

BILL ANALYSIS

H.B. 2733
By: Gattis
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As proposed, House Bill 2733 implements the statutory changes outlined in Recommendation 1 and 2, as contained in the Legislative Budget Board's January 2007 Staff Report, entitled *Texas State Government Effectiveness and Efficiency: Selected Issues and Recommendations*, starting on page 35 under the heading Reduce Risks Associated with State Contract Management.

Recommendation 1 calls for amending Chapter 2262, Government Code, to create a state Office of Contract Management within the Texas Building and Procurement Commission to review and approve state contracts over \$10 million, or those meeting other high-risk criteria established by the office, at each of the three stages of the contract management process.

Recommendation 2 calls for amending Chapter 2262, Government Code, to enable the state Office of Contract Management to recommend the cancellation of a high risk contract, at any stage in the contract management process, with the approval of the Legislative Budget Board and the Governor.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Building and Procurement Commission in SECTION 3 of this bill.

ANALYSIS

SECTION 1. Amends Section 2262.002(b), Government Code, as follows:

- (b) Except as otherwise provided by this chapter, this chapter does not apply to contracts of the Texas Department of Transportation that:
 - (1) relate to highway construction or highway engineering; or
 - (2) are subject to Section 201.112, Transportation Code.

SECTION 2. Amends Section 2262.101, Government Code, as follows:

- Sec. 2262.101. CREATION; DUTIES. The Contract Advisory Team is created to assist state agencies in improving contract management practices by:
- (1) reviewing any findings or recommendations made by the state auditor, including those made under Section 2262.052(b), regarding a state agency's compliance with the contract management guide; and
 - (2) providing recommendations to the commission regarding:
 - (A) the development of the contract management guide; and
 - (B) the training under Section 2262.053.

SECTION 3. Amends Chapter 2262, Government Code, by adding Subchapter D as follows:
SUBCHAPTER D. STATE OFFICE OF CONTRACT MANAGEMENT

Sec. 2262.151. DEFINITIONS. In this subchapter:

- (1) "High-risk contract" means a state agency contract that:
 - (A) has a value of at least \$10 million; or
 - (B) has a value of less than \$10 million, but has high-risk factors as identified by the office.
- (2) "Major information resources project" has the meaning assigned by Section 2054.003(10).
- (3) "Office" means the state office of contract management.

(4) "Quality assurance team" means the quality assurance team established under Section 2054.158.

(5) "Solicitation" means a solicitation for bids, offers, qualifications, proposals, or similar expressions of interest for a high-risk contract.

Sec. 2262.152. TEXAS DEPARTMENT OF TRANSPORTATION. Notwithstanding any other law, this subchapter applies to contracts of the Texas Department of Transportation that:

- (1) relate to highway construction or highway engineering; or
- (2) are subject to Section 201.112, Transportation Code.

Sec. 2262.153. ESTABLISHMENT; GENERAL DUTIES. The commission shall establish a state office of contract management to:

- (1) develop criteria for identifying high-risk factors in contracts;
- (2) review and approve an action related to a high-risk contract as provided by Section 2262.154;
- (3) provide recommendations and assistance to state agency personnel throughout the contract management process; and
- (4) coordinate and consult with the quality assurance team on all high-risk contracts relating to a major information resources project.

Sec. 2262.154. REVIEW AND APPROVAL; WAIVER. (a) Each state agency must receive approval from the office before taking the following actions in relation to a high-risk contract:

- (1) publicly releasing solicitation documents;
- (2) executing a final contract; and
- (3) making a payment or a series of payments that equal half of the contract value.

(b) In determining whether to approve an action described by Subsection (a), the office shall review related documentation to ensure that potential risks related to the high-risk contract have been identified and mitigated.

(c) The commission by rule may adopt criteria for waiving the review and approval requirements under Subsections (a) and (b).

Sec. 2262.155. SOLICITATION AND CONTRACT CANCELLATION. After review of and comment on the matter by the Legislative Budget Board and the governor, the office may recommend the cancellation of a solicitation or a contract during the review process under Section 2262.154 if:

- (1) a proposed solicitation is not in the best interest of the state;
 - (2) a proposed contract would place the state at an unacceptable risk if executed;
- or
- (3) an executed contract is experiencing performance failure or payment irregularities.

SECTION 4. Repeals Section 2262.051(f), Government Code.

SECTION 5. Provides that Subchapter D, Chapter 2262, Government Code, as added by this Act, applies only in relation to a contract:

- (1) for which the solicitation of bids, offers, qualifications, proposals, or similar expressions of interest is published on or after September 1, 2007;
- (2) that is extended or modified on or after September 1, 2007; or
- (3) for which a change order is submitted on or after September 1, 2007.

SECTION 6. Provides that this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. Provides that if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

H.B. 2733 80(R)