

**Written Testimony of Jordan Kroll**  
**IT Alliance for Public Sector**  
**Texas House State Affairs Committee**  
**Monday, August 15, 2016**

Chairman Cook, Vice Chair Giddings, and members of the House Committee on State Affairs, the Information Technology Alliance for Public Sector (ITAPS) appreciates the opportunity to submit written testimony on contracting procedures in the State of Texas. ITAPS, a division of the Information Technology Industry Council (ITI), is an alliance of leading technology companies offering the latest innovations and solutions to public sector markets. With a focus on the federal, state, and local levels of government, ITAPS advocates for improved procurement policies and practices in the public sector on behalf of the nation's leading innovation companies and represents more than 40 companies involved in information and communications technologies (ICT).

Last year Senate Bill 20 was passed and signed into law by Governor Greg Abbott. This law made sweeping reforms to state agency contracting and procurement law, with the goal of increasing transparency and ensuring State tax dollars are well spent and deliver high value. ITAPS members are supportive of greater accountability and transparency in the procurement process, but it is our belief that certain provisions contained in the bill have had unintended negative consequences for the State. The law has made the procurement process - which is critical to the smooth operation of the State - more expensive and complex. With this bill now implemented, Senate Bill 20 has been subject to inconsistent application and interpretations creating varying and unpredictable procurement policies amongst different agencies. Another unintended consequence is the rapid increase in staff augmentation procurements in lieu of solution or outcome based services, which can lead to higher costs and risk for the State.

Last year ITAPS submitted a [letter](#) to Senator Nelson (sponsor of Senate Bill 20) outlining our concerns with bill pertaining to the use of schedules by the State, among other things. This bill requires users of the State's cooperative contract are required to issue an additional request for pricing to vendors for all scopes of works and contracts valued over \$50,000, with six vendors needing to be contacted in a contract when its value is between \$150,000 and \$1,000,000. With the low bidding threshold now required under Senate Bill 20 implemented, agencies in Texas have experienced an increase in work and an increase in delays in the procurement process. As a result, agencies have expressed concerns and, at times, an unwillingness to go through the Department of Information Resources (DIR) under the bill due to the complexity and extended timelines now associated with the procurement process. Unwillingness to use the cooperative contract, despite it being mandated, has led to agencies issuing their own request for proposals (RFPs) and also the increased use of staff augmentation procurements. These onerous requirements for solicitation have ultimately detracted from the total project savings of using a master cooperative contract, which was established to ease the procurement process and ensure qualified vendors were available for agency use with pre-negotiated, pre-competed prices that offer Texas' state agencies the ability to purchase at a lower price.

Additionally, under this bill, many agencies feel they are not allowed to meet with vendors to develop solutions that meet their needs. As a result of this, agencies and vendors now feel effectively blocked from meeting. An unwillingness to meet with vendors not only potentially leads to vendor lock-in for agencies but also prevents agencies from learning about new, innovative ways to address challenges in areas like health, education, and public safety. Experience has shown that states benefit most from robust open communication with the industries that support them in their mission.

We urge the State to continue to incorporate continuous improvement into its public procurement process that will advance technological innovation across the state enterprise and produce the best outcome for its customers and citizens. ITAPS cautions against overly prescriptive requirements for the use of schedules by the State. It is our belief, based on the size and the unique needs of the State, that agencies should be given the flexibility to purchase for best value under the appropriate master cooperative contracts up to a limit of \$500,000 before schedule requirements of multiple solicitations.

It is our belief that for a state to fully recognize the benefits of innovation and products offered by the information technology sector they must also reform their standard IT terms and conditions to build smarter IT processes that are flexible, create robust competition, and deliver the maximum possible outcome for outcomes in project and system deliverables. Inflexible terms and conditions that disproportionately shift risk onto the vendor hinder efforts to engender competition among top technology providers. Generally speaking the only companies that can agree to unlimited or disproportional liability are the companies with nothing to lose. This ultimately leads to limiting the most qualified vendors and even higher costs for the taxpayers. We also caution against the indiscriminate use of a most favored customer clause as a means of achieving the best value for a state. This creates significant additional complexity and a disincentive for robust competition among vendors and ultimately leads to higher prices for the State. Companies with little to no market share are the only ones that can easily offer to accept most favored customer clauses. This creates additional complexity and a disincentive for robust competition among vendors and ultimately leads to higher prices for the State.

In closing, we support the strictest adherence to accountability but caution against procurement mandates that might preclude the State from obtaining the best innovative technology solutions that will provide enhanced constituent services. We urge the Legislature to consider forming a working group of government and industry representatives to revisit Senate Bill 20. The group should consider the challenges it has presented in its implementation and offer recommendations on how to improve the current system. If you have any questions or wish to discuss our concerns, please contact Jordan Kroll at 202-524-5546 or [jkroll@itic.org](mailto:jkroll@itic.org). Thank you for attention to this matter.