

SUBJECT: Continuing DIR and certain procurement functions of comptroller

COMMITTEE: State Affairs —favorable, without amendment

VOTE: 8 ayes — Cook, Giddings, Farrar, Frullo, Harless, Huberty, Menéndez, Sylvester Turner

0 nays

5 absent — Craddick, Geren, Hilderbran, Oliveira, Smithee

WITNESSES: For — (*Registered, but did not testify*: Wendy Reilly, TechAmerica)

Against — None

On — (*Registered, but did not testify*: Todd Kimbriel and Karen Robinson, DIR; Ron Pigott, Comptroller of Public Accounts - Texas Procurement and Support Division; Amy Tripp, Sunset Commission)

BACKGROUND: **The Department of Information Resources** (DIR) was created in 1989 to provide direction for state agencies' use and management of information technology (IT) and telecommunications products. The DIR's responsibilities have grown to include providing a range of IT and telecom products to state agencies, local governments, and universities. The DIR:

- provides statewide IT strategic planning, reporting, and standard setting;
- provides guidance and oversight of state information security;
- oversees major statewide programs, procuring and managing contracts for the state telecommunications system, the Texas Agency Network (TEX-AN); the official website of Texas, Texas.gov; and consolidated data center services for state agencies;
- procures and manages statewide IT contracts; and
- operates the Capitol Complex Telephone Systems (CCTS).

The DIR's 10-member board includes seven members appointed by the governor and three ex officio members. One member must be employed by a higher education institution.

At the end of fiscal 2011, the DIR employed a staff of 206. It received \$308 million in revenues, mostly from interagency contracts and receipts from its cost-recovery programs. Less than 1 percent of its revenue came from general revenue to support the administration of Texas.gov. At the beginning of fiscal 2011, the DIR had an unexpended balance of \$33 million from previously collected revenues. Of the department's fiscal 2011 expenditures of \$317 million, approximately 83 percent were pass-through payments to outside providers, including IBM Corp. for the data services contract and telecommunications service providers, primarily AT&T. In July 2012, the DIR began a new data center services contract valued at \$1.2 billion over eight years with providers Capgemini America, Xerox Print Services, and Xerox State and Local.

Comptroller's procurement division. In 2007, the Legislature created the Texas Procurement and Support Services Division and transferred statewide procurement functions to the Comptroller of Public Accounts from the Texas Facilities Commission (formerly the Texas Building and Procurement Commission). The division:

- establishes and manages statewide contracts and services, and reviews and delegates certain purchases to state agencies;
- certifies Historically Underutilized Businesses (HUBs), develops statewide HUB goals, and reports on the state's use of HUBs;
- trains and certifies purchasers and contract managers;
- provides mail services to state agencies in Travis County; and
- operates the Office of Vehicle Fleet Management.

The Statewide Procurement Advisory Council advises the comptroller in carrying out the division's responsibilities. The 75-employee division received \$5.1 million in revenues in fiscal 2011, with roughly 68 percent from general revenue, 19 percent from appropriated receipts, and 13 percent from interagency contracts.

2010 Sunset review and other legislative action. In 2010, the DIR underwent Sunset review. HB 2499 would have transferred the DIR's IT cooperative contracts program to the Comptroller's Office, among other provisions. The bill was adopted by the Legislature but vetoed by the governor. Certain recommendations from the 2010 Sunset report were implemented through other legislation. In the 82nd Legislature's first called session, the DIR was continued for two years with directions for a follow-up Sunset review and a provision that required stricter board

oversight of contracts and conflict-of-interest requirements. The DIR has begun to implement 2010 Sunset review's recommendations through policy changes.

DIGEST: HB 2472 would continue the Department of Information Resources (DIR) and leave the state's commodity and services procurement responsibilities with the Office of the Comptroller's Procurement and Support Services Division until September 1, 2021, when the DIR again would undergo Sunset review.

The bill would require the DIR or its board to:

- adopt a process to determine administrative fees, recover the costs of its operations, and report fee activity annually;
- develop criteria for the proper use of consultants and outside staff;
- develop an IT consolidation plan with other relevant entities;
- submit contracts of more than \$1 million to a statewide review team;
- receive board approval for major outsourced projects;
- create a management plan for each major outsourced contract;
- develop a comprehensive management guide for major outsourced projects, including a staff training guide, conflict-of-interest policy, accountability guidelines, and contract-management training requirements for new board members;
- jointly with the comptroller create a procurement coordination committee that reports biannually to the Sunset Advisory Commission;
- implement the Sunset Commission's standard provisions to develop a negotiated rulemaking and alternative dispute resolution policy;
- create a customer advisory committee;
- appoint an internal auditor who would report directly to the board and an audit subcommittee;
- create a policy for the strategic direction of the department; and
- define what would constitute a major outsourced contract.

The comptroller would:

- establish a statewide technology account to manage a statewide technology center;
- establish a clearing fund account for the purchase of IT-commodity

- products and services; and
- change the due date and recipients of the division's required HUB reports to improve efficiency and reduce risk of error.

Determination of administrative fees. The DIR would adopt a process to determine administrative fees it charges for IT and telecommunications services. The fee would correspond to the amount necessary to recover the department's costs. The bill would direct the staff of each DIR program to work with the department's financial staff to determine the appropriate administrative fees and seek approval of the fees from the department's board, executive director, and chief financial officer.

The DIR would report approved fees to the Legislative Budget Board (LBB) in an annual report that would include the method used to determine the fees and the amount charged customers. The DIR would post the information on its website with a description of how the fee was determined.

Consultants and outside staff. The DIR would develop criteria for the appropriate use of consultants and outside staff by analyzing staffing needs, cost-effectiveness of contracting for consultants and outside staff, and the ability of its staff to perform tasks proposed for consultants and outside staff. The department would present an analysis and obtain board approval to hire or train consultants or outside staff.

Information resources and technologies consolidation. The DIR would develop a method to measure the costs and implementation of an IT resources consolidation initiative. The DIR would work with other entities involved in IT consolidation and its internal auditor to develop a method to collect and validate data and determine a baseline cost assessment and timeline for consolidation efforts. The department would evaluate its efforts annually using an agreed-upon evaluation method. The department would report the results to its board, the LBB, and customers involved in the consolidation, and post the results on its website.

Review of certain contract solicitations. For any contract solicitation of more than \$1 million that the department was required to submit to the statewide review team, DIR would either implement the team's recommendations or provide a written explanation of why it could not implement them.

Reporting requirements. HB 2472 would change the deadline to November 15 from September 1 of each even-numbered year to submit a report on the progress, benefits, and efficiency gains of projects.

Oversight and approval for major contracts. The department would get approval from the board before entering into or amending a major outsourced contract. The department would specify procedures for administering, monitoring, and overseeing each project with its own management plan, which would specify risk mitigation practices, performance measures, and coordination and accountability activities. The DIR's executive director would approve each management plan. The department would establish a formal process to involve customers in major outsourced projects.

Conflicts of interest. The bill would prevent department employees from having any interest in a contract bid or receiving any gift or promise, obligation, or contract for future compensation in return for a contract bid.

Contract management training policy. The department would develop a training policy and manual on contract management, with participation of the internal auditor. Training would be required for all staff involved in contract management. The manual would include accountability measures, staff responsibilities, staff members' decision-making authority, and evaluation processes.

New DIR board members would have to complete a training program that provided information on statutes governing the DIR, the board, and contract management.

Procurement coordination committee. HB 2472 would require the department and the comptroller establish a committee to identify:

- areas of overlap in the procurement functions;
- mutually beneficial contracting practices;
- opportunities for collaboration; and
- opportunities for consolidation.

The department and the comptroller would develop methods to:

- collect and analyze costs relating to procurement contracts;
- measure savings from coordinated purchases; and

- encourage coordination of procurement functions.

The committee would report its findings to the Sunset Advisory Commission every two years for the next four years, and the department and the comptroller would publish the reports on their respective websites.

Board customer advisory committee. The DIR's board would appoint a customer advisory committee of customers from the department's key programs. The committee would report on the department's delivery of critical statewide services. The board would include a cross-section of the DIR's customers.

Internal auditor. The DIR's board also would appoint an internal auditor who would report directly to the board, as well as provide necessary staff and resources to the auditor. The auditor would prepare an annual report ranking the DIR's high-risk functions and bring other issues to the board's attention. The department would give the auditor access to its activities and records unless restricted by law. The bill would provide an exception to the requirement for open meetings to allow the auditor to discuss with the board issues related to fraud, waste, or abuse.

The board would maintain an audit subcommittee to oversee the internal auditor and other issues to ensure the auditor had sufficient resources.

Additional board oversight. The board would adopt a policy that outlined its role in setting a strategic direction for the DIR, including offering new initiatives and services and an approval and evaluation process for them. The board would implement a regular evaluation process to determine whether the department was fulfilling its mission of providing cost-effective IT services and meeting customer needs.

Oversight of major outsourced contracts. The DIR's board would define what constitutes a major outsourced contract with non-state entities. The board would include the \$1 million threshold in its definition and establish a subcommittee to monitor the department's major outsourced contracts.

Comptroller requirements. The comptroller would establish a statewide technology account to manage the DIR-managed statewide technology center. The account would be restricted to funding the technology center.

The comptroller would establish an account for all funds received from

DIR customers. The funds in the account would be used for the purchase of IT commodity items.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

The Department of Information Resources (DIR) has made progress in addressing many of the 2010 Sunset review recommendations to improve its oversight, management, and contracting practices. Undergoing Sunset Review in eight years would allow enough time for the DIR to implement these efficiency efforts, coordinate with the comptroller's Texas Procurement and Support Services Division, and gather data to determine how to further improve the state's procurement process. The benchmark reports that the bill would require would allow proper oversight and progress tracking for the next eight years.

HB 2472 would mandate through statutory requirements the execution of new policies and processes, many of which were recommended in the 2010 Sunset review. The DIR has already implemented improvements, some of which also were required by the 82nd Legislature's adoption of SB 1 in the first called session. The DIR has:

- created clear procedures to set, adjust, and seek board approval of administrative fees for its cost recovery programs as part of its yearly budgeting process;
- begun to report administrative fees and the method used to set them on its website;
- developed a clear policy for the appropriate use of outside contractors and consultants;
- begun to measure and report cost savings and the status for IT consolidation projects;
- improved oversight and approval of major contracts, and the review of certain contract solicitations;
- created a customer advisory committee reporting to its board;
- developed and implemented an agencywide training policy for all staff, including board members;
- established an Internal Audit Division, which reports to the board's Audit and Finance Subcommittee; and
- created a policy to improve and strengthen the board's oversight of the department.

Conflicts of interest in contracting. The DIR has implemented stricter

conflict-of-interest provisions. Current statutory requirements do not allow an employee to participate in the contract bidding process if the employee receives more than 5 percent of his or her income from the bidder or if the employee's spouse is employed by the bidder. While the DIR has strengthened its conflict of interest policy, the bill would prevent an employee with any interest in the likely bidder from participating in the bidding process. This statutory change would strengthen enforcement and ensure the continuation of the stricter policy.

Comptroller requirements. The 2010 Sunset Review revealed the DIR's questionable use of telecommunications fees to pay for data center consolidation expenses. The review also revealed unexpended balances, which led to the conclusion that some DIR customers were overcharged for goods or services. Adding a statewide technology account and a technology clearing fund account with a description of their intended uses would provide clear legislative oversight, limit expenditures to the program purpose, prevent balances from accruing, and improve internal auditing. While the DIR has worked to remedy these problems in the last two years, requiring by statute that the comptroller create these separate accounts would ensure continued oversight and improvement.

**OPPONENTS
SAY:**

Eight years is too long to wait for another Sunset review of the DIR and the state's technology procurement processes the department oversees. The Sunset Commission identified too much inefficiency in its 2010 and 2012 reviews to allow the DIR and the division's procurement responsibilities to continue that long without facing major overhaul.

The \$1 million threshold for contracts receiving board approval is too high. Lowering the threshold would strengthen oversight and show taxpayers that the DIR's board is closely watching the department's spending.

NOTES:

The companion bill, SB 216 by Birdwell, was referred to the Senate Government Organization committee on March 12.