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Contracting After the 2015 Legislative Session New Reporting And Oversight Requirements

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CONTRACTING AFTER THE 2015 LEGISLATIVE SESSION NEW REPORTING AND OVERSIGHT REQUIREMENTS

By Ann Bright¹

State agency procurement and contracting practices were among the many issues addressed by the 84th Texas Legislature (2015). As a result, several significant pieces of legislation were enacted which state agencies have worked to implement in the months following the Legislature's June 2015 adjournment. This paper will summarize some of that legislation, primarily focusing on legislation applicable to state agencies, and actions taken to implement that legislation.

BACKGROUND

In late 2014, questions surfaced about a contract involving the Texas Health and Human Services Commission (HHSC) and 21CT, Inc. (21CT). In addition to press coverage regarding the 21CT contract, concerns about the contract and the contract's procurement were spelled out in a Texas State Auditor's Office (SAO) investigation.² While the 21CT contract received the most attention, other contracting issues had been raised in the months leading up the beginning of the regular session of the 84th Texas Legislature in January 2015.³

In addition, in January 2014, an interim charge had been issued to the 82nd Texas Legislature's Senate Committee on Government Organizations to "Review and recommend improvements to state agency training, policies, and procedures for monitoring and reporting performance of state contracts, including a review of exemptions to state contracting oversight."⁴ In December 2014, this committee issued its report.⁵

¹ The views expressed in this paper are those of the author and do not necessarily reflect the official position of the Texas Parks and Wildlife Department.

² "An Investigative Report on the Health and Human Services Commission's and the Office of Inspector General's Procurement of Services and Commodities from 21CT, Inc.," Report 15-041, April 2015, see, <http://www.sao.texas.gov/Reports/Main/15-031.html>).

³ See, e.g., "Recent Contracting Audits" SAO Report 15-091, January 2015, <http://www.sao.texas.gov/Reports/Main/15-019.html>; "An Audit Report on Selected Contracts at the Texas Facilities Commission" No. 15-001, September 2015, <https://www.sao.texas.gov/Reports/Main/15-001.html>; "An Audit Report on Selected Contracts at the Parks and Wildlife Department" No. 14-042, August 2014, <https://www.sao.texas.gov/Reports/Main/14-042.html>; "An Audit Report on the CSCOPE Contract at Education Service Centers" No. 14-034, June 2014, <https://www.sao.texas.gov/SAOReports/ReportNumber?id=14-034>; "A Report on Analysis of Quality Assurance Team Projects" February 2014, <https://www.sao.texas.gov/Reports/Main/14-020.html>; "An Audit Report on the HealthSelect Contract at the Employees Retirement System" Report No. 15-007, November 2014, <http://www.sao.texas.gov/Reports/Main/15-007.html>; "An Audit Report on the Information and Communications Technology Cooperative Contracts Program at the Department of Information Resources" Report 14-007, October 2013, <http://www.sao.texas.gov/Reports/Main/14-007.html>

⁴ See, Interim Charges Relating to Intergovernmental Relations, Economic Development, and Government Organization, issued January 29, 2014,

http://www.senate.state.tx.us/assets/pdf/Senate_IGR_ECO_GOR_Charges_83rd.pdf

⁵ See, Senate Committee on Government Organization, 83rd Texas Legislature, Interim Report, December 2014, p. 47 at <http://www.senate.state.tx.us/75r/Senate/commit/c565/downloads/c565.InterimReport84.pdf>

This comprehensive interim committee report explored the history, complexity and weaknesses in state agency procurement and contracting, as well as previous efforts to address contracting and procurement issues. As the report stated, “Legislative committees and agencies have submitted numerous reports over several decades to the Legislature reviewing and documenting problems with state agencies’ processes and poor implementation of proper and consistent monitoring and oversight protocols.”⁶ Reference was also made to the “state’s lengthy and costly withdrawal from several multi-million dollar contracts.” In addressing the causes of these issues, the report pointed to the following, among other things:

- The decentralized nature of state government; (“While the Governor appoints members to more than 285-plus state boards, they function with relative independence from his office.”)
- Increasing privatization of government programs; (“Vendors or contractors increasingly are used by state agencies for the implementation of state programs. Agency employees that previously assisted citizens by coordinating services or solving problems now oversee the vendors or contractors who deliver those services.”)
- A lack of communication and coordination; (“One of the biggest challenges resulting from the growing reliance on contracts is the need for collaboration between centralized procurement and contracting staff and the agency program staff managing the service delivery or product usage.”)
- Struggles with agency staffing; (“Staff turnover and lack of experienced employees create problems for agencies with complicated, long-term contracts. In addition to internal staff management and training issues at the state agencies, legislative directives have caused agencies to reduce the total number of requested budgeted employees or full time equivalents.”)

The report concluded with four recommendations:

1. Require a Contract Administration Office for any agency with contracts of more than \$5 million or for an agency that lets 60 percent or more of their budget via contracts;
2. Require the Contract Advisory Team (CAT) to create a contract monitoring and oversight management tool for use by the CAT and to perform monitoring and reporting of the performance of major contracts;
3. Update training requirements in state law to require contract management training for state agency program employees who also have contracting duties;

⁶ *Id.*, at p. 48.

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