



# HOUSE BILL 16: Enhance Oversight of Service Contracts/PED.

2017-2018 General Assembly

<b>Committee:</b>		<b>Date:</b>	March 8, 2017
<b>Introduced by:</b>	Reps. Davis, Horn, Lucas, R. Turner	<b>Prepared by:</b>	Cindy Avrette Staff Attorney
<b>Analysis of:</b>	Second Edition		

**OVERVIEW:** *House Bill 16 is a recommendation of the Performance Evaluation Division (PED) that would impact the process a State agency must follow when it contracts with a provider for a service the agency must provide.*<sup>1</sup>

**CURRENT LAW AND BACKGROUND:** The Division of Purchase and Contract (P&C) in the Department of Administration provides general direction and oversight to ensure purchasing decisions are in compliance with State law and administrative rules. The individual State agencies take responsibility for each of the three phases of contract procurement: sourcing evaluation, contract formation, and contract management. For purposes of purchase and contract, the term "State agency" includes any State department, institution, or agency.<sup>2</sup>

State agencies awarded more than \$1 billion to non-State entities to provide services that the State agency is required or authorized by law to provide. The Joint Legislative Program Evaluation Oversight Committee's 2015-17 Work Plan directed PED to examine these agency service contracts and to evaluate the process used by State agencies to obtain these services from private sector providers. The examination found the following:

- State agencies are not ensuring procurement of contracted services achieves best value.
- State agencies are not documenting the basis for their decisions to contract with private providers.
- Agency procurements for high-value contracted services do not consistently include necessary attributes.
- State agencies and state-level monitoring are not consistently ensuring compliance with terms and conditions of high-value service contracts.

The Secretary of the Department of Administration sent a letter to PED on December 16, 2015. The Secretary agreed with the findings made in the PED report. The Secretary noted that agencies will need additional resources to train or hire employees with the necessary skillset to prepare an adequate business case.

The State Budget Director sent a letter to the PED on December 16, 2015, generally agreeing with the findings cited in the report. The Director noted that the Office of State Budget and Management (OSBM) had recently recommended the State adopt a standard methodology for comparing public and private costs when making decisions on whether to contract for services. The standard business case template and approval process for agencies seeking to contract for services, recommended in the bill,

<sup>1</sup> As introduced, this bill was identical to S90, as introduced by Sens. Randleman, Krawiec, Edwards, which is currently in Senate Rules and Operations of the Senate.

<sup>2</sup> G.S. 143-50.

Karen Cochrane-Brown  
Director



Legislative Analysis  
Division  
919-733-2578

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would help move the State in this direction. The Director also noted that the additional responsibility placed on the OSBM would require additional resources. The bill does not provide additional resources to any State agency.

**BILL ANALYSIS:** House Bill 16 would make the following changes in the way State agencies procure service contracts:

- It would require an agency to utilize a business case justification template for procuring a provider service contract.
- It would require an agency to consult with the Joint Legislative Commission on Governmental Operations (Gov Opps) about the selection of a provider under a service contract.
- It would require an agency to receive advance written approval before it could select a provider to fulfill a service contract.
- It would require the Department of Administration to schedule a review of an agency's service contracts at least once every five years to verify that the providers of those contracted services are the most cost-effective providers available.
- It would require the Division of P&C to develop a contract management system that all State agencies must use to manage their service contracts. The Division of P&C is currently in the process of soliciting bids for a proposed contract management system. It is anticipated that the new system will be undertaken this calendar year. The new system will enable all contracts to be stored and searchable in one, easy to use location.
- It would direct OSBM to develop and submit a plan to determine whether services provided by State agencies could be more effectively and appropriately provided by private providers. The plan must be submitted to Gov Opps and to the Fiscal Research Division by December 1, 2017.

## **Business Case Justification Template**

Section 1 of the bill would direct the OSBM to develop a business case justification template. The bill outlines the minimally required information and details the template must contain. The types of information required are substantially the same as the types of information that would be included in an agency's Request for Proposal for a service contract. Examples of the items that must be included in the template are:

- Description of the manner in which the service is currently provided.
- Description of metrics to be used to evaluate the service and the expected level of performance for each metric.
- An assessment of the availability of private providers who could provide the service.
- Identification of key project team members and their responsibilities.
- Identification of funding requirements and sources.

## **Documentation and Prior Approval Required**

A State agency cannot select a provider of an agency service until it has done all of the following:

- Used the business case justification template to document the business case for making the selection of a provider.
- Consulted with Gov Opps<sup>3</sup> about the selection of a provider.

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<sup>3</sup> This requirement is deemed satisfied if Gov Opps does not have a meeting at which the matter is heard within 15 days of receiving the submission, unless the chairs notify the agency that additional time is needed.

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- Received written approval from the appropriate officials:
  - The State Purchasing Officer<sup>4</sup> if the cost of the service is \$5 million<sup>5</sup> or less.
  - The State Purchasing Officer and the OSBM if the cost of the service exceeds \$5 million.

## **Exceptions from Documentation and Prior Approval**

The documentation and approval provisions outlined above do not apply if one or more of the following exceptions apply:

- The proposed provider of the agency services is a governmental entity other than the State agency required for authorized to provide the service. The governmental entity may be a county or a municipality.
- The total cost of providing the agency service does not exceed \$1 million.
- The procurement of a service contract would not be subject to the Secretary's authority to purchase or contract for services under G.S. 143-49(3).<sup>6</sup>

## **Contract Management System**

Section 3 of the bill would require the Department of Administration to develop a contract management system that has the capacity to ensure all of the following:

- That the contract terms and conditions are easily reviewable during the invoice approval process to verify that payments are made in accordance with the applicable terms and conditions.
- That key documents related to contracts can be stored, searched, and retrieved from the system by appropriate personnel.
- That customizable management reports can be generate by State agencies that are parties to contracts or that have contract oversight responsibilities.

The Division of P&C must notify State agencies within 30 days after that the contract management system is developed and operational. Once notified, agencies must use the contract management system to manage all service contracts entered into by the agency.

**EFFECTIVE DATE:** Section 1 of the bill would become effective October 1, 2017. The remainder of the bill would become effective when it becomes law.

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<sup>4</sup> The State Purchasing Officer may delegate the authority to make approvals for service contracts whose total cost is \$5 million or less to the head of a State agency if the Officer determines that the State agency's procurement staff have demonstrated competency with respect to the skills necessary to effectively utilize government-vendor partnerships to achieve best value, and that the results of recent P&C compliance reviews of the agency's procurement processes have been satisfactory.

<sup>5</sup> The total cost is the total amount of revenue that a service provider or combination of service providers would be estimated to receive during the first three years of providing the service IF the proposed service provider is a private provider. If the provider is a State entity, the total cost is the total amount of funds that the State agency would be estimated to expend providing the agency service during the first three years of operation.

<sup>6</sup> There are some contracts statutorily exempt from P&C oversight, such as the investment management contracts administered by the State Treasurer. These services contract would be excluded from this evaluation.