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S.B. No. 12

Substitute the following for S.B. No. 12:

By: Swinford

C.S.S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

(b) 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:

(1) the governing body 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

(2) 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.

1 (c) Notwithstanding Section 551.103(a), the governing body
2 must make a tape recording of the proceedings of a closed meeting
3 held under this section.

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

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

11 SECTION 3. Subchapter B, Chapter 2155, Government Code, is
12 amended by adding Section 2155.085 to read as follows:

13 Sec. 2155.085. REPORT ON CERTAIN PURCHASES. (a) Not later
14 than August 1 of each year, the commission shall publish a report on
15 the number and dollar value of sole source purchases made and open
16 market purchases made or contracts awarded for which there were
17 fewer than three responses to the contract or open market
18 solicitation in the previous calendar year. The report must compare
19 the total dollar value of all sole source purchases made and all
20 open market purchases made or contracts awarded for which there
21 were fewer than three responses to the contract or open market
22 solicitation with the total dollar value of all competitively
23 awarded contracts and open market purchases for which there were
24 three or more responses to the contract or open market
25 solicitation.

26 (b) Each state agency shall timely provide the commission
27 with the information the commission requires for the purpose of

1 creating the report under Subsection (a).

2 (c) The commission shall establish requirements for the
3 provision of information under Subsection (b) in consultation with
4 the Contract Advisory Team created under Subchapter C, Chapter
5 2262, the Health and Human Services Commission, and the Texas
6 Department of Transportation.

7 (d) The commission may not require a state agency to provide
8 information under Subsection (b) on a contract related to health
9 and human services if:

10 (1) the value of the contract cannot be determined at
11 the time of execution of the contract; and

12 (2) any qualified vendor is eligible for the contract.

13 SECTION 4. Section 2262.001, Government Code, is amended by
14 adding Subdivision (3-a) to read as follows:

15 (3-a) "Department" means the Department of
16 Information Resources.

17 SECTION 5. Section 2262.051, Government Code, is amended by
18 adding Subsection (h) to read as follows:

19 (h) The commission, in consultation with the team, the
20 Health and Human Services Commission, and the Texas Department of
21 Transportation, shall establish criteria in the guide for
22 determining whether a proposed project requires a business case
23 under Section 2262.303 or a project plan under Section 2262.304.

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

26 (e) The commission shall establish minimum qualifications
27 for certifying contract managers. The minimum standards must

1 require completion of the contract management training required
2 under this section.

3 (f) The commission may establish a system of charges and
4 billings to recover the cost of administering the training program
5 under this section.

6 (g) The commission, in consultation with the team, the
7 Health and Human Services Commission, and the Texas Department of
8 Transportation, shall develop guidelines by which a state agency is
9 required to involve a contract manager during various stages of the
10 contracting process based on the size of the contract and the risk
11 associated with the contract.

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

14 Sec. 2262.065. PERFORMANCE MEASURES. Each state agency
15 shall develop a plan for incorporating performance measures into an
16 appropriate percentage of contracts for services entered into by
17 the agency. The agency shall determine the appropriate percentage
18 in consultation with the commission.

19 Sec. 2262.066. INFORMATION-SHARING PORTAL. The commission
20 and department shall jointly:

21 (1) review the options for establishing an
22 information-sharing portal for use by state agencies in contract
23 management and administration; and

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

26 Sec. 2262.067. UNIFORM DEFINITIONS AND CONTRACT LIBRARY.

27 (a) The commission shall develop and publish a uniform set of

1 definitions for use as applicable in state contracts.

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

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

7 SUBCHAPTER G. MANAGEMENT OF PROJECTS FOR CERTAIN MAJOR CONTRACTS

8 Sec. 2262.301. APPLICABILITY. This subchapter applies only
9 to a:

10 (1) project that is likely to result in a major
11 contract for services; and

12 (2) major contract for services.

13 Sec. 2262.302. GUIDELINES; FORMS. (a) A state agency shall
14 prepare each document required by this subchapter in a manner
15 consistent with commission guidelines.

16 (b) The commission, in consultation with the team, the
17 Health and Human Services Commission, and the Texas Department of
18 Transportation, shall develop and provide guidelines and forms for
19 the documents required by this subchapter.

20 Sec. 2262.303. BUSINESS CASE. (a) For each proposed
21 project that meets the criteria established under Section
22 2262.051(h), a state agency must prepare a business case providing
23 the initial justification for the related major contract, including
24 the anticipated return on investment in terms of cost savings and
25 efficiency for the contract.

26 (b) The agency shall file the document with the commission
27 and the Legislative Budget Board at the same time the agency files

1 its legislative appropriations request.

2 Sec. 2262.304. PROJECT PLANS. (a) A state agency shall
3 develop a project plan for each proposed project that meets the
4 criteria established under Section 2262.051(h).

5 (b) Except as provided by Subsection (c), the state agency
6 must file the project plan with the commission before the agency:

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

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

11 (c) A state agency may not post in the state business daily a
12 contractor solicitation for the related major contract unless the
13 project plan has been filed under this section.

14 (d) The project plan must include:

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

17 (2) a method for monitoring changes to the scope of a
18 related contract.

19 Sec. 2262.305. CONTRACT REVIEW. (a) A state agency shall
20 periodically review and report on the contractor's performance
21 throughout the term of the contract. The agency shall provide the
22 review to the agency's executive director and to the commission.

23 (b) The commission shall store in a database the contractor
24 performance reviews provided to the commission by state agencies
25 under Subsection (a).

26 (c) The commission shall make the database available to
27 state agencies and searchable by:

- (1) contractor;
- (2) contract value;
- (3) state agency; and
- (4) date, including both the beginning date and the end date of the contract.

Sec. 2262.306. APPROVAL BY STATE AGENCIES. (a) A state agency's executive director, or the executive director's designee, and its designated contract manager must approve and sign each document required by this subchapter.

(b) If a proposed contract amendment or 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 must approve the amendment or order.

Sec. 2262.307. NEGOTIATION CONTRACTS. (a) A state agency shall consider contracting with a state governmental entity or a private entity for negotiation services or advice on a contract if the agency determines that:

- (1) there is a substantial need for the negotiation services or advice; and
- (2) the agency cannot adequately perform the negotiation services with its own personnel or cannot perform the negotiation without advice.

(b) A state agency may contract with a private entity 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.

SECTION 9. (a) The Department of Information Resources, in

1 coordination with the Legislative Budget Board, the Texas Building
2 and Procurement Commission, and the comptroller, shall analyze
3 current automated information systems of state agencies to
4 determine how the systems may be combined to more effectively
5 standardize and synchronize state contract management, including
6 the use of performance measures in contracts.

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

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

13 SECTION 11. Not later than March 1, 2006, the Texas Building
14 and Procurement Commission shall develop the continuing education
15 course required by Section 2155.078(o), Government Code, as added
16 by this Act.

17 SECTION 12. A state agency is not required to comply with
18 Section 2262.303 or 2262.304, Government Code, as added by this
19 Act, until the contract management guide is revised as required by
20 Section 2262.051(h), Government Code, as added by this Act.

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