
IMPROVE MAJOR CONSULTING CONTRACT REPORTING REQUIREMENTS AND PROCESSES

Statute and the General Appropriations Act require state agencies and institutions of higher education to publicly report information about awarded contracts to promote transparency and efficient operation of state government. These awarded contracts include contracts for consulting services. Statute defines a major consulting services contract as one that is expected to exceed \$15,000 for a state agency or \$25,000 for an institution of higher education, other than a public junior or community college. Agencies and institutions of higher education must follow additional approval and reporting requirement for all major consulting services contracts.

However, agencies and institutions do not follow the approval and reporting requirements for major consulting services contracts consistently, which decreases transparency and accountability.

FACTS AND FINDINGS

- ♦ Statute requires a finding of fact from the Governor's Office, Budget Division, for approval of major consulting services contracts for state agencies. The finding of fact approval verifies that the consulting services are necessary. Some agencies and institutions award major consulting services contracts without complying with this process.
- ♦ Most agencies are not posting statutorily required contract award notifications correctly to the *Texas Register* before and after contracts are awarded. For fiscal year 2018, 42 agencies awarded consulting services contracts; however, 15 agencies made notifications to the *Texas Register* before and after contracts were awarded. Of the 42 awarding agencies, 21 agencies were not found in the *Texas Register*, based on an agency name search.

CONCERNS

- ♦ Pursuant to Texas law, contracts that are in violation of the finding of fact process and *Texas Register* requirements are void. However, no state entity is authorized to determine the validity of consulting contracts to ensure that agencies complied with either process appropriately.

♦ Multiple reporting requirements make the posting of notifications correctly challenging for agencies and institutions. These requirements also make it difficult for potential vendors, state agencies, or public viewers to find the information. The *Texas Register* is published weekly and serves as the journal of agency rulemaking for the state. In contrast, agencies post opportunities for vendors to enter state contracts on the Electronic State Business Daily website, which is a useful tool to communicate consulting contract opportunities and awards.

OPTIONS

- ♦ **Option 1:** Amend statute to require state agencies and institutions of higher education to upload findings of fact to the Legislative Budget Board's state agencies contracts database as part of the required contract notification for major consulting services contracts.
- ♦ **Option 2:** Amend statute to simplify requirements for state agencies and institutions of higher education to report consulting services contracts. This amendment would eliminate the required publication of contract-related notifications in the *Texas Register* and would add a requirement for agencies to report consulting solicitations valued at greater than \$14,000 to the Electronic State Business Daily website. In addition, amend the statutory definition of major consulting services contract to establish the value of such a contract at greater than \$14,000 for state agencies, rather than at greater than \$15,000.

DISCUSSION

The Texas Government Code, Section 2254.021, defines a consulting service as "the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee." The statute also defines a major consulting services contract as one that "is reasonably foreseeable ... to exceed \$15,000 for state agencies, or \$25,000 for an institution of higher education." Other sections of the Texas Government Code, Chapter 2254, contain notification requirements that apply to contracts at different dollar-value thresholds.

FIGURE 1
LEGISLATIVE HISTORY OF TEXAS STATE AGENCIES' CONTRACT REPORTING REQUIREMENTS
FISCAL YEARS 1993 TO 1999

LEGISLATURE	LEGISLATION
Seventy-third, 1993	Senate Bill 248, requiring published notice in the <i>Texas Register</i> before and after state agencies enter into major consulting services contracts.
Seventy-fifth, 1997	Senate Bill 1380, requiring agencies to post contract solicitations of \$25,000 or greater to the Electronic State Business Daily website.
Seventy-sixth, 1999	Senate Bill 176, requiring notification to the Legislative Budget Board about consulting services contracts greater than \$14,000.

SOURCE: Legislative Budget Board.

The Legislature has strengthened state contracting reporting requirements during the course of several legislative sessions, as shown in **Figure 1**. As a result, when state agencies and institutions of higher education award consulting service contracts, they must notify the Legislative Budget Board (LBB), the Electronic State Business Daily (ESBD) website, and the *Texas Register*. The different notification vehicles and requirements for major consulting contracts can be confusing or unclear and are not followed consistently, which decreases transparency and accountability.

NOTIFICATION AND REPORTING REQUIREMENTS FOR CONSULTING SERVICES CONTRACTS

Statute requires agencies and institutions of higher education to follow additional approval and reporting requirements for all major consulting contracts.

STATE AGENCIES CONTRACTS DATABASE

The state agencies contracts database, maintained by the LBB, is the single repository for state agencies or institutions of higher education to report contract information and documents required by statute or the General Appropriations Act.

The Texas Government Code, Section 2254.0301, stipulates requirements for consulting services contract notifications by a state agency other than an institution of higher education or a university system. The agency must provide written notice to

LBB of a contract for consulting services if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, is greater than \$14,000. An agency can identify a contract in the database as a consulting services contract in the following two ways:

- using one or more contract reporting codes, as required in the Texas Government Code, Section 2254.0301; and
- using the National Institute of Governmental Purchasing (NIGP) code, which is an option for categorizing the type of purchase but is not statutorily required.

After analyzing contract data in the database, LBB staff determined that fewer consulting contracts are reported in the statutorily required contract reporting category than in the optional category using an NIGP code for consulting. The difference between the two categories in the number and value of contracts is shown in **Figure 2**. This discrepancy, especially the fact that fewer contracts are reported using a statutorily required code, suggests that agencies may be reporting consulting contracts incorrectly.

Of the 1,084 contracts reported to the contracts database with a consulting NIGP code, but not reported pursuant to the Texas Government Code, Section 2254.0301, the largest reporting category is for purchases or sales valued at more

FIGURE 2
TEXAS STATE AGENCIES' REPORTED CONSULTING CONTRACTS, SEPTEMBER 2015 TO JUNE 2018

CATEGORY	CONTRACTS	VALUE (IN MILLIONS)
Consulting reporting requirement, pursuant to the Texas Government Code, Section 2254.0301	403	\$305.0
National Institute of Governmental Purchasing (NIGP) consulting code	1,303	\$2,700.0
Both consulting reporting requirement and NIGP consulting code	219	\$104.0
Total in state agencies contracts database	40,436	\$60,500.0

SOURCE: Legislative Budget Board Contracts Database.

than \$50,000, which contains 688 contracts. Of these 688 contracts, 43 have the word consulting in the contract subject title and have a combined value of \$368.2 million. Using an NIGP code of consulting and a similar subject in the title, many of these contracts appear to be incorrectly reported, resulting in less oversight and inaccurate totals for the state. Using the contract reporting code prompts additional requirements; therefore, inaccurate labeling in the contracts database impedes the proper process. It prevents the state from knowing how many consulting contracts are active, which limits appropriate oversight and transparency. Agencies could be selecting consulting NIGP codes or contract reporting code incorrectly.

ELECTRONIC STATE BUSINESS DAILY

The Comptroller of Public Accounts (CPA), Statewide Procurement Division, manages the ESDB. The website is the state's online directory for listing procurement opportunities. State and local agencies post solicitations to the ESDB to serve as the central listing for solicitations for potential vendors. Agencies are required to post procurements with an expected contract value of more than \$25,000 to the ESDB, regardless of the source of funds used for the contract. The Texas Government Code, Section 2155.083, details the requirements of ESDB notices.

Some major consulting services contracts are not posted to the ESDB because, although they are valued at greater than the \$15,000 threshold in the Texas Government Code, Section 2254.021, they are not valued at more than \$25,000. The same is true of contracts valued from \$14,000 to \$25,000 that agencies must report to the LBB's contracts database.

TEXAS REGISTER

The Secretary of State manages the *Texas Register*, which records agency rulemaking, gubernatorial appointments, Attorney General opinions, and solicitations, such as major consulting services contracts. The Texas Government Code, Section 2002.002, states that the purpose of the *Texas Register* is to provide adequate and proper notice of proposed state agency rules and state agency actions through publication of the state register. *Texas Register* posting requirements are in addition to ESDB posting requirements for consulting services contracts.

At least 30 days before a state agency enters into a major consulting services contract, it must publish the following information in the *Texas Register*: an invitation for consultants to provide offers of consulting services; the name of the state

agency contact; the closing date for offers; and the procedure by which the agency will award the contract. In addition, within 20 days of entering into a major consulting services contract, the contracting state agency must publish the following information in the *Texas Register*: a description of the activities the consultant will conduct; the consultant's name and business address; the total value; the beginning and ending dates of the contract; and dates on which required documents or reports from the consultant are due to the agency. Pursuant to the Texas Government Code, Section 2254.034, a contract that does not meet these requirements is void.

Despite some contracts that do not comply with posting requirements, CPA staff report that they have not stopped payment on any consulting contracts. Statute is not clear concerning which state agency would deem a contract void or the process required to cancel or cease payments on a void contract.

For fiscal year 2018, 42 agencies reported 136 consulting services contracts to the contracts database. Of these, LBB staff were able to verify 15 agencies that posted to the *Texas Register*, even though all were subject to this requirement. Of the 42 agencies reporting, 21 agencies were not found in the *Texas Register* database. The prenotification posting occurs before a contract is awarded; therefore, a contract cannot be associated with a posting in the *Texas Register* for verification purposes. Additionally, the *Texas Register* cannot be filtered based on a certain reporting requirement; searching a keyword or phrase must be performed manually.

FINDING OF FACT REQUIREMENT FOR MAJOR CONSULTING SERVICES CONTRACTS

Pursuant to the Texas Government Code, Section 2254.028, a state agency must obtain a finding of fact from the Governor's Office, Budget Division, before entering into a major consulting services contract. This approval verifies that the consulting services are necessary. If the agency does not comply with this requirement, the contract is void. This requirement does not apply to institutions of higher education, other than public junior colleges, if the institution publishes in the *Texas Register* before entering into the contract a finding and explanation by its chief executive officer that the consulting services are necessary.

No process is required for oversight, and no public way is available to determine which agencies complied with this requirement. For fiscal years 2017 and 2018, 29 contracts received a finding of fact from the Governor's Office, Budget

Division. As of June 2018, agencies awarded 67 contracts during the same period for major consulting services. In addition, findings of fact are not publicly available without requesting this information from the agency.

IMPROVE CONSULTING SERVICES CONTRACT NOTIFICATION AND REPORTING

Option 1 would amend statute to require state agencies to upload findings of fact to the LBB's state agencies contracts database, including the separate finding for institutions of higher education, as part of the required contract notification for major consulting services contracts. Many contracts reported to the contracts database include additional documentation; therefore, adding the findings of fact would maintain all required documents in one consistent database, increasing ease of use and access.

Option 2 would amend statute to simplify reporting requirements for consulting services contracts as follows:

- eliminate the requirement to publish notification before contracts are awarded in the *Texas Register*, and add a requirement for agencies to report consulting solicitations valued at more than \$14,000 to the ESBD, which is the central location for vendors seeking procurement opportunities;
- eliminate the requirement to publish notification of major consulting services contracts awarded in the *Texas Register*. Agencies already are required to post consulting services contracts, in addition to other contracts, to the contracts database;
- eliminate the requirement to publish notification in the *Texas Register* when a consulting services contract is renewed, amended, or extended. Agencies currently are required to document these updates in the contracts database; and
- amend the definition of major consulting services contract in the Texas Government Code, Section 2254.021, to establish the value of such a contract at greater than \$14,000, rather than at \$15,000. This amount would match the existing threshold in the Texas Government Code, Section 2254.0301, which requires state agency notification to the LBB of consulting services contracts that exceed \$14,000. The amendment also would match the new provision previously mentioned that would require agencies to report contracts that exceed \$14,000 to the ESBD.

Applicable consulting contracts are reported twice before an award, to the ESBD and the *Texas Register*, and twice after an award, to the contracts database and the *Texas Register*. The ESBD is the central location for vendors seeking procurement opportunities, and the contracts database is the central database for awarded contracts. Therefore, these tools would serve more efficiently for notifications before and after contracts are awarded.

FISCAL IMPACT OF THE OPTIONS

Option 1 would require agencies to upload the completed finding of fact to the contracts database, including the separate finding for institutions of higher education. Many contracts reported to the contracts database already contain additional uploaded documentation, and adding the finding of fact would maintain all required documents in one consistent database. No significant fiscal impact is anticipated as a result of Option 1.

Option 2 involves statutory amendments and would have no significant fiscal impact.

The introduced 2020–21 General Appropriations Bill does not include any adjustments as a result of these options.