sec. 2155.0755. VERIFICATION OF USE OF BEST VALUE STANDARD. (a) The contract manager or procurement director of each state agency shall:

(1) approve each state agency contract for which the agency is required to purchase goods or services using the best value standard;

(2) ensure that, for each contract, the agency documents the best value standard used for the contract; and

(3) acknowledge in writing that the agency complied with the agency's and comptroller's contract management guide in the purchase.

(b) For each purchase of goods or services for which a state agency is required to use the best value standard, the comptroller shall ensure that the agency includes in the vendor performance tracking system established under Section

SECTION 10. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

2262.055 information on whether the vendor satisfied that standard.

No equivalent provision.

SECTION 11. Section 2155.077, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-2) to read as follows:

(a) The commission may bar a vendor from participating in state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, for:

(1) substandard performance under a contract with the state or a state agency;

(2) material misrepresentations in a bid or proposal to the state or a state agency or during the course of performing a contract with the state or a state agency;

(3) fraud; [ø#]

(4) breaching a contract with the state or a state agency; or

(5) repeated unfavorable performance reviews under Section 2155.089 or repeated unfavorable classifications received by the vendor under Section 2262.055 after considering the following factors:

(A) the severity of the substandard performance by the vendor;

(B) the impact to the state of the substandard performance;

(C) any recommendations by a contracting state agency that provides an unfavorable performance review;

(D) whether debarment of the vendor is in the best interest of the state; and

(E) any other factor that the comptroller considers relevant, as specified by comptroller rule. [FA4(1)]

(a-2) The comptroller may bar a vendor from participating in

SECTION 11. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

state contracts that are subject to this subtitle, including contracts for which purchasing authority is delegated to a state agency, if more than two contracts between the vendor and the state have been terminated by the state for unsatisfactory vendor performance during the preceding three years.
[FA4(2)-(3)]

(b) Except as provided by Subsection (d), the commission shall bar a vendor from participating in state contracts under Subsection (a) or (a-2) for a period that is commensurate with the seriousness of the vendor's action and the damage to the state's interests.

SECTION 8. Section 2155.078, Government Code, is amended.

SECTION 12. Same as Senate version.

SECTION 12. Same as Senate version.

SECTION 9. Subchapter B, Chapter 2155, Government Code, is amended by adding Sections 2155.089 and 2155.090 to read as follows:

SECTION 13. Subchapter B, Chapter 2155, Government Code, is amended by adding Section 2155.089 to read as follows:

SECTION 13. Same as House version.

Sec. 2155.089. REPORTING VENDOR PERFORMANCE.

(a) After a contract is completed or otherwise terminated, each state agency shall review the vendor's performance under the contract.

(b) The state agency shall report to the comptroller, using the tracking system *described by Section 2155.090*, on the results of the review regarding a vendor's performance under a contract.

(c) This section does not apply to an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015.

Sec. 2155.089. REPORTING VENDOR PERFORMANCE.

(a) After a contract is completed or otherwise terminated, each state agency shall review the vendor's performance under the contract.

(b) The state agency shall report to the comptroller, using the tracking system *established by Section 2262.055*, on the results of the review regarding a vendor's performance under a contract.

(c) This section does not apply to:

(1) an enrollment contract described by 1 T.A.C. Section 391.183 as that section existed on September 1, 2015; *or*

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

(2) a contract of the Employees Retirement System of Texas or the Teacher Retirement System of Texas 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. 2155.090. VENDOR PERFORMANCE TRACKING SYSTEM. (a) The comptroller shall evaluate a vendor's performance based on the information reported under Section 2155.089 and criteria established by the comptroller.
(b) The comptroller shall establish an evaluation process that allows vendors who receive an unfavorable performance review to protest any classification given by the comptroller.
(c) The comptroller shall include the performance reviews in a vendor performance tracking system.
(d) A state agency may use the vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the database.
(e) The comptroller shall make the vendor performance tracking system accessible to the public on the comptroller's Internet website.

No equivalent provision. (But see SECTION 21 below.)

SECTION 10. Subchapter I, Chapter 2155, Government Code, is amended by adding Section 2155.5035 to read as follows:

Sec. 2155.5035. USE OF SCHEDULE BY STATE AGENCY. (a) A state agency purchasing goods or services under a contract listed on the schedule:
(1) for a purchase with a value of \$50,000 or less, may directly award a contract to a vendor included on the schedule without submission of a request for pricing to other vendors

No equivalent provision. [Deleted by FA2(1)]

Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

on the list;

(2) for a purchase with a value of more than \$50,000 but not more than \$150,000, shall submit a request for pricing to at least three vendors included on the schedule in the category to which the purchase relates;

(3) for a purchase with a value of more than \$150,000 but not more than \$1 million, shall submit a request for pricing to at least six vendors included on the schedule in the category to which the purchase relates or all vendors on the schedule if the category has fewer than six vendors; and

(4) may not purchase under the contract goods or services that have a total value exceeding \$1 million.

(b) The price listed for a good or service under a multiple award contract is a maximum price. A state agency may negotiate a lower price for goods or services under a contract listed on a schedule developed under this chapter.

SECTION 11. Section 2155.504, Government Code, is amended to read as follows:

Sec. 2155.504. USE OF SCHEDULE BY GOVERNMENTAL ENTITIES. (a) A ~~[state agency or]~~ local government may purchase goods or services directly from a vendor under a contract listed on a schedule developed under this subchapter. A purchase authorized by this section satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Chapter 2157.

(b) The price listed for a good or service under a multiple award contract is a maximum price. ~~A [An agency or]~~ local government may negotiate a lower price for goods or services under a contract listed on a schedule developed under this

No equivalent provision.

Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

subchapter.

No equivalent provision.

SECTION 12. Section 2157.068, Government Code, is amended.

SECTION 13. Subchapter B, Chapter 2157, Government Code, is amended by adding Section 2157.0685. Among other provisions, Subsection (c) is added to read as follows:

(c) A statement of work executed by a state agency under a contract awarded by the department under Section 2157.068 is not valid and money may not be paid to the vendor under the terms of the statement of work unless the department first signs the statement of work.

No equivalent provision.

Associated CCR Draft: 84R33144

SECTION 15. Section 2156.181(a), Government Code, is amended to read as follows:

(a) The commission may enter into one or more compacts, interagency agreements, or cooperative purchasing agreements directly with one or more state governments, agencies of other states, or other governmental entities or may participate in, sponsor, or administer a cooperative purchasing agreement through an entity that facilitates those agreements for the purchase of goods or services if the commission determines that the [entering into an] agreement would be in the best interest of the state.

SECTION __. Same as Senate version. [FA2(2)]

SECTION 16. Same as Senate version except as follows:

(c) A statement of work executed by a state agency under a contract awarded by the department under Section 2157.068 is not valid and money may not be paid to the vendor under the terms of the statement of work if the department:
(1) has not reviewed the statement of work; or
(2) disapproves the statement of work before the contract solicitation.

SECTIONS __ - __. Sections 2161.001(3), 2161.002,

SECTION 14. Same as House version.

SECTION 15. Same as Senate version.

SECTION 16. Same as Senate version.

Same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

2161.061, and 2161.125, Government Code, are amended.
[FA1,3rd,FA4,3rd]

No equivalent provision.

SECTION __. Subtitle E, Title 10, Government Code, is amended by adding Chapter 2207. [FA12]

Same as Senate version.

No equivalent provision.

SECTION __. Transition provision relating to added Chapter 2207, Government Code. [FA12]

Same as Senate version.

SECTION 14. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.9011 to read as follows:

Sec. 2252.9011. EMPLOYMENT OF OR CONTRACTS WITH FORMER OR RETIRED PRIVATE VENDOR EMPLOYEES. A state agency may not hire, or enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with, an individual who is a former or retired employee of a private vendor under which the individual will perform services for the agency related to the individual's former duties for the vendor for which the vendor contracted with the agency before the second anniversary of the last date on which the individual was employed by the private vendor.

No equivalent provision.

Same as House version.

SECTION 15. Section 2261.001(a), Government Code, is amended.

SECTION 17. Same as Senate version.

SECTION 17. Same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 16. Chapter 2261, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR CERTAIN CONTRACTS

Sec. 2261.251. APPLICABILITY OF SUBCHAPTER. Notwithstanding Section 2261.001, this subchapter applies to the Texas Department of Transportation *and to an institution of higher education acquiring goods or services under Section 51.9335 or 73.115, Education Code.*

Sec. 2261.252. DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST; CERTAIN CONTRACTS PROHIBITED. (a) Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency. (b) A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:

HOUSE VERSION (IE)

SECTION 18. Chapter 2261, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR CERTAIN CONTRACTS

Sec. 2261.251. APPLICABILITY OF SUBCHAPTER. (a) Notwithstanding Section 2261.001, this subchapter applies to the Texas Department of Transportation.

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

No equivalent provision.

CONFERENCE

SECTION 18. Chapter 2261, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ETHICS, REPORTING, AND APPROVAL REQUIREMENTS FOR CERTAIN CONTRACTS

Sec. 2261.251. Same as House version except *also makes the subchapter applicable to an institution of higher education acquiring goods or services under Section 51.9335 or 73.115, Education Code.*

Sec. 2261.252. Same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

- (1) a member of the agency's governing body;
 - (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
 - (3) a family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.
- (c) A state agency employee or official has a financial interest in a person if the employee or official:
- (1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or
 - (2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.
- (d) A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation.

Sec. 2261.253. REQUIRED POSTING OF CERTAIN CONTRACTS; ENHANCED CONTRACT AND PERFORMANCE MONITORING. (a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website:

- (1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed;
- (2) the statutory or other authority under which a contract that is not competitively bid under Subdivision (1) is entered into without compliance with competitive bidding procedures; and
- (3) the request for proposals related to a competitively bid

HOUSE VERSION (IE)

Sec. 2261.252. REQUIRED POSTING OF CERTAIN CONTRACTS; ENHANCED CONTRACT AND PERFORMANCE MONITORING; PROHIBITED CONTACTS. (a) For each contract for the purchase of goods or services from a private vendor, each state agency shall post on its Internet website: [FA6(1)]

- (1) each contract the agency enters into, including contracts entered into without inviting, advertising for, or otherwise requiring competitive bidding before selection of the contractor, until the contract expires or is completed;
- (2) the statutory or other authority under which a contract that is not competitively bid under Subdivision (1) is entered into without compliance with competitive bidding procedures; and
- (3) the request for proposals related to a competitively bid

CONFERENCE

Sec. 2261.253. Substantially the same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

contract included under Subdivision (1) until the contract expires or is completed.

(b) A state agency monthly may post contracts described by Subsection (a) that are valued at less than \$15,000.

(c) Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

(d) This section does not apply to a memoranda of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING

HOUSE VERSION (IE)

contract included under Subdivision (1) until the contract expires or is completed.

(b) A state agency monthly may post contracts described by Subsection (a) that are valued at less than \$15,000.

(c) Each state agency by rule shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body or, if the agency is not governed by a multimember governing body, the officer who governs the agency. The agency's contract management office or procurement director shall immediately notify the agency's governing body or governing official, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

() In renewing or considering a rebid for a contract for the purchase of goods or services from a private vendor, a state agency shall give priority consideration to the private vendor's performance under previous state contracts.

() A state agency may not enter into a contract for the purchase of goods or services from a private vendor that has an unresolved lawsuit with another state agency regarding a contract exceeding \$5 million in value unless the contracting state agency submits a written notification to the governor, lieutenant governor, and speaker of the house of representatives not later than the 30th day before the date the contract is signed. [FA6(2)]

(d) This section does not apply to a memoranda of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

Sec. 2261.253. CONTRACTS WITH VALUE EXCEEDING

CONFERENCE

Sec. 2261.254. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

\$1 MILLION. (a) For each contract for the purchase of goods or services that has a value exceeding \$1 million, a state agency shall develop and implement contract reporting requirements that provide information on:

- (1) compliance with financial provisions and delivery schedules under the contract;
- (2) corrective action plans required under the contract and the status of any active corrective action plan; and
- (3) any liquidated damages assessed or collected under the contract.

(b) Each state agency shall verify:

- (1) the accuracy of any information reported under Subsection (a) that is based on information provided by a contractor; and
- (2) the delivery time of goods or services scheduled for delivery under the contract.

(c) Except as provided by Subsection (d), a state agency may enter into a contract for the purchase of goods or services that has a value exceeding \$1 million only if:

- (1) the governing body of the state agency approves the contract and the approved contract is signed by the presiding officer of the governing body; or
- (2) for a state agency that is not governed by a multimember governing body, the officer who governs the agency approves and signs the contract.

(d) The governing body or governing official of a state agency, as appropriate, may delegate to the executive director of the agency the approval and signature authority under Subsection (c).

(e) A highway construction or maintenance contract that is awarded by the Texas Department of Transportation under Subchapter A, Chapter 223, Transportation Code, is not

HOUSE VERSION (IE)

\$1 MILLION. (a) For each contract for the purchase of goods or services that has a value exceeding \$1 million, a state agency shall develop and implement contract reporting requirements that provide information on:

- (1) compliance with financial provisions and delivery schedules under the contract;
- (2) corrective action plans required under the contract and the status of any active corrective action plan; and
- (3) any liquidated damages assessed or collected under the contract.

(b) Each state agency shall verify:

- (1) the accuracy of any information reported under Subsection (a) that is based on information provided by a contractor; and
- (2) the delivery time of goods or services scheduled for delivery under the contract.

(c) Except as provided by Subsection (d), a state agency may enter into a contract for the purchase of goods or services that has a value exceeding \$1 million only if:

- (1) the governing body of the state agency approves the contract and the approved contract is signed by the presiding officer of the governing body; or
- (2) for a state agency that is not governed by a multimember governing body, the officer who governs the agency approves and signs the contract.

(d) The governing body or governing official of a state agency, as appropriate, may delegate to the executive director of the agency the approval and signature authority under Subsection (c).

(e) A highway construction, *engineering services*, or maintenance contract *that is in compliance with all applicable laws related to procuring engineering services or*

CONFERENCE

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

required to be signed by a member of the Texas Transportation Commission or the executive director of the department. This exception does not apply to expedited highway improvement contracts under Subchapter C, Chapter 223, Transportation Code, a comprehensive development agreement entered into under Subchapter E, Chapter 223, Transportation Code, a design-build contract entered into under Subchapter F, Chapter 223, Transportation Code, or any other contract entered into by the Texas Department of Transportation.

Sec. 2261.255. CONTRACTS WITH VALUE EXCEEDING \$5 MILLION.

Sec. 2261.256. RISK ANALYSIS PROCEDURE; CONTRACT MANAGEMENT HANDBOOK. (a) Each state agency shall develop and comply with a risk analysis procedure. The procedure must provide for:

- (1) assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts; and
- (2) identifying contracts that require enhanced contract monitoring.

HOUSE VERSION (IE)

construction bidding and that is awarded by the Texas Department of Transportation under Subchapter A, Chapter 223, Transportation Code, is not required to be signed by a member of the Texas Transportation Commission or the executive director of the department. This exception does not apply to expedited highway improvement contracts under Subchapter C, Chapter 223, Transportation Code, a comprehensive development agreement entered into under Subchapter E, Chapter 223, Transportation Code, a design-build contract entered into under Subchapter F, Chapter 223, Transportation Code, or any other contract entered into by the Texas Department of Transportation.

Sec. 2261.254. Same as Senate version.

Sec. 2261.255. *ACCOUNTABILITY AND RISK ANALYSIS PROCEDURE; CONTRACT MANAGEMENT HANDBOOK.* (a) Each state agency shall develop and comply with a *purchasing accountability and* risk analysis procedure. The procedure must provide for:

- (1) assessing the risk of fraud, abuse, or waste in the contractor selection process, contract provisions, and payment and reimbursement rates and methods for the different types of goods and services for which the agency contracts;
- (2) identifying contracts that require enhanced contract monitoring *or the immediate attention of contract management staff; and*
- (3) *establishing clear levels of purchasing accountability and staff responsibilities related to purchasing.*

CONFERENCE

Sec. 2261.255. Same as Senate version.

Sec. 2261.256. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

(b) Each state agency shall publish a contract management handbook that establishes consistent contracting policies and practices to be followed by the agency and that is consistent with the comptroller's contract management guide. The agency handbook may include standard contract provisions and formats for the agency to incorporate in contracts.

Sec. 2261.257. CONTRACT DATABASE.

No equivalent provision.

No equivalent provision.

No equivalent provision. (But see SECTION 9 above.)

HOUSE VERSION (IE)

(b) Each state agency shall publish a contract management handbook that establishes consistent contracting policies and practices to be followed by the agency and that is consistent with the comptroller's contract management guide. The agency's handbook may include standard contract provisions and formats for the agency to incorporate in contracts.

[FA4(4)]

(c) Each state agency shall post on the agency's Internet website the procedures described by Subsections (a)(2) and (3) and submit to the comptroller a link to the web page that includes the procedures. The comptroller shall post on the comptroller's Internet website the web page link submitted by each state agency. [FA4(5)]

Sec. 2261.256. Same as Senate version.

SECTION 19. Section 2262.053(d), Government Code, is amended to read as follows:

(d) The comptroller shall administer training under this section and may assess a fee for the training in an amount sufficient to recover the comptroller's costs under this section.

SECTION 20. Section 2262.0535, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The comptroller may assess a fee for the training provided under this section in an amount sufficient to recover the comptroller's costs under this section.

SECTION 21. Section 2262.055, Government Code, is

CONFERENCE

Sec. 2261.257. Same as Senate version.

SECTION 19. Same as House version.

SECTION 20. Same as House version.

SECTION 21. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) The comptroller shall evaluate the vendor's performance based on information reported by state agencies under Section 2155.089 and criteria established by the comptroller.

(b) The comptroller by rule shall establish an evaluation process that:

(1) rates vendors on an A through F scale, with A being the highest grade; and

(2) allows vendors who receive a grade lower than a C [an unfavorable performance review] to protest any classification given by the comptroller.

(d) A state agency shall use the vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the tracking system. The comptroller by rule shall establish the manner in which the rating scale established under Subsection (b) affects a vendor's eligibility for state contracts and the grades on the scale that disqualify a vendor from state contracting. [FA4(6)]

(e) The comptroller shall make the vendor performance tracking system accessible to the public on the comptroller's Internet website.

No equivalent provision.

Same as House version.

SECTION 17. Section 2262.101, Government Code, as amended by Chapters 676 (H.B. 1965) and 1227 (S.B. 1681), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

Sec. 2262.101. CREATION; DUTIES. (a) The Contract Advisory Team is created to assist state agencies in improving contract management practices by:

(1) reviewing and making recommendations on the solicitation documents and contract documents for contracts

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

of state agencies that have a value of at least \$10 million;

(2) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide;

(3) providing recommendations to the comptroller regarding:

(A) the development of the contract management guide; and

(B) the training under Section 2262.053;

(4) providing recommendations and assistance to state agency personnel throughout the contract management process;

(5) coordinating and consulting with the quality assurance team established under Section 2054.158 on all contracts relating to a major information resources project; ~~and~~

(6) ~~[(4)]~~ developing and recommending policies and procedures to improve state agency contract management practices;

(7) ~~[(5)]~~ developing and recommending procedures to improve state agency contracting practices by including consideration for best value; ~~and~~

(8) ~~[(6)]~~ creating and periodically performing a risk assessment to determine the appropriate level of management and oversight of contracts by state agencies; and

(9) after being notified by a state agency of a change order, contract amendment, contract renewal or extension, or other proposed action that would result in a change to the monetary value of a contract reviewed under Subdivision (1) by more than 20 percent, reviewing the justification for the change order, contract amendment, contract renewal or extension, or other proposed action, as applicable, to:

(A) determine whether the justification is reasonable considering the circumstances; and

(B) if the team determines the justification is not reasonable,

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

contact the state agency for additional justification, and if not satisfactory, forward the contract to the comptroller for notification under Subsection (h).

(b) The risk assessment created and performed [~~reviewed~~] under Subsection (a)(8) [~~(a)(6)~~] must include~~[- but is not limited to]~~ the following criteria:

- (1) the amount of appropriations to the agency;
- (2) total contract value as a percentage of appropriations to the agency; and [~~or~~]
- (3) the impact of the functions and duties of the state agency on the health, safety, and well-being of residents [~~citizens~~].

(c) The comptroller shall oversee the activities of the team, including ensuring that the team carries out its duties under Subsections (a)(1), [Subsection] (a)(5), and (a)(7).

(d) A state agency shall:

- (1) comply with a recommendation made under Subsection (a)(1); or
- (2) submit a written explanation regarding why the recommendation is not applicable to the contract under review.

(e) The team may review documents under Subsection (a)(1) only for compliance with contract management and best practices principles and may not make a recommendation regarding the purpose or subject of the contract.

(f) The team may develop an expedited process for reviewing solicitations under Subsection (a)(1) for contracts:

- (1) that the team identifies as posing a low risk of loss to the state; or
- (2) for which templates will be used more than once by a state agency.

(g) A state agency that notifies the team of a change order, contract amendment, contract renewal or extension, or other

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

proposed action under Subsection (a)(9) must include with the notification a justification for the proposed action in the form and containing the information specified by the team.

(h) The comptroller shall, for each contract of a state agency forwarded under Subsection (a)(9), notify:

(1) the governing body of the agency or the single state officer who governs the agency;

(2) the Legislative Budget Board; and

(3) each member of the senate and house of representatives.

SECTION 18. Section 2262.102(a), Government Code, is amended to read as follows:

(a) The team consists of the following nine [~~six~~] members:

(1) one member from the Health and Human Services Commission;

(2) one member from the comptroller's office;

(3) one member from the Department of Information Resources;

(4) one member from the Texas Facilities Commission;

(5) one member from the governor's office; [~~and~~]

(6) one member from a small state agency;

(7) one member from the Texas Department of Transportation;

(8) one member from the Texas Education Agency; and

(9) one member from the Texas Commission on Environmental Quality.

No equivalent provision.

Same as House version.

SECTION 19. Subchapter C, Chapter 2262, Government Code, is amended by adding Section 2262.105 to read as follows:

No equivalent provision.

Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

Sec. 2262.105. QUARTERLY REPORT TO LEGISLATIVE BUDGET BOARD. The contract advisory team shall submit a quarterly report to the Legislative Budget Board on:

- (1) the number of solicitation documents and contracts reviewed by the team in the preceding quarter; and
- (2) whether state agencies accepted or rejected the team's recommendations and any reasons provided by the state agencies for rejecting the recommendations.

SECTION 20. Section 51.9335(d), Education Code, is amended to read as follows:

(d) Subject to Section 51.9337, Subtitle D, Title 10, Government Code, and Subchapter B, Chapter 2254, Government Code, do not apply to the acquisition of goods and services under this section, except that an institution of higher education must comply with any provision of those laws, or a rule adopted under a provision of those laws, relating to contracting with historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities. An institution of higher education may, but is not required to, acquire goods or services as provided by Subtitle D, Title 10, Government Code.

No equivalent provision.

SECTION 22. Same as Senate version.

SECTION 21. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9337 to read as follows:

Sec. 51.9337. PURCHASING AUTHORITY CONDITIONAL; REQUIRED STANDARDS. (a) An institution of higher education may not exercise the acquisition authority granted by Section 51.9335 or 73.115

No equivalent provision.

SECTION 23. Same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

unless the institution complies with this section. An institution that is determined under Subsection (j) to not be in compliance with this section is subject to the laws governing acquisition of goods and services by state agencies, including Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code.

(b) The board of regents of an institution of higher education by rule shall establish for each institution under the management and control of the board:

(1) a code of ethics for the institution's officers and employees, including provisions governing officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, subject to Subsection (c);

(2) policies for the internal investigation of suspected defalcation, misappropriation, and other fiscal irregularities and an institutional or systemwide compliance program designed to promote ethical behavior and ensure compliance with all applicable policies, laws, and rules governing higher education, including research and health care to the extent applicable;

(3) a contract management handbook that provides consistent contracting policies and practices and contract review procedures, including a risk analysis procedure, subject to Subsection (d);

(4) contracting delegation guidelines, subject to Subsections (e) and (f);

(5) training for officers and employees authorized to execute contracts for the institution or to exercise discretion in awarding contracts, including training in ethics, selection of appropriate procurement methods, and information resources purchasing technologies; and

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

(6) internal audit protocols, subject to Subsection (g).

(c) The code of ethics governing an institution of higher education must include:

(1) general standards of conduct and a statement that each officer or employee is expected to obey all federal, state, and local laws and is subject to disciplinary action for a violation of those laws;

(2) policies governing conflicts of interest, conflicts of commitment, and outside activities, ensuring that the primary responsibility of officers and employees is to accomplish the duties and responsibilities assigned to that position;

(3) a conflict of interest policy that prohibits employees from having a direct or indirect financial or other interest, engaging in a business transaction or professional activity, or incurring any obligation that is in substantial conflict with the proper discharge of the employee's duties related to the public interest;

(4) a conflict of commitment policy that prohibits an employee's activities outside the institution from interfering with the employee's duties and responsibilities to the institution;

(5) a policy governing an officer's or employee's outside activities, including compensated employment and board service, that clearly delineates the nature and amount of permissible outside activities and that includes processes for disclosing the outside activities and for obtaining and documenting institutional approval to perform the activities;

(6) a policy that prohibits an officer or employee from acting as an agent for another person in the negotiation of the terms of an agreement relating to the provision of money, services, or property to the institution;

(7) a policy governing the use of institutional resources; and

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

(8) a policy providing for the regular training of officers and employees on the policies described by this subsection.

(d) An institution of higher education shall establish contract review procedures and a contract review checklist that must be reviewed and approved by the institution's legal counsel before implementation. The review procedures and checklist must include:

(1) a description of each step of the procedure that an institution must use to evaluate and process contracts;

(2) a checklist that describes each process that must be completed before contract execution; and

(3) a value threshold that initiates the required review by the institution's legal counsel unless the contract is a standard contract previously approved by the counsel.

(e) An institution of higher education's policies governing contracting authority must clearly specify the types and values of contracts that must be approved by the board of regents and the types and values of contracts for which contracting authority is delegated by the board to the chief executive officer and by the chief executive officer to other officers and employees of the institution. An officer or employee may not execute a document for the board unless the officer or employee has authority to act for the board and the authority is exercised in compliance with applicable conditions and restrictions.

(f) An institution of higher education may not enter into a contract with a value of more than \$1 million, including any amendment, extension, or renewal of the contract that increases the value of the original contract to more than \$1 million, unless the institution's board of regents approves the contract, expressly delegates authority to exceed that amount, or expressly adopts an exception for that contract. The board

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

must approve any amendment, extension, or renewal of a contract with a value that exceeds 25 percent of the value of the original contract approved by the board unless the authority to exceed the approved amount is expressly delegated by the board or an exception is expressly adopted by the board for that contract.

(g) The board of regents of an institution of higher education shall adopt standards for internal audits conducted by the institution to provide a systematic, disciplined approach to evaluate and improve the effectiveness of the institution's risk management, control, and governance processes related to contracts and to require risk-based testing of contract administration. The internal auditor must have full and unrestricted access to all institutional property, personnel, and records. An internal auditor must report directly to the board of regents in accordance with Chapter 2102, Government Code.

(h) The chief auditor of an institution of higher education shall annually assess whether the institution has adopted the rules and policies required by this section and shall submit a report of findings to the state auditor. In auditing the purchase of goods and services by the institution, the state auditor shall determine whether an institution has adopted the required rules and policies.

(i) If the state auditor determines that an institution of higher education has failed to adopt the required rules and policies, the auditor shall report that failure to the legislature and to the institution's board of regents and shall, in consultation with the institution, adopt a remediation plan to bring the institution into compliance. If the institution fails to comply within the time established by the state auditor, the auditor shall find the institution to be in noncompliance and report that finding to

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

the legislature and comptroller.

(j) In accordance with a schedule adopted by the state auditor in consultation with the comptroller, the authority of an institution of higher education to acquire goods and services as provided by Section 51.9335 or 73.115 is suspended if the institution fails to comply with the remediation plan under Subsection (i) within the time established by the state auditor. As a result of the suspension, the laws, including Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code, governing acquisition of goods and services by state agencies from which the institution is otherwise exempt, shall apply to the institution's acquisition of goods and services.

No equivalent provision.

SECTION __. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.954 to read as follows:

Sec. 51.954. DISCLOSURE OF SPONSORS OF CONTRACTED RESEARCH IN PUBLIC COMMUNICATIONS. (a) In any public communication the content of which is based on the results of sponsored research, a faculty member or other employee or appointee of an institution of higher education who conducted or participated in conducting the research shall conspicuously disclose the identity of each sponsor of the research.

(b) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003.

(2) "Public communication" means oral or written communication intended for public consumption or distribution, including:

(A) testimony in a public administrative, legislative, regulatory, or judicial proceeding;

SECTION 24. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

(B) printed matter including a magazine, journal, newsletter, newspaper, pamphlet, or report; or

(C) posting of information on a website or similar Internet host for information.

(3) "Sponsor" means an entity that contracts for or provides money or materials for research.

(4) "Sponsored research" means research:

(A) that is conducted under a contract with, or that is conducted under a grant awarded by and pursuant to a written agreement with, an individual or entity other than the institution conducting the research; and

(B) in which payments received or the value of materials received under that contract or grant, or under a combination of more than one such contract or grant, constitutes at least 50 percent of the cost of conducting the research. [FA11]

SECTION 22. Sections 73.115(e) and (f), Education Code, are amended to read as follows:

(e) To the extent of any conflict, this section prevails over any other law relating to the purchasing of goods and services other than Section 51.9337 and ~~except~~ a law relating to contracting with historically underutilized businesses.

(f) Except as otherwise provided by this section and Section 51.9337, Subtitle D, Title 10, Government Code, and Chapter 2254, Government Code, do not apply to purchases of goods and services made under this section.

SECTION 23. Section 2155.502(d), Government Code, is repealed.

No equivalent provision.

SECTION 22. Sections 305.022(c-1) and (c-3) and 2155.502(d), Government Code, are repealed. [FA9(2)]

SECTION 25. Same as Senate version.

SECTION 26. Same as Senate version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 24. *(a) As soon as is practicable after the effective date of this Act, the executive directors of the Texas Department of Transportation, the Texas Education Agency, and the Texas Commission on Environmental Quality shall each appoint a member to the contract advisory team as required by Section 2262.102, Government Code, as amended by this Act.*

(b) As soon as is practicable after the effective date of this Act, the comptroller of public accounts, and each affected state agency as necessary, shall adopt the rules and procedures and take the actions necessary to implement the changes in law made by this Act.

SECTION 25. To the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 26. Section 572.069, Government Code, as added by this Act, applies only to a state officer or employee whose service or employment with a state agency ceases on or after the effective date of this Act.

No equivalent provision.

HOUSE VERSION (IE)

SECTION 23.

As soon as is practicable after the effective date of this Act, the comptroller of public accounts, and each affected state agency as necessary, shall adopt the rules, *processes*, and procedures and take the actions necessary to implement the changes in law made by this Act.

No equivalent provision.

No equivalent provision. [Deleted by FA3(2)]

SECTION 25. Section 2262.055(d), Government Code, as added by this Act, applies only in relation to a contract for which the request for bids or proposals or other applicable expression of interest is made public on or after October 1, 2015.

CONFERENCE

SECTION 28. Same as House version.

Same as House version.

SECTION 27. Same as Senate version.

SECTION 29. Same as House version.

Senate Bill 20
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

SECTION 27. Saving provision.

SECTION 26. Same as Senate version.

SECTION 30. Same as Senate version.

No equivalent provision.

SECTION __. Notwithstanding any law amended or added by this Act, the changes in law made by this Act do not apply to an institution of higher education or university system as those terms are defined by Section 61.003, Education Code. [FA1].

Same as Senate version.

SECTION 28. This Act takes effect September 1, 2015.

SECTION 27. Same as Senate version.

SECTION 31. Same as Senate version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 29, 2015

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
 Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB20 by Nelson (Relating to state agency contracting.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for SB20, Conference Committee Report: a negative impact of (\$4,341,212) through the biennium ending August 31, 2017.

In addition to costs shown above, there would be an indeterminate fiscal impact for activities related to the vendor performance tracking system. Depending on rules adopted by the Comptroller, the costs could be significant.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	(\$2,395,606)
2017	(\$1,945,606)
2018	(\$650,000)
2019	(\$650,000)
2020	(\$650,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2015
2016	(\$2,395,606)	7.0
2017	(\$1,945,606)	7.0
2018	(\$650,000)	7.0
2019	(\$650,000)	7.0
2020	(\$650,000)	7.0

Fiscal Analysis

The bill would amend the Government Code to require the State Auditor's Office to consider auditing contracts entered by the Health and Human Services Commission that exceed \$100 million in annual value.

The bill would require the Comptroller of Public Accounts (CPA), in cooperation with the Governor's budget and policy staff, to conduct a study examining the feasibility and practicality of consolidating state purchasing functions and reducing the number of vendors authorized to contract with the state.

The bill would amend the Government Code to require agencies to retain records related to contracts for at least seven years after the expiration of the contract.

The bill would prohibit the employment of former state employees and officers within the first two years after state employment if those employees participated in a procurement related to the hiring entity.

The bill would amend the Government Code to specify that purchasing information reported by state agencies in the statewide uniform accounting system should include solicitation and contracting information, as defined by CPA.

The bill would require institutions of higher education to participate in the training and certification process offered by CPA to state agencies.

The bill would amend the Government Code to allow CPA to contract with entities that administer cooperative purchasing programs and agreements.

The bill would require agencies to submit a certain number of requests for pricing on purchases made through multiple award contract schedules at the Department of Information Resources (DIR) depending on the value of the goods, services, and contracts. Agencies would be prohibited from making purchases for commodities in a single fiscal year in excess of \$1 million under a single contract in a multiple award schedule. Agencies would also be required to receive approval for statements of work on DIR information technology commodity contracts worth more than \$50,000.

The bill would require agencies and institutions of higher education to comply with certain reporting requirements for each contract with a value exceeding \$1 million, and to comply with certain additional requirements for each contract with a value exceeding \$5 million. Agencies would be required to develop a risk analysis procedure and identify certain types of contracts for enhanced contract or performance monitoring. The bill would also require agencies, including the Texas Department of Transportation (TxDOT), to post online a list of the contracts the entities have entered along with the statutory authorities and request for proposals associated with the procurements.

The bill would amend the Government Code to require agencies to use the vendor performance tracking system to determine whether to award a contract to a vendor reviewed in the system. CPA would be required to develop an evaluation process to rate vendors on an "A" through "F" scale. CPA would be required to establish in rule how these ratings affect a vendor's eligibility for state contracts and the grades on the scale that disqualify a vendor from state contracting. The tracking system would be accessible to the public on CPA's website. The bill would also require agencies to consider prior vendor performance when renewing a contract or considering a rebid for a

contract.

Additionally, CPA could bar vendors from participating in state contracts if more than two contracts between the vendor and the state have been terminated by the state within the last three years.

The bill would amend the Education Code to make the procurement authority of institution of higher education contingent on implementation of policies and procedures described in the bill. If the state auditor determines that an institution of higher education has failed to adopt the required rules and policies, the auditor will adopt a remediation plan in consultation with the institution. If the auditor finds that the institution fails to comply with the remediation plan, the purchasing authority of the institution would subject to standard agency procurement oversight and procedures.

The bill would amend the Education Code to require the disclosure of research sponsors in certain public communications.

Methodology

The new debarment and vendor rating requirements will likely lead to significant protests and litigation. The costs associated with these protests and litigation will depend on agency performance evaluations of vendors and the evaluation criteria developed by CPA. Therefore, the potential cost impact of vendor protests and litigation cannot be determined at this time. Given the large number of vendors that hold contracts with the state, the costs could be significant. Likewise, the potential fiscal impacts on state agencies from prohibiting certain vendors from participating in contracts cannot be determined at this time but could be significant, depending on rules adopted by CPA.

This estimate assumes CPA would incur additional administrative costs of \$1.3 million in General Revenue to hire 7.0 FTEs in the 2016-17 biennium for legal support for new procurements, ensuring compliance with procurement requirements, and rating vendors in the vendor performance tracking system. Additionally, the CPA would also incur costs of \$0.45 million in General Revenue in 2016-17 to contract for assistance to study state procurement.

DIR estimates there would be a cost associated with implementing provisions of the bill including reviewing statements of work for information technology commodity purchases over \$50,000. It is anticipated that these cost could be absorbed within existing resources. The agency also anticipates a loss of revenue out of appropriated receipts generated from administrative fees charged to customers of DIR's cooperative contracts program due to the \$1 million cap on contracts offered through the program. The agency anticipates that administrative fees would be increased to offset the loss of revenue from purchases through the program. To the extent administrative fees are not increased, there would likely be a reduction in FTEs at DIR.

TxDOT estimates a \$2.6 million cost in the 2016-17 biennium to develop a system for identifying and hosting 50,000 contracts on its website annually. This analysis assumes that on-going business costs to maintain this system in fiscal year 2018 and beyond could be absorbed by the agency using existing resources.

In addition to the costs described above, institutions of higher education and state agencies reported some costs associated with implementation of the provisions of the bill, including the verification of contract monitoring information provided by contractors, developing and implementing a risk analysis procedure to identify contracts that require enhanced contract and

performance monitoring, and the additional reporting requirements. For purposes of this fiscal note, it assumed that any costs not described above would not be significant and could be absorbed by the institutions and agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 301 Office of the Governor, 302 Office of the Attorney General, 303 Facilities Commission, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 308 State Auditor's Office, 313 Department of Information Resources, 320 Texas Workforce Commission, 323 Teacher Retirement System, 327 Employees Retirement System, 405 Department of Public Safety, 450 Department of Savings and Mortgage Lending, 454 Department of Insurance, 529 Health and Human Services Commission, 580 Water Development Board, 582 Commission on Environmental Quality, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System Administration

LBB Staff: UP, KMc, AG, JI, KVe

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order under Rule 13.

I certify that a copy of the conference committee report on S.B. 20 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

Jan Price
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Representative Four Price

May 28, 2015
(date)