

By: Isett

H.B. No. 2247

A BILL TO BE ENTITLED

AN ACT

1
2 relating to state contract management, including the training of
3 personnel, the negotiation of contracts, and the standardization of
4 practices.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter D, Chapter 551, Government Code, is
7 amended by adding Section 551.0726 to read as follows:

8 Sec. 551.0726. GOVERNING BODY OF STATE AGENCY:
9 DELIBERATION REGARDING CONTRACT BEING NEGOTIATED; CLOSED MEETING.

10 (a) In this section, "state agency" means a department, board,
11 commission, or other agency in the executive branch of state
12 government.

13 (b) The governing body of a state agency may conduct a
14 closed meeting to deliberate business and financial issues relating
15 to a contract being negotiated if, before conducting the closed
16 meeting:

17 (1) the governing body votes unanimously that
18 deliberation in an open meeting would have a detrimental effect on
19 the position of the state in negotiations with a third person; and

20 (2) the attorney advising the governing body issues a
21 written determination that deliberation in an open meeting would
22 have a detrimental effect on the position of the state in
23 negotiations with a third person.

24 (c) Notwithstanding Section 551.103(a), the governing body

1 must make a tape recording of the proceedings of a closed meeting
2 held under this section.

3 SECTION 2. Section 2155.078, Government Code, is amended by
4 adding Subsection (o) to read as follows:

5 (o) In addition to the three levels of training provided by
6 this section, the commission shall develop and implement a
7 continuing education course on cost analysis and price negotiation.
8 State agency purchasing personnel who attend the course shall
9 review the course and provide the review to the commission.

10 SECTION 3. Subchapter B, Chapter 2155, Government Code, is
11 amended by adding Section 2155.0785 to read as follows:

12 Sec. 2155.0785. WORKING GROUP. (a) The commission shall
13 form a working group of representatives of state agencies:

14 (1) to review the training programs administered under
15 Sections 2155.078 and 2262.053; and

16 (2) to offer recommendations to the commission on
17 improvements and modifications to the training programs.

18 (b) The working group shall meet annually at a time
19 designated by the commission.

20 (c) A representative of a state agency that takes part in
21 the working group established under this section shall report to
22 the governing body of the represented state agency on the efforts of
23 the working group.

24 SECTION 4. Subchapter B, Chapter 2155, Government Code, is
25 amended by adding Section 2155.085 to read as follows:

26 Sec. 2155.085. REPORT ON CERTAIN PURCHASES. (a) Not later
27 than August 1 of each year, the commission shall publish a report on

1 the number and dollar value of sole source purchases made and open
2 market purchases made or contracts awarded for which there were
3 fewer than three responses to the contract or open market
4 solicitation in the previous calendar year. The report must compare
5 the total dollar value of all sole source purchases made and all
6 open market purchases made or contracts awarded for which there
7 were fewer than three responses to the contract or open market
8 solicitation with the total dollar value of all competitively
9 awarded contracts and open market purchases for which there were
10 three or more responses to the contract or open market
11 solicitation.

12 (b) Each state agency shall timely provide the commission
13 with the information the commission requires for the purpose of
14 creating the report under Subsection (a).

15 SECTION 5. Section 2262.001, Government Code, is amended by
16 adding Subdivision (3-a) to read as follows:

17 (3-a) "Department" means the Department of
18 Information Resources.

19 SECTION 6. Section 2262.053, Government Code, is amended by
20 adding Subsections (e) and (f) to read as follows:

21 (e) The commission shall establish minimum qualifications
22 for certifying contract managers. The minimum standards must
23 require completion of the contract management training required
24 under this section and Section 2155.078.

25 (f) The commission shall develop guidelines by which a state
26 agency is required to involve a contract manager during various
27 stages of the contracting process based on the size of the contract

1 and the risk associated with the contract.

2 SECTION 7. Subchapter B, Chapter 2262, Government Code, is
3 amended by adding Sections 2262.065-2262.067 to read as follows:

4 Sec. 2262.065. PERFORMANCE MEASURES. Each state agency
5 shall develop a plan for incorporating performance measures into an
6 appropriate percentage of contracts for services entered into by
7 the agency. The agency shall determine the appropriate percentage
8 in consultation with the commission.

9 Sec. 2262.066. INFORMATION-SHARING PORTAL. The commission
10 and department shall jointly:

11 (1) review the options for establishing an
12 information-sharing portal for use by state agencies in contract
13 management and administration; and

14 (2) if the commission and department determine that
15 establishing the portal is cost-effective, establish the portal.

16 Sec. 2262.067. UNIFORM DEFINITIONS AND CONTRACT LIBRARY.

17 (a) The commission shall develop and publish a uniform set of
18 definitions for use as applicable in state contracts.

19 (b) The commission shall develop and publish a uniform and
20 automated set of forms, including sample contracts and contract
21 terms, for use in the different stages of the contracting process.

22 SECTION 8. Chapter 2262, Government Code, is amended by
23 adding Subchapter G to read as follows:

24 SUBCHAPTER G. CONTRACT MANAGEMENT OF MAJOR CONTRACTS

25 Sec. 2262.301. DEFINITION. In this subchapter, "quality
26 assurance team" means the quality assurance team established under
27 Section 2054.158.

1 Sec. 2262.302. APPLICABILITY. This subchapter applies only
2 to a major contract.

3 Sec. 2262.303. GUIDELINES; FORMS. (a) A state agency shall
4 prepare each document required by this subchapter in a manner
5 consistent with department guidelines.

6 (b) The commission, in consultation with the department,
7 shall develop and provide guidelines and forms for the documents
8 required by this subchapter.

9 (c) The commission, in consultation with the department,
10 shall work with state agencies in developing the guidelines and
11 forms.

12 Sec. 2262.304. BUSINESS CASE. (a) For each proposed major
13 contract, a state agency must prepare a business case providing the
14 initial justification for the contract, including the anticipated
15 return on investment in terms of cost savings and efficiency for the
16 contract.

17 (b) The agency shall file the document with the commission
18 and the Legislative Budget Board at the same time the agency files
19 its legislative appropriations request.

20 Sec. 2262.305. PROJECT PLANS. (a) For each major contract,
21 a state agency shall develop a project plan for the project to which
22 the major contract relates.

23 (b) Except as provided by Subsection (c), the state agency
24 must file the project plan with the quality assurance team before
25 the agency:

26 (1) spends more than 10 percent of allocated funds for
27 the related major contract; or

1 (2) first issues a contractor solicitation for the
2 related major contract.

3 (c) The commission may not issue a contractor solicitation
4 for the contract unless the project plan has been filed under this
5 section.

6 (d) The project plan must include:

7 (1) a procurement plan with anticipated service levels
8 and performance standards for each contractor; and

9 (2) a method for monitoring changes to the scope of a
10 contract.

11 Sec. 2262.306. INDEPENDENT VALIDATION AND VERIFICATION.

12 (a) A state agency shall budget for and incorporate an independent
13 validation and verification plan with the project plan required
14 under Section 2262.305.

15 (b) The commission, in consultation with the department,
16 shall establish standards for:

17 (1) validation services provided by contractors; and

18 (2) validation services provided by state agencies,
19 including standards regarding commission approval of
20 agency-provided validation services.

21 (c) If a state agency decides to perform validation services
22 for its own contract, the agency's validation services providers
23 must operate independently from the agency's contracting teams.

24 (d) In addition to the plan required under Subsection (a), a
25 state agency shall periodically submit an independent validation
26 and verification report to the agency's executive director and to
27 the commission. The commission shall determine the frequency and

1 content of the report in its guidelines.

2 Sec. 2262.307. CONTRACT REVIEW. (a) After a major contract
3 is completed or otherwise terminated, a state agency shall prepare
4 a review of the contractor's performance. The agency shall provide
5 the review to the agency's executive director and to the
6 department.

7 (b) The department shall store in a database the contractor
8 performance reviews provided to the department by state agencies
9 under Subsection (a).

10 (c) The department shall make the database available to
11 state agencies and searchable by:

12 (1) contractor;

13 (2) contract value;

14 (3) state agency; and

15 (4) date, including both the beginning date and the
16 end date of the contract.

17 (d) The commission, in consultation with the department,
18 shall develop a system by which a contractor who receives an
19 unfavorable review may add comments to the database relating to the
20 performance review of the contractor.

21 Sec. 2262.308. APPROVAL BY STATE AGENCIES. (a) A state
22 agency's executive director and its designated contract manager
23 must approve and sign each document required by this subchapter.

24 (b) If a proposed contract amendment or change order changes
25 the monetary value of a contract by more than 10 percent or
26 significantly changes the completion date of a contract, the state
27 agency's executive director must approve the amendment or order.

1 Sec. 2262.309. NEGOTIATION CONTRACTS. (a) A state agency
2 may contract with a state governmental entity or a private entity
3 for negotiation services or advice on a major contract if the agency
4 determines that:

5 (1) there is a substantial need for the negotiation
6 services or advice; and

7 (2) the agency cannot adequately perform the
8 negotiation services with its own personnel or cannot perform the
9 negotiation without advice.

10 (b) A state agency may contract with a private entity for
11 negotiation services or advice only if the agency determines that
12 it cannot obtain the consulting services through a contract with a
13 state governmental entity.

14 SECTION 9. (a) The Department of Information Resources, in
15 coordination with the Legislative Budget Board, the Texas Building
16 and Procurement Commission, and the comptroller, shall analyze
17 current automated information systems of state agencies to
18 determine how the systems may be combined to more effectively
19 standardize and synchronize state contract management, including
20 the use of performance measures in contracts.

21 (b) Not later than December 31, 2005, the department shall
22 report the results of its analysis to the governor, the lieutenant
23 governor, and the speaker of the house of representatives.

24 SECTION 10. A contract manager is not required to be
25 certified under Chapter 2262, Government Code, as amended by this
26 Act, until September 1, 2007.

27 SECTION 11. Not later than March 1, 2006, the Texas Building

1 and Procurement Commission shall develop the continuing education
2 course required by Section 2155.078, Government Code, as amended by
3 this Act.

4 SECTION 12. A state agency is not required to comply with
5 Sections 2262.304-2262.309, Government Code, as added by this Act,
6 until September 1, 2007. A state agency may comply earlier if the
7 forms, electronic requirements, database, or other items are
8 available before that date.

9 SECTION 13. This Act takes effect September 1, 2005.