

BILL ANALYSIS

C.S.S.B. 12
By: Zaffirini
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The manner in which state agencies engage in contracts with private and not-for-profit vendors is of vital concern for the state because it directly affects the use of state appropriated financial resources and, in some cases, the termination of state employee positions. In recent months, accounts have arisen that allege that some state agency employees engaged in improper actions when engaging in contracts on behalf of the state and investigations are currently underway. Examples like these highlight the need for increased oversight and training in the contracting process.

SB 12 improves the processes by which the state solicits, negotiates, enters into, and manages contracts with private and not-for-profit vendors by improving the training processes for employees involved in contracting; improving contract reporting mechanisms for state agencies; requiring needed provisions to address amendments; and addressing ethical issues specific to contracting.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Amends Chapter 551, Subchapter D of the Government Code, to add a new Section 551.0726 which states that the governing body of a state agency may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting, the governing body of that agency votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person, and the attorney advising the governing body issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person. The governing body for a state agency must make a tape recording of the proceedings of a closed meeting permitted under this bill; provides exceptions.

Amends Section 2155.078 of the Government Code by adding Subsection (o) to require the Texas Building and Procurement Commission (TBPC) to develop and implement a continuing education course on cost analysis and price negotiation. State agency purchasing personnel who attend this course must review the course and provide this review to the commission.

Amends Chapter 2155, Subchapter B, of the Government Code to add Section 2155.085 requiring the TBPC to publish a report on the number and dollar value of sole source purchases made and open market purchases made or contracts awarded for which there were fewer than three responses to the contract or open market solicitation in the previous calendar year. Each state agency is required to provide the commission with timely information for the purpose of creating this report; the commission is required to establish requirements for the provision of this information, but is prohibited from requiring a state agency to provide information on a health and human services contract if the value of the contract cannot be determined at the time of the execution of the contract and any qualified vendor is eligible for the contract.

Amends Section 2262.053 of the Government Code to require TBPC to establish minimum qualifications for certifying contract managers and to require TBPC to develop guidelines by

which a state agency is required to involve a contract manager during various stages of the contracting process.

Amends Chapter 2262, Subchapter B of the Government Code, to require that each state agency develop a plan for incorporating performance measures into an appropriate percentage of contracts for services entered into by an agency; requires state agencies to determine the appropriate percentage in consultation with TBPC.

Requires TBPC and the Department of Information Resources (DIR) to jointly review the options for establishing an information-sharing portal for use by state agencies in contract management and administration and, if the TBPC and DIR determine that establishing the portal is cost-effective, establish the portal.

Requires TBPC to develop and publish a uniform set of definitions and a uniform and automated set of forms, including sample contracts and contract terms, for use in different stages of the contracting process.

Amends Chapter 2262 of the Government Code, by adding a new Subchapter G on management of major contracts for services; this subchapter only applies to major contracts for services. Requires state agencies to prepare each document required by this subchapter in a manner consistent with TBPC guidelines.

Requires TBPC, in consultation with DIR, to develop and provide guidelines and forms, and to work with state agencies in developing and providing these guidelines and forms, for the documents required by new Subchapter G.

Requires a state agency to prepare a business case providing the initial justification for the contract, including the anticipated return on investment in terms of cost savings and efficiency for the contract, for each proposed contract that meets the criteria in the Contract Management Guide. Requires each agency to file the business case with TBPC and the Legislative Budget Board (LBB) at the same time the agency files its legislative appropriations request.

Amends Section 2262.051 of the Government Code to require the TBPC in consultation with the team, Health and Human Services, and the Department of Transportation to establish criteria in the contract management guide for determining whether a proposed project requires a business case. Requires state agencies to develop a project plan for each major contract, based on criteria in the contract management guide. Except as provided by (c) of this section, state agencies must file their project plan with TBPC before the agency spends more than 10 percent of allocated funds for the related major contract, or first issues a contractor solicitation for the related major contract. Requires that project plan to include a procurement plan and a method for monitoring changes to the scope of the contract. A state agency is prohibited from posting a contractor solicitation for the contract on the Electronic State Business Daily unless the project plan has been filed under Section 2262.304.

Requires state agencies to periodically review and report on a contractor's performance throughout the term of a major contract; TBPC is required to store these contractor performance reviews in a database and to make this database available to state agencies and searchable by contractor, contract value, state agency and date.

Requires state agency executive director (or executive director's designee) and the state agency's designated contract manager to approve and sign each document required by the new Subchapter G added by this bill. If a proposed contract amendment or a change order changes the monetary value of a contract by more than 10 percent or significantly changes the completion date of a contract, the state agency's executive director would be required to approve the amendment or order.

Requires a state agency to contract with a state government entity or a private entity for negotiation services or advice on a major contract if the agency determines that there is substantial need for the negotiation services or advice and the agency cannot adequately perform the negotiation services with its own personnel or cannot perform the negotiation without advice. Authorizes state agencies to contract with private entities for negotiation services or advice only if the agency determines that it cannot obtain the consulting services through a contract with a state governmental entity.

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Requires DIR, in coordination with LBB, TBPC, and the Comptroller, to analyze current automated information systems of state agencies to determine how these systems may be combined to more effectively standardize and synchronize state contract management. Requires DIR to report the results of its analysis by December 31, 2005.

Contract managers are not required to be certified as required by this bill until September 1, 2007. Requires TBPC to develop the continuing education course required by the bill no later than March 1, 2006. State agencies are not required to comply with Sections 2262.303 and 2262.304 (business case and project plan) of the Government Code as added by this bill until the Contract Management Guide has been revised to establish the criteria established in this bill.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

SB 12 and CSSB 12 both make changes to Chapter 2262 of the Government Code, and both seek to address issues that have come to light regarding the state's contracting practices.

CSSB 12 differs from the engrossed bill in the following ways:

CSSB 12 adds the following language:

Amends Chapter 551, Subchapter D of the Government Code, to add a new Section 551.0726 which states that the governing body of a state agency may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting, the governing body of that agency votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person, and the attorney advising the governing body issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the state in negotiations with a third person. The governing body for a state agency must make a tape recording of the proceedings of a closed meeting permitted under this bill; provides exceptions.

Amends Section 2155.078 of the Government Code by adding Subsection (o) to require the Texas Building and Procurement Commission (TBPC) to develop and implement a continuing education course on cost analysis and price negotiation. State agency purchasing personnel who attend this course must review the course and provide this review to the commission.

Amends Chapter 2155, Subchapter B, of the Government Code to add Section 2155.085 requiring the TBPC to publish a report on the number and dollar value of sole source purchases made and open market purchases made or contracts awarded for which there were fewer than three responses to the contract or open market solicitation in the previous calendar year. Each state agency is required to provide the commission with timely information for the purpose of creating this report; the commission is required to establish requirements for the provision of this information, but is prohibited from requiring a state agency to provide information on a health and human services contract if the value of the contract cannot be determined at the time of the execution of the contract and any qualified vendor is eligible for the contract.

Amends Section 2262.053 of the Government Code to require TBPC to establish minimum qualifications for certifying contract managers and to require TBPC to develop guidelines by which a state agency is required to involve a contract manager during various stages of the contracting process.

Amends Chapter 2262, Subchapter B of the Government Code, to require that each state agency develop a plan for incorporating performance measures into an appropriate percentage of contracts for services entered into by an agency; requires state agencies to determine the appropriate percentage in consultation with TBPC.

Requires TBPC and the Department of Information Resources (DIR) to jointly review the options for establishing an information-sharing portal for use by state agencies in contract management and administration and, if the TBPC and DIR determine that establishing the portal is cost-effective, establish the portal.

C.S.S.B. 12 79(R)

Requires TBPC to develop and publish a uniform set of definitions and a uniform and automated set of forms, including sample contracts and contract terms, for use in different stages of the contracting process.

Amends Chapter 2262 of the Government Code, by adding a new Subchapter G on management of major contracts for services; this subchapter only applies to major contracts for services. Requires state agencies to prepare each document required by this subchapter in a manner consistent with TBPC guidelines.

Requires TBPC, in consultation with DIR, to develop and provide guidelines and forms, and to work with state agencies in developing and providing these guidelines and forms, for the documents required by new Subchapter G.

Requires a state agency to prepare a business case providing the initial justification for the contract, including the anticipated return on investment in terms of cost savings and efficiency for the contract, for each proposed contract that meets the criteria in the Contract Management Guide. Requires each agency to file the business case with TBPC and the Legislative Budget Board (LBB) at the same time the agency files its legislative appropriations request.

Amends Section 2262.051 of the Government Code to require the TBPC in consultation with the team, Health and Human Services, and the Department of Transportation to establish criteria in the contract management guide for determining whether a proposed project requires a business case or a project plan.

Requires state agencies to develop a project plan for each major contract, based on criteria in the contract management guide. Except as provided by (c) of this section, requires state agencies to file their project plan with TBPC before the agency spends more than 10 percent of allocated funds for the related major contract, or first issues a contractor solicitation for the related major contract. Requires that project plan to include a procurement plan and a method for monitoring changes to the scope of the contract. A state agency is prohibited from posting a contractor solicitation for the contract on the Electronic State Business Daily unless the project plan has been filed under Section 2262.304.

Requires state agencies to periodically review and report on a contractor's performance throughout the term of a major contract; TBPC is required to store these contractor performance reviews in a database and to make this database available to state agencies and searchable by contractor, contract value, state agency and date.

Requires state agency executive director (or executive director's designee) and the state agency's designated contract manager to approve and sign each document required by the new Subchapter G added by this bill. If a proposed contract amendment or a change order changes the monetary value of a contract by more than 10 percent or significantly changes the completion date of a contract, the state agency's executive director would be required to approve the amendment or order.

Requires a state agency to contract with a state government entity or a private entity for negotiation services or advice on a major contract if the agency determines that there is substantial need for the negotiation services or advice and the agency cannot adequately perform the negotiation services with its own personnel or cannot perform the negotiation without advice. Authorizes state agencies to contract with private entities for negotiation services or advice only if the agency determines that it cannot obtain the consulting services through a contract with a state governmental entity.

Requires DIR, in coordination with LBB, TBPC, and the Comptroller, to analyze current automated information systems of state agencies to determine how these systems may be combined to more effectively standardize and synchronize state contract management. Requires DIR to report the results of its analysis by December 31, 2005.

Contract managers are not required to be certified as required by this bill until September 1, 2007. Requires TBPC to develop the continuing education course required by the bill no later than March 1, 2006. State agencies are not required to comply with Sections 2262.303 and

2262.304 (business case and project plan) of the Government Code as added by this bill until the Contract Management Guide has been revised to establish the criteria established in this bill.

CSSB 12 strikes the following:

CSSB 12 strikes language defining "executive director" under 2262.001, Government Code, and instead CSSB 12 defines "department" as the Department of Information Resources. Language that would have added Sections 2262.0015, Government Code, language that would have added Sections 2262.055-2262.064, Government Code, are removed. 2262.065, Government Code, and 2262.066, Government Code, as written in the engrossed version of the bill are replaced with language regarding performance measures and an information sharing portal respectively. Language adding 2262.104 and 2262.105, Government Code, language that would create Subchapters D, E, and F of Chapter 2262 of the Government Code, language that would transfer 2262.003, Government Code, and redesignates it as 2262.156, Government Code, language that would have added 572.060, Government Code, language amending Section 321.020(a), Government Code, and language amending Section 2113.102(a), Government Code are all stricken. Language that would have amended Subsections 2262.053(a) and 2262.053(d) of the Government Code is removed, and Subsections 2262.053(e) and (f) as written in the engrossed version are substituted with new language concerning billing for contract management training and minimum qualifications for certifying contract managers.

CSSB 12 also strikes Article 4 of SB 12 in its entirety.