

By: Zaffirini, et al.

S.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to contracting and ethics issues of state agencies;
providing a civil penalty.

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

ARTICLE 1. CHANGES TO LAW ON STATEWIDE CONTRACT MANAGEMENT

SECTION 1.01. Section 2262.001, Government Code, is amended
by amending Subdivision (3) and adding Subdivision (3-a) to read as
follows:

(3) "Contract manager" means a person who:

(A) is employed by a state agency; and

(B) has significant contract management duties
for the state agency [~~, as determined by the agency in consultation
with the state auditor~~].

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

SECTION 1.02. The heading to Section 2262.053, Government
Code, is amended to read as follows:

Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

SECTION 1.03. Section 2262.053, Government Code, is amended
by amending Subsections (a) and (d) and adding Subsection (e) to
read as follows:

(a) In coordination with the [~~comptroller, Department of
Information Resources, and~~] state auditor and [~~7~~] the commission,
The University of Texas at Austin shall develop [~~or administer~~] a

1 training program for contract managers.

2 (d) The commission [~~Texas Building and Procurement~~
3 ~~Commission~~] shall continue to administer the training program under
4 Section 2155.078 and coordinate the training it provides contract
5 managers under that section with the training provided under this
6 section. The commission shall certify contract managers who have
7 completed the contract management training required under this
8 section and Section 2155.078 and keep a list of those contract
9 managers.

10 (e) The program developed under this section must include a
11 separate class on ethics and contracting.

12 SECTION 1.04. Subchapter B, Chapter 2262, Government Code,
13 is amended by adding Section 2262.0535 and Sections
14 2262.055-2262.064 to read as follows:

15 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The
16 University of Texas at Austin shall adapt the program developed
17 under Section 2262.053 to develop an abbreviated program for
18 training the members of the governing bodies of state agencies. The
19 training may be provided together with other required training for
20 members of state agency governing bodies.

21 (b) All members of the governing body of a state agency
22 shall complete at least one course of the training developed under
23 this section. This subsection does not apply to a state agency that
24 does not enter into any contracts.

25 Sec. 2262.055. USE OF UNIFORM FORMS. Each state agency
26 shall use the forms developed under Section 2262.104.

27 Sec. 2262.056. STATE AGENCY REPOSITORY. (a) Each state

1 agency shall maintain in a central location all contracts for that
2 agency.

3 (b) Each state agency shall provide the department
4 electronic copies of the contracts.

5 Sec. 2262.057. REPORTING CONTRACTOR PERFORMANCE. (a)
6 After a contract is completed or otherwise terminated, each state
7 agency shall:

8 (1) review the contractor's performance under the
9 contract; and

10 (2) send a written review of the contractor's
11 performance to the department.

12 (b) Using the form and criteria developed by the team under
13 Sections 2262.104 and 2262.105, the state agency shall classify the
14 contractor as approved, not approved, on probation, or suspended
15 for the contract solicitation process for that agency. The agency
16 shall provide the contractor classification to the department as
17 part of the performance review.

18 Sec. 2262.058. EXCLUDING CONTRACTOR FROM SOLICITATION
19 PROCESS. Based on its own contractor performance reviews and on
20 information in the database developed under Section 2262.059, a
21 state agency may exclude a contractor from the solicitation process
22 for a contract if the agency determines the contractor has
23 performed poorly on a previous state contract without regard to
24 whether the contractor has been barred under Section 2155.077.

25 Sec. 2262.059. CONTRACTS AND CONTRACTOR PERFORMANCE
26 DATABASE. (a) The department shall store in a database the
27 contracts and contractor performance reviews, including the

1 contractor classifications, provided to the department by state
2 agencies under this subchapter.

3 (b) The department shall make the database available to
4 state agencies and searchable by:

5 (1) contractor;

6 (2) contract value;

7 (3) state agency; and

8 (4) date, including both the beginning date and the
9 end date of the contract.

10 (c) The department shall develop a system that incorporates
11 the performance reviews and aggregates the reviews for each
12 contractor.

13 (d) A state agency may use the performance review database
14 to determine whether to award a contract to a contractor reviewed in
15 the database.

16 Sec. 2262.060. PERFORMANCE MEASURES; REPORTS. (a) Each
17 state agency shall develop a plan for incorporating performance
18 measures into all contracts entered into by the agency.

19 (b) Not later than March 1 of each year, each state agency
20 shall report to the governor, lieutenant governor, and speaker of
21 the house of representatives regarding performance measures in the
22 agency's contracts. The report must describe the agency's efforts
23 to include performance-based provisions in the agency's contracts.

24 (c) The agency shall make the report accessible to the
25 public on the agency's website.

26 Sec. 2262.061. CONTRACT MANAGERS. (a) Each state agency
27 that enters into contracts other than interagency contracts shall

1 establish a career ladder program for contract management in the
2 agency.

3 (b) An employee hired as a contract manager is responsible
4 for procurement planning, contract solicitation, contract
5 formation, price establishment, and contract oversight.

6 (c) Each state agency shall determine, in consultation with
7 the state auditor, the amount and significance of contract
8 management duties sufficient for an employee to be considered a
9 contract manager under this chapter.

10 Sec. 2262.062. APPROVAL OF CONTRACTS. (a) Each state
11 agency shall establish formal guidelines regarding who may approve
12 a contract for the agency.

13 (b) The guidelines must require that at least two persons
14 approve the contract, including a supervisor and a contract manager
15 certified under Section 2262.053. This subsection applies both to
16 contracts that agency staff is authorized to enter into without
17 further approval by the governing body and to contracts that must be
18 approved by the governing body.

19 (c) Each state agency shall annually report to the
20 commission a list of each person authorized to approve contracts at
21 the agency. The list must include the person's name, position, and
22 supervisory responsibility, if any.

23 Sec. 2262.063. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE
24 PROHIBITED. A state agency may not negotiate a contract with only
25 one employee engaging in the negotiation.

26 Sec. 2262.064. CONSISTENT PRICING BY CONTRACTORS. (a) The
27 commission shall solicit a contract for the creation of a mechanism

1 for tracking and comparing prices that state agencies pay for
2 similar products or services.

3 (b) On behalf of the state, a contractor awarded a contract
4 under Subsection (a) may renegotiate state agency contracts for
5 products or services to obtain the best value for the state when the
6 tracking and comparing mechanism shows a disparity in the price
7 paid for similar products or services. A contract under Subsection
8 (a) may allow the selected contractor to keep a percentage of the
9 savings obtained in the renegotiated contracts.

10 (c) A state agency shall give a contractor selected under
11 Subsection (a) the information the contractor requires for the
12 purpose of tracking and comparing prices that state agencies pay
13 for similar products and services.

14 (d) A contractor selected under Subsection (a) may not sell
15 information it receives under Subsection (c) or otherwise make use
16 of the information for a purpose other than performing its contract
17 with the state.

18 SECTION 1.05. Subchapter C, Chapter 2262, Government Code,
19 is amended by adding Sections 2262.104 and 2262.105 to read as
20 follows:

21 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The team
22 shall develop and publish a uniform set of definitions for use as
23 applicable in state contracts.

24 (b) The team shall develop and publish a uniform and
25 automated set of forms for use in the different stages of the
26 contracting process.

27 Sec. 2262.105. CLASSIFYING CONTRACTOR PERFORMANCE. (a)

1 The team shall develop criteria for use by state agencies in
2 classifying a contractor's performance under Section 2262.057.

3 (b) As part of the uniform forms published under Section
4 2262.104, the team shall develop a form for use by state agencies in
5 classifying a contractor's performance based on criteria developed
6 under Subsection (a).

7 SECTION 1.06. Chapter 2262, Government Code, is amended by
8 adding Subchapters D, E, and F to read as follows:

9 SUBCHAPTER D. CONTRACT PROVISIONS

10 Sec. 2262.151. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

11 (a) The team shall develop recommendations for contract terms
12 regarding penalties for contractors who do not comply with a
13 contract, including penalties for contractors who do not disclose
14 conflicts of interest under Section 2262.201. The team may develop
15 recommended contract terms that are generally applicable to state
16 contracts and terms that are applicable to important types of state
17 contracts.

18 (b) A state agency may include applicable recommended terms
19 in a contract entered into by the agency.

20 Sec. 2262.152. REQUIRED PROVISION RELATING TO
21 SUBCONTRACTOR COMPLIANCE. Each state agency contract must include
22 a provision that:

23 (1) holds the contractor responsible for the conduct
24 of all subcontractors in complying with the contractor's contract
25 with the state agency; and

26 (2) requires each subcontractor to disclose all
27 potential conflicts of interest to the state agency, according to

1 guidelines developed under Section 2262.201(b), when the
2 subcontractor contracts with or is otherwise hired by the
3 contractor.

4 Sec. 2262.153. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
5 STATE AGENCY EMPLOYEES. (a) The team shall develop a standard
6 contract provision requiring a contractor to disclose:

7 (1) each employee of the contractor who was employed
8 by the state at any time during the two years before the date of the
9 disclosure; and

10 (2) each state employee who was employed by the
11 contractor at any time during the year before the date of the
12 disclosure.

13 (b) A state agency shall include the provision in a contract
14 entered into by the agency.

15 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;
16 OUTSOURCING. (a) Each contract entered into by a state agency must
17 include a provision requiring disclosure of any services required
18 to fulfill the contract, including services performed by a
19 subcontractor, that will be or are performed in a country other than
20 the United States.

21 (b) The contract must include a provision allowing the state
22 agency to terminate the contract and solicit a new contract if:

23 (1) the contractor or a subcontractor of the
24 contractor performs a service required to fulfill the contract in a
25 country other than the United States; and

26 (2) the contractor did not disclose in the contract at
27 the time the contract was originally entered into that the service

1 would be performed in a country other than the United States.

2 (c) A state agency that decides not to solicit a new
3 contract under circumstances in which the agency is authorized to
4 do so under a contract provision required by Subsection (b) shall
5 report this decision to:

6 (1) the governor;

7 (2) the lieutenant governor;

8 (3) the speaker of the house of representatives; and

9 (4) the team.

10 [Sections 2262.156-2262.200 reserved for expansion]

11 SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

12 Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each
13 contractor who responds to a state agency's contract solicitation
14 shall disclose in its response all potential conflicts of interest
15 to the agency.

16 (b) The team shall develop guidelines to aid contractors and
17 state agencies in identifying potential conflicts of interest.

18 Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING
19 CLASS. Each executive director of a state agency shall annually
20 complete the ethics and contracting class developed under Section
21 2262.053. This section does not apply to a state agency that does
22 not enter into any contracts.

23 [Sections 2262.203-2262.250 reserved for expansion]

24 SUBCHAPTER F. CHANGES TO CONTRACTS

25 Sec. 2262.251. CONTRACT AMENDMENTS. (a) An amendment to a
26 contract is subject to the same approval processes as the original
27 contract.

1 (b) A state agency may not amend a contract unless:

2 (1) the agency complies with the same approval
3 processes for the amendment as required for the original contract;
4 and

5 (2) a contract manager for the agency states in
6 writing why the amendment is necessary.

7 (c) This section does not require a new solicitation for a
8 new contract.

9 Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) A
10 contract amendment, including a contract extension, may not change
11 the monetary value of a contract by more than 10 percent.

12 (b) If a proposed contract amendment or extension changes
13 the monetary value of a contract by more than 10 percent, the state
14 agency must issue a new solicitation for a new contract.

15 SECTION 1.07. Section 2262.003, Government Code, is
16 transferred to Subchapter D, Chapter 2262, Government Code, as
17 added by this Act, is redesignated as Section 2262.155, Government
18 Code, and is amended to read as follows:

19 Sec. 2262.155 [2262.003]. REQUIRED [CONTRACT] PROVISION
20 RELATING TO AUDITING. (a) Each state agency shall include in each
21 of its contracts a term that provides that:

22 (1) the state auditor may conduct an audit or
23 investigation of any entity receiving funds from the state directly
24 under the contract or indirectly through a subcontract under the
25 contract; and

26 (2) acceptance of funds directly under the contract or
27 indirectly through a subcontract under the contract acts as

1 acceptance of the authority of the state auditor, under the
2 direction of the legislative audit committee, to conduct an audit
3 or investigation in connection with those funds.

4 (b) The state auditor shall provide assistance to a state
5 agency in developing the contract provisions.

6 SECTION 1.08. (a) Section 2262.063, Government Code, as
7 added by this article, applies only to a contract for which a state
8 agency first advertises or otherwise solicits bids, proposals,
9 offers, or qualifications on or after the effective date of this
10 Act.

11 (b) Section 2262.201(a), Government Code, as added by this
12 article, applies only in relation to a contract for which a state
13 agency first solicits bids, proposals, offers, or qualifications on
14 or after the date that the Contract Advisory Team's guidelines
15 regarding potential conflicts of interest take effect.

16 SECTION 1.09. Not later than March 1, 2006, The University
17 of Texas at Austin shall develop the training program, including
18 the ethics and contracting class, required by Section 2262.053,
19 Government Code, as amended by this article, and Section 2262.0535,
20 Government Code, as added by this article.

21 SECTION 1.10. A member of a governing body of a state agency
22 is not required to complete the training developed under Section
23 2262.0535, Government Code, as added by this article, until
24 September 1, 2007.

25 SECTION 1.11. An executive director of a state agency is not
26 required to comply with Section 2262.202, Government Code, as added
27 by this article, until September 1, 2007.

1 SECTION 1.12. A contract manager is not required to be
2 certified under Chapter 2262, Government Code, as amended by this
3 article, until September 1, 2007.

4 SECTION 1.13. (a) As soon as practicable, and not later
5 than March 1, 2006, the Contract Advisory Team shall develop the
6 forms, criteria, recommendations, and provisions required by this
7 article, including Sections 2262.104, 2262.105, 2262.151,
8 2262.153, and 2262.201(b), Government Code, as added by this
9 article.

10 (b) A state agency is not required to comply with Sections
11 2262.055-2262.062 and Sections 2262.152-2262.154, Government Code,
12 as added by this article, until September 1, 2007. A state agency
13 may comply earlier if the forms, electronic requirements, database,
14 or other items are available before that date.

15 ARTICLE 2. CHANGES TO LAW ON PERSONAL FINANCIAL DISCLOSURE,
16 STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST

17 SECTION 2.01. Subchapter C, Chapter 572, Government Code,
18 is amended by adding Section 572.060 to read as follows:

19 Sec. 572.060. CONFLICT OF INTEREST OF STATE OFFICER OR
20 EMPLOYEE OR LEGISLATIVE CONSULTANT; CIVIL PENALTY. (a) In this
21 section:

22 (1) "Legislative consultant" means:

23 (A) a person providing services under contract as
24 a consultant to the senate, the house of representatives, or a
25 member or committee of either house; or

26 (B) a person providing services under contract as
27 a consultant to a state agency in connection with legislation or

1 communications with members of the legislature or legislative
2 employees.

3 (2) "Legislative employee" means a person employed by:

4 (A) the senate, the house of representatives, or
5 a committee of either house; or

6 (B) a member of the legislature acting in the
7 member's official capacity.

8 (3) "Member of the governor's executive staff" means a
9 person employed by the governor acting in the governor's official
10 capacity whose regular job duties include:

11 (A) the formulation of policy or testifying
12 before and meeting with members of the legislature; or

13 (B) supervising other employees in the
14 governor's office whose regular job duties include those described
15 by Paragraph (A).

16 (4) "State agency legislative liaison" means an
17 employee of a state agency who serves as a legislative liaison or
18 government affairs officer or acts in a similar capacity or whose
19 regular job duties include testifying before and meeting with
20 members of the legislature.

21 (5) "State agency procurement agent" means an employee
22 of a state agency whose regular job duties include soliciting,
23 evaluating, or awarding bids, proposals, or contracts for the
24 procurement by the state agency of property or services.

25 (b) This section applies to an appointed officer, executive
26 head of a state agency, member of the governor's executive staff,
27 legislative employee, state agency legislative liaison, state

1 agency procurement agent, or legislative consultant.

2 (c) For purposes of this section, a person to whom this
3 section applies has a conflict of interest if the person has a
4 personal financial or other interest in the subject matter of a
5 governmental decision or action that compromises or has the
6 appearance of compromising the person's professional judgment or
7 integrity.

8 (d) A person to whom this section applies who has a conflict
9 of interest with respect to a governmental decision or action
10 shall:

11 (1) disclose the conflict in writing delivered to the
12 state officer or state agency employing or contracting with the
13 person; and

14 (2) abstain from further participation in the
15 governmental decision or action.

16 (e) A person who violates this section is liable for a civil
17 penalty of not less than \$500 and not more than the value of a
18 monetary gain the person receives because of the governmental
19 decision or action.

20 (f) Subsection (e) does not prohibit:

21 (1) the imposition of a civil penalty under Chapter
22 571; or

23 (2) removal of an appointed officer under Section
24 572.058 for conduct that violates both this section and Section
25 572.058.

26 SECTION 2.02. Section 572.060, Government Code, as added by
27 this article, applies only to participation in a governmental

1 decision made or action taken on or after September 1, 2005.
2 Participation in a governmental decision made or action taken
3 before September 1, 2005, is governed by the law in effect on the
4 date the decision is made or the action is taken, and the former law
5 is continued in effect for that purpose.

6 ARTICLE 3. EFFECTIVE DATE

7 SECTION 3.01. This Act takes effect September 1, 2005.