

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2261. STATE CONTRACTING STANDARDS AND OVERSIGHT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2261.001. APPLICABILITY. (a) This chapter, other than Subchapter F, applies only to each procurement of goods or services made by a state agency that is neither made by the comptroller nor made under purchasing authority delegated to the agency by or under Section 51.9335 or 73.115, Education Code, or Section 2155.131 or 2155.132.

(b) This chapter applies to contracts and to contract management activities that are related to the procurements to which it applies.

(c) The comptroller on request shall determine whether a procurement or type of procurement:

(1) is made under purchasing authority delegated to an agency by or under Section 2155.131 or 2155.132; or

(2) is made under some other source of purchasing authority.

(d) This chapter does not apply to a procurement made by the Texas Department of Transportation or a procurement paid for by local or institutional funds of an institution of higher education.

(e) Repealed by Acts 2003, 78th Leg., ch. 309, Sec. 7.25. Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 2259.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.25, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.76, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 17, eff. September 1, 2015.

Sec. 2261.002. DEFINITIONS. In this chapter:

(1) "Contract" includes a grant, other than a grant made to a school district or a grant made for other academic purposes, under which the recipient of the grant is required to perform a specific act or service, supply a specific type of product, or both.

(2) "State agency" has the meaning assigned by Section [2151.002](#).

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999.
Renumbered from Sec. 2259.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

Sec. 2261.003. OPEN MARKET PURCHASES. This chapter does not require a state agency to purchase a good or service under contract if the agency is authorized under other law to purchase the good or service on the open market.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999.
Renumbered from Sec. 2259.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

SUBCHAPTER B. CONTRACTOR SELECTION

Sec. 2261.051. COMPETITIVE CONTRACTOR SELECTION PROCEDURES. Each state agency shall assess its contractor selection procedures and use competitive selection procedures to the greatest extent possible when selecting contractors.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999.
Renumbered from Sec. 2259.051 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

Sec. 2261.052. DETERMINING LOWEST AND BEST BID OR PROPOSAL.
(a) In determining the lowest and best bid or proposal, a state agency shall consider:

(1) the vendor's price to provide the good or service;
(2) the probable quality of the offered good or service; and

(3) the quality of the vendor's past performance in contracting with the agency, with other state entities, or with

private sector entities.

(b) This section does not apply to a procurement covered by Section [2155.144](#).

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999.
Renumbered from Sec. 2259.052 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

Sec. 2261.0525. CERTIFICATION OF VENDOR ASSESSMENT PROCESS.

(a) Before a state agency may award a contract to a vendor, the agency's procurement director must review the process and all documents used by the agency to assess each vendor who responded to the solicitation. The procurement director must certify in writing that:

(1) the agency assessed each vendor's response to the solicitation using the evaluation criteria published in the solicitation or, if applicable, the written evaluation criteria established by the agency; and

(2) the final calculation of scoring of responses was accurate.

(b) A state agency shall justify in writing any change in the scoring of a vendor that occurs following the initial assessment and scoring of responses. The written justification must be reviewed by the agency's procurement director. The procurement director shall certify in writing that the change in scoring was appropriate.

(c) A state agency's procurement director may delegate to a person whose position in the agency's procurement office is at least equal to the position of contract manager the certification authority under this section if the agency has met the conditions prescribed by the comptroller under Section [2262.053](#)(h).

(d) A written certification or justification required by this section must be placed in the contract file.

Added by Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. [65](#)), Sec. 23, eff. September 1, 2019.

Sec. 2261.053. PROHIBITION ON CERTAIN BIDS AND CONTRACTS.

(a) In this section:

(1) "Disaster" has the meaning assigned by Section [418.004](#).

(2) "Hurricane Katrina" means the hurricane of that name that struck the gulf coast region of the United States in August 2005.

(b) Except as provided by Subsection (c), a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been:

(1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section [39.459](#), Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or

(2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section [39.459](#), Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

(c) A bid or award subject to the requirements of this section must include the following statement:

"Under Section [2261.053](#), Government Code, the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

(d) If a state agency determines that an individual or business entity holding a state contract was ineligible to have the bid accepted or contract awarded under Subsection (b), the state agency may immediately terminate the contract without further obligation to the contractor.

(e) This section does not create a cause of action to contest a bid or award of a state contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 1302 (S.B. [608](#)), Sec. 3, eff. September 1, 2007.

Sec. 2261.054. STATEMENT REGARDING VENDOR SELECTION REQUIRED FOR CERTAIN CONTRACT AWARDS. If a state agency awards a contract to a vendor who did not receive the highest score in an assessment process certified under Section 2261.0525, the agency shall state in writing in the contract file the reasons for making the award.

Added by Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 23, eff. September 1, 2019.

SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 2261.101. REMEDIES AND SANCTIONS SCHEDULES. (a) Each state agency shall create and incorporate in each of its contracts for goods or services that are subject to this chapter a remedies schedule, a graduated sanctions schedule, or both, for breach of the contract or substandard performance under the contract.

(b) State agencies shall design fair and feasible standards that will hold contractors accountable for breach of contract or substandard performance under a contract without diminishing the number of able providers who are willing to contract with the state. Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 2259.101 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

Sec. 2261.102. LIABILITY INSURANCE COVERAGE REQUIRED. Each state agency shall, when feasible, include provisions in each of its contracts for goods or services that are subject to this chapter that require the contractor to carry director or officer liability insurance coverage in an amount not less than the value of the contract that is sufficient to protect the interests of the state in the event an actionable act or omission by a director or officer of the contractor damages the state's interests.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 2259.102 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

SUBCHAPTER D. PAYMENT AND REIMBURSEMENT METHODS

Sec. 2261.151. REEVALUATION OF PAYMENT AND REIMBURSEMENT RATES. (a) To ensure that its payment and reimbursement methods and rates are appropriate, each state agency that makes procurements to which this chapter applies shall reevaluate at least biennially its payment and reimbursement methods and rates, especially methods and rates based on historical funding levels or on a formula established by agency rule rather than being based on reasonable and necessary actual costs incurred.

(b) A state agency shall submit formal rate reevaluation information to the Legislative Budget Board and the comptroller on request.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 2259.151 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

SUBCHAPTER E. CONTRACTOR OVERSIGHT AND LIABILITY

Sec. 2261.201. DOUBLE-BILLING. Each state agency that makes procurements to which this chapter applies shall design and implement procedures to detect and report double-billing by contractors.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 2259.201 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

Sec. 2261.202. CONTRACT MONITORING RESPONSIBILITIES. As one of its contract management policies, each state agency that makes procurements to which this chapter applies shall establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 2259.202 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001.

Sec. 2261.203. COMPARABLE COSTS. Each state agency that

makes procurements to which this chapter applies shall monitor performance under a contract to verify that comparable costs are being charged for comparable goods and services.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 5, eff. Sept. 1, 1999. Renumbered from Sec. 2259.203 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(71), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 43, eff. Sept. 1, 2003.

Sec. 2261.204. LIABILITY PROVISIONS. (a) Each state agency shall include in the contract file for each of its contracts for goods or services subject to this chapter a written explanation of the agency's decision to include or not include in the contract a provision for liquidated damages or another form of liability for damages caused by the contractor.

(b) A contract file must also include, if applicable, a written justification for any provision in the contract that limits the liability of a contractor for damages.

(c) If an extension of a state agency's contract described by Subsection (a) modifies a provision for liquidated damages or another provision relating to a contractor's liability for damages, the agency must amend the written explanation or justification required by this section to include a justification for the modification.

Added by Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 25, eff. September 1, 2019.

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 and to an institution of higher education acquiring goods or services under Section 51.9335 or 73.115, Education Code.

(b) This subchapter does not apply to a contract of the Employees 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.

Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 18, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 26, eff. September 1, 2019.

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.

(a-1) A state agency employee or official is required to disclose under Subsection (a) any potential conflict of interest specified by state law or agency policy that is known by the employee or official at any time during:

(1) the procurement process, from the initial request for bids for the purchase of goods or services from a private vendor until the completed final delivery of the goods or services; or

(2) the term of a contract with a private vendor.

(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:

(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.

(e) This section applies only to a contract for the purchase of goods or services solicited through a purchase order if the amount of the purchase order exceeds \$25,000.

(f) Section 51.923, Education Code, governs the conflicts of interest of the members of the governing board of an institution of higher education, as those terms are defined by Section 61.003, Education Code, and this section does not apply to those members. Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 18, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 9, eff. September 1, 2017.

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 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 memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

(e) A state agency that posts a contract on its Internet website as required under this section shall redact from the posted contract:

- (1) information that is confidential under law;
- (2) information the attorney general determines is excepted from public disclosure under Chapter 552; and
- (3) the social security number of any individual.

(f) The redaction of information under Subsection (e) does not exempt the information from the requirements of Section 552.021 or 552.221.

(g) Subsection (a) does not apply to:

- (1) a contract posted on the major contracts database established under Section 322.020; or
- (2) a contract of an institution of higher education that is valued at less than \$15,000 and paid with money other than funds appropriated to the institution by this state.

(h) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code, except that the term does not include a public junior college.

Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 18, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 10, eff.

September 1, 2017.

Sec. 2261.254. CONTRACTS WITH VALUE EXCEEDING \$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 or a deputy 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 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. Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 18, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 27, eff. September 1, 2019.

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

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

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

Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 18, eff. September 1, 2015.

Sec. 2261.256. 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.

(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.

(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. Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 18, eff. September 1, 2015.

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

(b) The comptroller shall provide as necessary information and state agency contract data contained in the centralized accounting and payroll systems to other state agencies with oversight duties, including the Legislative Budget Board, the state auditor's office, and the Department of Information Resources. Added by Acts 2015, 84th Leg., R.S., Ch. 326 (S.B. 20), Sec. 18, eff. September 1, 2015.

Sec. 2261.258. MONITORING ASSESSMENT BY STATE AUDITOR. (a) Before July 1 of each year, the state auditor shall assign one of the following ratings to each of the 25 largest state agencies in that state fiscal year as determined by the Legislative Budget

Board:

- (1) additional monitoring warranted;
- (2) no additional monitoring warranted; or
- (3) reduced monitoring warranted.

(b) In assigning a rating to a state agency as required under Subsection (a), the state auditor shall consider the following information, as applicable:

(1) results of an audit of:

(A) the agency conducted by the state auditor under Chapter 321; or

(B) the agency's contracts and contract processes and controls conducted by the agency's internal auditors or by the state auditor;

(2) results of a purchase audit conducted by the comptroller under Section 2155.325;

(3) information reported by the quality assurance team established under Section 2054.158 relating to the agency's major information resources projects;

(4) information from the Contract Advisory Team established under Subchapter C, Chapter 2262, relating to reviews of the agency's contracts and contract solicitation documents;

(5) information relating to agency findings from a review of the agency conducted by:

(A) the Legislative Budget Board; and

(B) the Sunset Advisory Commission under Chapter 325 (Texas Sunset Act);

(6) the agency's self-reported improvements to the agency's contracting processes; and

(7) any additional internal analysis provided by the agency.

(c) On or before September 1 of each year, the state auditor shall submit to the comptroller and the Department of Information Resources a report that:

(1) lists each state agency that was assigned a rating under Subsection (a); and

(2) for a state agency that was assigned a rating under Subsection (a)(1) or (3), specifies that additional or reduced

monitoring, as applicable, is required during one or more of the following periods:

- (A) contract solicitation development;
- (B) contract formation and award; or
- (C) contract management and termination.

(d) In consultation with the Contract Advisory Team established under Subchapter C, Chapter 2262, the comptroller by rule shall develop guidelines for the additional or reduced monitoring of a state agency during the periods described by Subsections (c)(2)(A), (B), and (C) for a contract that falls under the monetary thresholds for review or monitoring by the Contract Advisory Team.

(e) In consultation with the quality assurance team established under Section 2054.158, the Department of Information Resources by rule shall develop guidelines for the additional or reduced monitoring of a state agency during the periods described by Subsections (c)(2)(A), (B), and (C) for a contract that falls under the monetary thresholds for review or monitoring by the quality assurance team.

(f) The state auditor may request any information necessary from a state agency, the Contract Advisory Team, or the quality assurance team to comply with the requirements of this section, and the agency or team, as applicable, shall provide the requested information.

(g) The state auditor, comptroller, and Department of Information Resources shall share information as necessary to fulfill their respective duties under this section.

(h) The state auditor's duties under this section must be included in the audit plan and approved by the legislative audit committee under Section 321.013.

Added by Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 28, eff. September 1, 2019.

Sec. 2261.259. ELECTRONIC COMPLIANCE SUBMISSIONS. A state agency that uses the centralized accounting and payroll system authorized under Sections 2101.035 and 2101.036 or an alternative computer software system for compliance requirements related to the

procurement of goods or services may electronically submit to the comptroller using that computer software system a written justification, verification, notification, or acknowledgement required under this chapter or Subchapter B, Chapter 2155.

Added by Acts 2019, 86th Leg., R.S., Ch. 953 (S.B. 65), Sec. 28, eff. September 1, 2019.