

**Senate Finance Committee
Article IX**

Adopted Amendments

March 28, 2019

Legislative Budget Board

Article IX
Proposed Rider Amendment
Management and Oversight of State Contracts
Prepared by LBB Staff, 3/22/2019

Overview

Amend riders in Article IX of the introduced version of Senate Bill 1 pertaining to the management and oversight of state contracts.

Required Actions

(1) Amend Article IX, Section 9.01(d) as follows:

- (d) ~~A contract associated with any phase of the development of a major information resources project with an initial value expected to exceed \$10 million must be approved by QAT prior to execution. If this requirement is not met, QAT may provide written notification to the comptroller, the governor, and/or the Legislative Budget Board detailing the requirements that the agency did not meet and any recommendations to address identified risks related to the project or contract. QAT, as authorized by Government Code, Section 2054.1181, may require the agency to establish a corrective Action plan including modifications to the design, deployment, or costs related to the project, or to discontinue the project subject to Legislative Budget Board approval.~~

QAT may conduct a preliminary review of the draft contract prior to vendor negotiation and, based on this review and QAT's determination that the agency has developed a risk mitigation strategy sufficient to protect the state's interests, may waive further review and the approval requirement of this section. Prior to the start of vendor negotiations with regards to a major information resources project with an initial value expected to exceed \$10 million, a state agency shall submit to QAT a draft copy of the contract containing the proposed terms. QAT may provide the state agency with recommendations pertaining to the draft copy of the contract. Upon conclusion of vendor negotiations, a state agency shall submit the final negotiated copy of the contract to QAT for review. QAT shall either provide the state agency with recommendations pertaining to the final negotiated copy of the contract or waive review. A state agency shall not submit the final negotiated copy of the contract to the vendor for the purpose of execution prior to receiving either QAT's recommendations or waiver.

(2) Amend Article IX, Section 9.01(f)(1) as follows:

- (f) (1) An amendment to a major information resources project or contract associated with any phase of the development of a major information resources project with a total initial project or contract value that exceeds \$45 million must be approved by reported to QAT prior to execution when:
- (A) the expected total value of the project or contract subsequent to the amendment exceeds the total value of the initial project or contract awarded by 10 percent or more; ~~or~~
 - (B) the expected total value of an element in the project or contract subsequent to the amendment exceeds the total value of the same element in the initial project or contract awarded by 10 percent or more; or
 - (C) the amendment requires the vendor to provide consultative services, technical expertise, or other assistance in defining project scope or deliverables.

(3) Amend Article IX, Section 9.01(g) as follows:

(g) ~~In order to obtain approval~~ For the purposes of reporting contracts under Subsection (f) a state agency shall provide to QAT a copy of the final version of the amendment, including all appendices and attachments, prior to execution. QAT may conduct a preliminary review of the draft contract amendment prior to vendor negotiation and, based on this review and QAT's determination that the agency has developed a risk mitigation strategy sufficient to protect the state's interests, may waive further review and the approval requirement of Subsection (f).

(4) Amend Article IX, Section 9.01(i) as follows:

(i) ~~In lieu of formally approving an amendment pursuant to Subsection (f) or a contract pursuant to Subsection (d), QAT may waive the requirements of the respective subsection by providing notice to the state agency seeking approval of the amendment or contract. QAT may waive the requirements with regards to a contract under Subsection (d) or an amendment under Subsection (f) by providing notice of waiver to the state agency required to submit contract documents under the respective Subsections.~~

(5) Amend Article IX, Section 9.02(b) as follows:

(b) ~~A state agency may not expend appropriated funds for a major information resources project unless the project has been reviewed by QAT and approved by the Legislative Budget Board in the agency's biennial operating plan. The Comptroller of Public Accounts may not issue warrants for the expenditure of appropriated funds by a state agency until written approval of the major information resources project is received from QAT. QAT shall recommend approval~~ make recommendations based on an analysis of the major information resources project's risk. QAT may request any information necessary to determine a major information resources project's potential risk. QAT may waive the major information resources project review requirements for a project.

(6) Amend Article IX, Section 9.02(g) as follows:

(g) ~~The Legislative Budget Board~~ QAT may issue guidelines for software development, quality assurance, and the review of major information resources projects.

(7) Amend Article IX, Section 9.02(h) as follows:

(h) ~~Unless waived by the Legislative Budget Board~~ QAT shall ~~may~~ require each affected agency to:

- (1) quantitatively define the expected outcomes and outputs for each major information resources project at the outset;
- (2) monitor cost; and
- (3) evaluate the final results to determine whether expectations have been met.

(8) Amend Article IX, Section 9.12(b) as follows:

(b) A contract is subject to the requirements of this Sec. 9.12 if:

- (1) (A) under the contract a state agency or institution of higher education acquires information resources technologies;
- (B) ~~(2)~~ there is a proposal for the transfer by assignment of responsibility for fulfillment of any duties, rights, or obligations due to a state agency or institution of higher education under the contract; and

(C) ~~(3)~~the total value of the contract exceeds \$10 million; or

(2) the contract contains “sensitive personal information,” as that term is defined in Section 521.002, Business & Commerce Code.

(9) Delete Article IX, Section 9.12(g) and renumber Sections 9.12(h) through (m).

(10) Amend Article IX, Section 17.10(c)(1) as follows:

(c) Agencies shall make a good faith effort to identify and execute savings and efficiencies in their use of contracted goods and services. An agency or institution of higher education may not use funds appropriated elsewhere in this Act to pay for a contract for goods or services unless it:

(1) Seeks competitive bids before renewing or extending a contract that has been in effect more than three fiscal years as of August 31, 2019 and is valued at the lesser of \$10,000,000 or 10 percent of the agency’s All Funds budget for the 2020-21 biennium. The following contracts are exempt from the requirements of this Subsection (c)(1) of this § 17.10:

(A) TxSmartBuy, term, and cooperative contracts administered by the Comptroller or Department of Information Resources;

(B) grants;

(C) interagency contracts;

(D) contracts that relate to a construction project as defined by §2166.001, Government Code;

(E) contracts that relate to highway construction or highway engineering;

(F) contracts that relate to developing information resource applications or information resource technologies; ~~and~~

(G) contracts not required by law to be competitively bid; and

(H) managed care contracts in Medicaid and CHIP program; and

(11) Add the following section to Article IX:

Sec. 9.13 Report on Monitoring Assessments 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 the 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) On or before September 1 of each year, the state auditor shall submit to the comptroller of public accounts a report that:

(1) lists each state agency that was assigned a rating as described in Subsection (a); and

(2) for a state agency that was assigned a rating, 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.

(c) The comptroller shall develop guidelines for the additional or reduced monitoring of a state agency during the periods described for a contract that falls under the monetary thresholds for review and monitoring by the Contract Advisory Team or the Quality Assurance Team.

(d) 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 any statutory provisions relating to monitoring assessments by the state auditor, and the agency or team, as applicable, shall provide the requested information.