

1-1 By: Zaffirini, et al. S.B. No. 769  
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 769 By: Zaffirini

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to contracting issues of state agencies, including ethics  
1-11 issues related to state contracting.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 2113.102, Government  
1-14 Code, is amended to read as follows:

1-15 (a) A state agency may not use appropriated money to  
1-16 contract with a person to audit [~~the financial records or accounts~~  
1-17 ~~of~~] the agency except:

1-18 (1) as provided by[+]

1-19 [~~(1)~~] Subsections (b), (c), and (d); and

1-20 (2) in accordance with Section 321.020 [Chapter 466,  
1-21 pertaining to the state lottery,

1-22 [~~(3) Chapter 2306, pertaining to the Texas Department~~  
1-23 ~~of Housing and Community Affairs; and~~

1-24 [~~(4) Chapter 361, Transportation Code, pertaining to~~  
1-25 ~~the Texas Turnpike Authority division of the Texas Department of~~  
1-26 ~~Transportation].~~

1-27 SECTION 2. Subsection (a), Section 2162.103, Government  
1-28 Code, is amended to read as follows:

1-29 (a) In comparing the cost of providing a service, the  
1-30 council shall consider the:

1-31 (1) cost of supervising the work of a private  
1-32 contractor; ~~and~~

1-33 (2) cost of a state agency's performance of the  
1-34 service, including:

1-35 (A) the costs of the comptroller, attorney  
1-36 general, and other support agencies; and

1-37 (B) other indirect costs related to the agency's  
1-38 performance of the service;

1-39 (3) installation costs and any other initial costs  
1-40 associated with a contract with a private contractor;

1-41 (4) other costs associated with the transition to  
1-42 using a private contractor's goods or services; and

1-43 (5) cost savings to the state if a private contractor  
1-44 were awarded the contract.

1-45 SECTION 3. Section 2177.052, Government Code, is amended by  
1-46 amending Subsections (b), (c), and (f) and adding Subsection (g) to  
1-47 read as follows:

1-48 (b) Each state agency shall provide the commission:

1-49 (1) copies of the following documents:

1-50 (A) [~~(1)~~] each major contract entered into by the  
1-51 agency; and

1-52 (B) [~~(2)~~] each request for proposal, invitation  
1-53 to bid, or comparable solicitation related to the major contract;  
1-54 and

1-55 (2) information regarding each major contract entered  
1-56 into by the agency, including:

1-57 (A) the name of the contractor;

1-58 (B) the contract value;

1-59 (C) the beginning date and end date of the  
1-60 contract;

1-61 (D) a description of any amendments made to the  
1-62 contract;

1-63 (E) cumulative payments and encumbrances under

2-1 the contract;

2-2 (F) key contract terms that are out of compliance  
 2-3 in terms of timeliness standards; and

2-4 (G) any other information that the commission  
 2-5 considers necessary.

2-6 (c) The commission shall include in the information posted  
 2-7 on the electronic procurement marketplace:

2-8 (1) each major contract of a state agency, including  
 2-9 the commission; ~~and~~

2-10 (2) each request for proposal, invitation to bid, or  
 2-11 comparable solicitation related to the major contract; and

2-12 (3) information provided to the commission under  
 2-13 Subsection (b)(2) regarding a major contract.

2-14 (f) The commission shall make the information searchable by  
 2-15 contract value, state agency, ~~and~~ vendor, and date, including  
 2-16 both the beginning date and the end date of the contract. The  
 2-17 commission may make the information searchable by other subjects as  
 2-18 appropriate.

2-19 (g) The commission shall set appropriate criteria to  
 2-20 determine when and what information should be updated.

2-21 SECTION 4. Section 2262.001, Government Code, is amended by  
 2-22 amending Subdivisions (3) and (4) and adding Subdivision (3-a) to  
 2-23 read as follows:

2-24 (3) "Contract manager" means a person who:

2-25 (A) is employed by a state agency; and

2-26 (B) has significant contract management duties  
 2-27 for the state agency ~~[, as determined by the agency in consultation~~  
 2-28 ~~with the state auditor].~~

2-29 (3-a) "Executive director" means the administrative  
 2-30 head of a state agency.

2-31 (4) "Major contract" means a contract, including a  
 2-32 renewal of a contract, that has a value of at least \$1 million.

2-33 SECTION 5. Subchapter A, Chapter 2262, Government Code, is  
 2-34 amended by adding Section 2262.0015 to read as follows:

2-35 Sec. 2262.0015. APPLICABILITY TO CERTAIN CONTRACTS.

2-36 (a) The commission by rule shall establish threshold requirements  
 2-37 that exclude small or routine contracts, including purchase orders,  
 2-38 from the application of this chapter.

2-39 (b) This chapter does not apply to an enrollment contract  
 2-40 described by 1 T.A.C. Section 391.183 as that section existed on  
 2-41 November 1, 2007.

2-42 SECTION 6. The heading to Section 2262.053, Government  
 2-43 Code, is amended to read as follows:

2-44 Sec. 2262.053. TRAINING FOR CONTRACT MANAGERS.

2-45 SECTION 7. Section 2262.053, Government Code, is amended by  
 2-46 amending Subsections (a) and (d) and adding Subsections (e), (f),  
 2-47 and (g) to read as follows:

2-48 (a) In coordination with the comptroller, Department of  
 2-49 Information Resources, ~~and~~ state auditor, and Health and Human  
 2-50 Services Commission, the commission or a private vendor selected by  
 2-51 the commission shall develop ~~[or administer]~~ a training program for  
 2-52 contract managers.

2-53 (d) The commission ~~[Texas Building and Procurement~~  
 2-54 ~~Commission]~~ shall administer the training program under this  
 2-55 section.

2-56 (e) The commission shall certify contract managers who have  
 2-57 completed the contract management training required under this  
 2-58 section and keep a list of those contract managers.

2-59 (f) The program developed under this section must include a  
 2-60 separate class on ethics and contracting.

2-61 (g) A state agency or educational entity may develop  
 2-62 qualified contract manager training to supplement the training  
 2-63 required under this section. The commission may incorporate the  
 2-64 training developed by the agency or entity into the training  
 2-65 program under this section.

2-66 SECTION 8. Subchapter B, Chapter 2262, Government Code, is  
 2-67 amended by adding Section 2262.0535 and Sections 2262.055 through  
 2-68 2262.066 to read as follows:

2-69 Sec. 2262.0535. TRAINING FOR GOVERNING BODIES. (a) The

3-1 commission or a private vendor selected by the commission shall  
3-2 adapt the program developed under Section 2262.053 to develop an  
3-3 abbreviated program for training the members of the governing  
3-4 bodies of state agencies. The training may be provided together  
3-5 with other required training for members of state agency governing  
3-6 bodies.

3-7 (b) All members of the governing body of a state agency  
3-8 shall complete at least one course of the training developed under  
3-9 this section. This subsection does not apply to a state agency that  
3-10 does not enter into any contracts.

3-11 Sec. 2262.055. FEES FOR TRAINING. The commission shall set  
3-12 and collect a fee from state agencies that receive training under  
3-13 this subchapter in an amount that recovers the commission's costs  
3-14 for the training.

3-15 Sec. 2262.056. STATE AGENCY REPOSITORY. Each state agency  
3-16 shall maintain in a central location all contracts for that agency.

3-17 Sec. 2262.057. REPORTING CONTRACTOR PERFORMANCE.  
3-18 (a) After a contract is completed or otherwise terminated, each  
3-19 state agency shall review the contractor's performance under the  
3-20 contract.

3-21 (b) Using the forms developed by the team under Sections  
3-22 2262.104 and 2262.105, the state agency shall report to the  
3-23 commission on the results of the review regarding the contractor's  
3-24 performance under the contract.

3-25 Sec. 2262.058. CONTRACTOR PERFORMANCE DATABASE. (a) The  
3-26 commission shall store in a database contractor performance reviews  
3-27 as provided by this section.

3-28 (b) The commission shall evaluate the contractor's  
3-29 performance based on the information reported under Section  
3-30 2262.057 and criteria established by the commission.

3-31 (c) The commission shall establish an evaluation process  
3-32 that allows vendors who receive an unfavorable performance review  
3-33 to protest any classification given by the commission.

3-34 (d) The commission shall develop a database that  
3-35 incorporates the performance reviews and aggregates the reviews for  
3-36 each contractor.

3-37 (e) A state agency may use the performance review database  
3-38 to determine whether to award a contract to a contractor reviewed in  
3-39 the database.

3-40 Sec. 2262.059. EXCLUDING CONTRACTOR FROM SOLICITATION  
3-41 PROCESS. Based on its own contractor performance reviews and on  
3-42 information in the database developed under Section 2262.058, a  
3-43 state agency may exclude a contractor from the solicitation process  
3-44 for a contract if the agency determines the contractor has  
3-45 performed poorly on a previous state contract without regard to  
3-46 whether the contractor has been barred under Section 2155.077.

3-47 Sec. 2262.060. PERFORMANCE MEASURES; REPORTS. (a) Each  
3-48 state agency shall develop a plan for incorporating performance  
3-49 measures into all contracts entered into by the agency. This  
3-50 includes ensuring that performance measures are written into each  
3-51 contract prior to execution.

3-52 (b) Not later than March 1 of each year, each state agency  
3-53 shall report to the team, governor, lieutenant governor, and  
3-54 speaker of the house of representatives regarding performance  
3-55 measures in the agency's contracts. The report must describe the  
3-56 agency's efforts to include performance-based provisions in the  
3-57 agency's contracts.

3-58 (c) The state agency shall make the report accessible to the  
3-59 public on the agency's website.

3-60 Sec. 2262.061. CONTRACT MANAGERS. (a) Each state agency  
3-61 that enters into contracts other than interagency contracts shall  
3-62 establish a career ladder program for contract management in the  
3-63 agency.

3-64 (b) An employee hired as a contract manager may engage in  
3-65 procurement planning, contract solicitation, contract formation,  
3-66 price establishment, and other contract activities.

3-67 (c) Each state agency shall determine, in consultation with  
3-68 the state auditor, the amount and significance of contract  
3-69 management duties sufficient for an employee to be considered a

4-1 contract manager under this chapter.

4-2 Sec. 2262.062. APPROVAL OF CONTRACTS. (a) Each state  
 4-3 agency shall establish formal guidelines regarding who may approve  
 4-4 a contract for the agency.

4-5 (b) Each state agency shall adopt administrative rules to  
 4-6 establish a monetary threshold above which agency contracts and  
 4-7 amendments to or extensions of agency contracts require written  
 4-8 authorization by the agency executive director.

4-9 (c) For state agency contracts valued in excess of \$1  
 4-10 million the agency executive director must authorize a contract  
 4-11 amendment in writing.

4-12 (d) Each state agency shall annually report to the  
 4-13 commission a list of each person authorized to approve contracts at  
 4-14 the agency. The list must include the person's name, position, and  
 4-15 supervisory responsibility, if any.

4-16 Sec. 2262.063. NEGOTIATION OF CONTRACT BY SINGLE EMPLOYEE  
 4-17 PROHIBITED. A state agency may not negotiate a contract with only  
 4-18 one employee engaging in the negotiation.

4-19 Sec. 2262.064. DEVELOPMENT OF OPTIMIZED MODEL FOR CERTAIN  
 4-20 CONTRACTS. (a) If a state agency determines that a proposed  
 4-21 contract or proposed contract extension or amendment would  
 4-22 outsource existing services or functions performed by the agency  
 4-23 that have a value of \$10 million or more, or that would lead to the  
 4-24 loss of 100 or more existing state employee positions, the agency  
 4-25 shall create an optimized model for the identified functions or  
 4-26 services to determine how and at what cost the agency could most  
 4-27 efficiently provide the functions or services.

4-28 (b) The model must show consideration of all relevant  
 4-29 factors, including:

4-30 (1) best practices in Texas and other states;  
 4-31 (2) available technology;  
 4-32 (3) access to benefits and services for clients;  
 4-33 (4) program integrity; and  
 4-34 (5) assessment of state agency skills available  
 4-35 throughout the life of the project.

4-36 (c) An agency that develops an optimized model under this  
 4-37 section shall use it as the basis for cost comparison when deciding  
 4-38 whether to outsource the identified functions or services.

4-39 (d) A model developed under this section is confidential and  
 4-40 is not subject to disclosure under Chapter 552 until a final  
 4-41 determination has been made to award the contract for which the  
 4-42 model was developed.

4-43 Sec. 2262.065. ANALYSIS OF SERVICES AND FUNCTIONS. (a) In  
 4-44 this section, "inherently governmental in nature" means a function  
 4-45 or service that involves the exercise or use of governmental  
 4-46 authority or discretion.

4-47 (b) If a state agency determines that a proposed contract or  
 4-48 proposed contract extension or amendment would outsource existing  
 4-49 services or functions performed by the agency that have a value of  
 4-50 \$10 million or more, or would lead to the loss of 100 or more  
 4-51 existing state employee positions, then before the agency may issue  
 4-52 a competitive solicitation for the contract or amend or extend the  
 4-53 contract the agency shall contract with the State Council on  
 4-54 Competitive Government for its staff to perform an analysis to  
 4-55 determine if any of the services or functions to be performed under  
 4-56 the contract or contract extension or amendment are inherently  
 4-57 governmental in nature.

4-58 (c) Except as provided by Subsection (e), if the State  
 4-59 Council on Competitive Government determines that a service or  
 4-60 function to be performed under the contract or contract extension  
 4-61 or amendment is inherently governmental in nature, the state agency  
 4-62 may not:

4-63 (1) contract with a private entity to perform the  
 4-64 service or function; or

4-65 (2) amend or extend the contract, if a private entity  
 4-66 is to perform the service or function under the contract extension  
 4-67 or amendment.

4-68 (d) The analysis required under this section must use the  
 4-69 standards and policies contained in the Office of Federal

5-1 Procurement Policy, Policy Letter 92-1, or comparable guidelines  
 5-2 developed by the State Council on Competitive Government.

5-3 (e) A state agency may contract with a private entity to  
 5-4 perform a service or function or amend or extend an existing  
 5-5 contract to allow a private entity to perform a service or function  
 5-6 that the State Council on Competitive Government determines to be  
 5-7 inherently governmental in nature if the chief administrative  
 5-8 officer of the agency issues a report stating that there is a  
 5-9 compelling state interest in outsourcing the service or function.

5-10 Sec. 2262.066. FULL AND FAIR COST COMPARISON. (a) If a  
 5-11 state agency determines that a proposed contract or proposed  
 5-12 contract extension or amendment would outsource existing services  
 5-13 or functions performed by the agency that have a value of \$10  
 5-14 million or more, or that would lead to the loss of 100 or more  
 5-15 existing state employee positions, the agency shall:

5-16 (1) conduct a full and fair cost comparison to  
 5-17 determine whether a private entity could perform the service or  
 5-18 function with a comparable or better level of quality at a cost  
 5-19 savings to the state; and

5-20 (2) prepare a business case providing the initial  
 5-21 justification for the proposed contract or proposed contract  
 5-22 extension or amendment that includes:

5-23 (A) the results of the comparison required under  
 5-24 Subdivision (1); and

5-25 (B) the anticipated return on investment in terms  
 5-26 of cost savings and efficiency for the proposed contract or  
 5-27 proposed contract extension or amendment.

5-28 (b) To perform the comparison required by Subsection  
 5-29 (a)(1), a state agency may:

5-30 (1) contract with the State Council on Competitive  
 5-31 Government to have its staff perform the comparison; or

5-32 (2) use the methodology provided in Section 2162.103.

5-33 (c) A state agency shall submit the business case required  
 5-34 under Subsection (a)(2) to the governor, lieutenant governor,  
 5-35 speaker of the house of representatives, Legislative Budget Board,  
 5-36 and standing committees of the legislature that have primary  
 5-37 jurisdiction over the agency, over state appropriations, and over  
 5-38 state purchasing.

5-39 SECTION 9. Section 2262.101, Government Code, is amended to  
 5-40 read as follows:

5-41 Sec. 2262.101. CREATION; DUTIES. (a) The Contract  
 5-42 Advisory Team is created to assist state agencies in improving  
 5-43 contract management practices by:

5-44 (1) ~~reviewing the solicitation of major contracts by~~  
 5-45 ~~state agencies;~~

5-46 ~~[(2)]~~ reviewing any findings or recommendations made  
 5-47 by the state auditor, including those made under Section  
 5-48 2262.052(b), regarding a state agency's compliance with the  
 5-49 contract management guide; ~~and~~

5-50 (2) ~~[(3)]~~ providing recommendations to the commission  
 5-51 regarding:

5-52 (A) the development of the contract management  
 5-53 guide; and

5-54 (B) the training under Section 2262.053; and

5-55 (3) certifying that state agencies have complied with  
 5-56 Sections 2262.064 and 2262.066.

5-57 (b) The team shall consult with state agencies in developing  
 5-58 forms, contract terms, guidelines, and criteria required under this  
 5-59 chapter.

5-60 SECTION 10. Subsection (a), Section 2262.102, Government  
 5-61 Code, is amended to read as follows:

5-62 (a) The team consists of the following six ~~five~~ members:

5-63 (1) one member from the attorney general's office;

5-64 (2) one member from the comptroller's office;

5-65 (3) one member from the Department of Information

5-66 Resources;

5-67 (4) one member from the Texas Building and Procurement

5-68 Commission; ~~and~~

5-69 (5) one member from the governor's office; and

6-1 (6) one member from the State Council on Competitive  
6-2 Government.

6-3 SECTION 11. Subchapter C, Chapter 2262, Government Code, is  
6-4 amended by adding Sections 2262.104 and 2262.105 to read as  
6-5 follows:

6-6 Sec. 2262.104. UNIFORM DEFINITIONS AND FORMS. (a) The  
6-7 team shall develop and publish a uniform set of definitions for use  
6-8 as applicable in state contracts.

6-9 (b) The team shall develop and publish a uniform and  
6-10 automated set of forms that a state agency may use in the different  
6-11 stages of the contracting process.

6-12 Sec. 2262.105. FORMS FOR REPORTING CONTRACTOR PERFORMANCE.  
6-13 As part of the uniform forms published under Section 2262.104, the  
6-14 team shall develop forms for use by state agencies in reporting a  
6-15 contractor's performance under Section 2262.057.

6-16 SECTION 12. Chapter 2262, Government Code, is amended by  
6-17 adding Subchapters D, E, F, and G to read as follows:

6-18 SUBCHAPTER D. CONTRACT PROVISIONS

6-19 Sec. 2262.151. USE OF UNIFORM FORMS. A state agency may use  
6-20 the forms developed under Section 2262.104 as templates, guides, or  
6-21 samples for contracts entered into by the agency.

6-22 Sec. 2262.152. CONTRACT TERMS RELATING TO NONCOMPLIANCE.

6-23 (a) The team shall develop recommendations for contract terms  
6-24 regarding penalties for contractors who do not comply with a  
6-25 contract, including penalties for contractors who do not disclose  
6-26 conflicts of interest under Section 2262.201. The team may develop  
6-27 recommended contract terms that are generally applicable to state  
6-28 contracts and terms that are applicable to important types of state  
6-29 contracts.

6-30 (b) A state agency may include applicable recommended terms  
6-31 in a contract entered into by the agency.

6-32 Sec. 2262.153. REQUIRED PROVISION RELATING TO  
6-33 SUBCONTRACTOR COMPLIANCE. Each state agency contract must require  
6-34 that each contractor provide a list of all subcontractors for the  
6-35 contract and include a provision that:

6-36 (1) holds the contractor responsible for the conduct  
6-37 of all subcontractors in complying with the contractor's contract  
6-38 with the state agency; and

6-39 (2) requires each subcontractor to disclose all  
6-40 potential conflicts of interest to the state agency, according to  
6-41 guidelines developed under Section 2262.201(b), when the  
6-42 subcontractor contracts with or is otherwise hired by the  
6-43 contractor.

6-44 Sec. 2262.154. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;  
6-45 STATE AGENCY EMPLOYEES. Before entering into a contract with the  
6-46 state, a contractor and subcontractor shall disclose each employee:

6-47 (1) who was employed by:

6-48 (A) the state at any time during the two years  
6-49 before the date of the disclosure and is now employed by the  
6-50 contractor or subcontractor; or

6-51 (B) the contractor or subcontractor at any time  
6-52 during the year before the date of the disclosure and is now  
6-53 employed by the state; and

6-54 (2) who is materially involved in the development of  
6-55 the contract terms or the management of the contract.

6-56 Sec. 2262.155. REQUIRED CONTRACTOR DISCLOSURE STATEMENT;  
6-57 OUTSOURCING. (a) Each contract entered into by a state agency  
6-58 must include a provision requiring disclosure of any services  
6-59 materially necessary to fulfill the contract, including services  
6-60 performed by a subcontractor, that will be or are performed in a  
6-61 country other than the United States. This section does not apply  
6-62 to services that are occasional, minor, or incidental to fulfilling  
6-63 the contract.

6-64 (b) The contract must include a provision allowing the state  
6-65 agency to terminate the contract and solicit a new contract, except  
6-66 as provided by Subsection (d), if:

6-67 (1) the contractor or a subcontractor of the  
6-68 contractor performs a service materially necessary to fulfill the  
6-69 contract in a country other than the United States; and

7-1                   (2) the contractor does not disclose in the contract  
7-2 that the service will be performed in a country other than the  
7-3 United States.

7-4                   (c) A state agency that decides not to solicit a new  
7-5 contract under circumstances in which the agency is authorized to  
7-6 do so under a contract provision required by Subsection (b) shall  
7-7 report this decision to:

7-8                   (1) the governor;

7-9                   (2) the lieutenant governor;

7-10                  (3) the speaker of the house of representatives; and

7-11                  (4) the team.

7-12                  (d) A contractor may replace a subcontractor without  
7-13 termination of a contract under this section if the contractor  
7-14 determines that the subcontractor is performing a service  
7-15 materially necessary to fulfill the contract in a country other  
7-16 than the United States and did not disclose that fact to the  
7-17 contractor.

7-18                  Sec. 2262.156. HIRING PREFERENCE PROVISION FOR CERTAIN  
7-19 LARGE CONTRACTS. If a state agency determines that a proposed  
7-20 contract or proposed contract extension or amendment would  
7-21 outsource existing services or functions performed by the agency  
7-22 that have a value of \$10 million or more, or that would lead to the  
7-23 loss of 100 or more existing state employee positions, the contract  
7-24 or contract amendment must contain a provision that requires the  
7-25 contractor to give preference in hiring to former employees of a  
7-26 state agency:

7-27                   (1) whose employment is terminated because of the  
7-28 contract or contract extension or amendment;

7-29                   (2) who satisfy the contractor's hiring criteria for  
7-30 that position; and

7-31                   (3) whose salary requirements are competitive with  
7-32 market rates for positions with equivalent skills and experience.

#### 7-33                   SUBCHAPTER E. ETHICS; CONFLICT OF INTEREST

7-34                  Sec. 2262.201. CONTRACTOR CONFLICTS OF INTEREST. (a) Each  
7-35 contractor who responds to a state agency's contract solicitation  
7-36 shall disclose in its response all potential conflicts of interest  
7-37 to the agency.

7-38                  (b) The team shall develop guidelines to aid contractors and  
7-39 state agencies in identifying potential conflicts of interest.

7-40                  Sec. 2262.202. EXECUTIVE DIRECTORS; ETHICS IN CONTRACTING  
7-41 CLASS. Each executive director of a state agency shall annually  
7-42 complete the ethics and contracting class developed under Section  
7-43 2262.053(f). This section does not apply to a state agency that  
7-44 does not enter into any contracts.

#### 7-45                   SUBCHAPTER F. CHANGES TO CONTRACTS

7-46                  Sec. 2262.251. CONTRACT AMENDMENTS, EXTENSIONS, AND CHANGE  
7-47 ORDERS. (a) An extension of or amendment to a contract, including  
7-48 a change order, is subject to the same approval processes as the  
7-49 original contract.

7-50                  (b) A state agency may not extend or amend a contract  
7-51 unless:

7-52                   (1) the agency complies with the same approval  
7-53 processes for the extension or amendment as required for the  
7-54 original contract; and

7-55                   (2) a contract manager for the agency states in  
7-56 writing why the extension or amendment is necessary.

7-57                  (c) This section does not affect whether a state agency is  
7-58 required to undertake a new solicitation process in the manner  
7-59 required for a new contract in order to extend or amend a contract.

7-60                  Sec. 2262.252. LARGE CHANGE IN CONTRACT VALUE. (a) If a  
7-61 proposed contract amendment or extension changes the monetary value  
7-62 of a contract by \$1 million or more, the state agency must obtain  
7-63 review and approval from the team and the agency's executive  
7-64 director before the agency amends or extends the contract.

7-65                  (b) This section does not apply to a proposed contract  
7-66 amendment required by a state or federal statute.

7-67                  Sec. 2262.253. CERTAIN CONTRACT EXTENSIONS. This  
7-68 subchapter does not apply to contract extensions that are  
7-69 specifically established as a component of the original

8-1 procurement.

8-2 SUBCHAPTER G. STATE OFFICE OF CONTRACT MANAGEMENT

8-3 Sec. 2262.301. DEFINITIONS. In this subchapter:

8-4 (1) "High-risk contract" means a state agency contract  
8-5 that:

- 8-6 (A) has a value of at least \$10 million; or
- 8-7 (B) has a value of less than \$10 million, but has  
8-8 high-risk factors as identified by the office.

8-9 (2) "Major information resources project" has the  
8-10 meaning assigned by Section 2054.003(10).

8-11 (3) "Office" means the state office of contract  
8-12 management.

8-13 (4) "Quality assurance team" means the quality  
8-14 assurance team established under Section 2054.158.

8-15 (5) "Solicitation" means a solicitation for bids,  
8-16 offers, qualifications, proposals, or similar expressions of  
8-17 interest for a high-risk contract.

8-18 Sec. 2262.302. ESTABLISHMENT; GENERAL DUTIES. The  
8-19 commission shall establish a state office of contract management  
8-20 to:

8-21 (1) develop criteria for identifying high-risk  
8-22 factors in contracts;

8-23 (2) review and approve an action related to a  
8-24 high-risk contract as provided by Section 2262.303;

8-25 (3) provide recommendations and assistance to state  
8-26 agency personnel throughout the contract management process; and

8-27 (4) coordinate and consult with the quality assurance  
8-28 team on all high-risk contracts relating to a major information  
8-29 resources project.

8-30 Sec. 2262.303. REVIEW AND APPROVAL; WAIVER. (a) Each  
8-31 state agency must receive approval from the office before taking  
8-32 the following actions in relation to a high-risk contract:

8-33 (1) publicly releasing solicitation documents;

8-34 (2) executing a final contract; and

8-35 (3) making a payment or a series of payments that equal  
8-36 half of the contract value.

8-37 (b) In determining whether to approve an action described by  
8-38 Subsection (a), the office shall review related documentation to  
8-39 ensure that potential risks related to the high-risk contract have  
8-40 been identified and mitigated.

8-41 (c) The commission by rule may adopt criteria for waiving  
8-42 the review and approval requirements under Subsections (a) and (b).

8-43 Sec. 2262.304. SOLICITATION AND CONTRACT CANCELLATION.

8-44 After review of and comment on the matter by the Legislative Budget  
8-45 Board and the governor, the office may recommend the cancellation  
8-46 of a solicitation or a contract during the review process under  
8-47 Section 2262.303 if:

8-48 (1) a proposed solicitation is not in the best  
8-49 interest of the state;

8-50 (2) a proposed contract would place the state at an  
8-51 unacceptable risk if executed; or

8-52 (3) an executed contract is experiencing performance  
8-53 failure or payment irregularities.

8-54 SECTION 13. Section 2262.003, Government Code, is  
8-55 transferred to Subchapter D, Chapter 2262, Government Code, as  
8-56 added by this Act, is redesignated as Section 2262.157, Government  
8-57 Code, and is amended to read as follows:

8-58 Sec. 2262.157 [~~2262.003~~]. REQUIRED [~~CONTRACT~~] PROVISION  
8-59 RELATING TO AUDITING. (a) Each state agency shall include in each  
8-60 of its contracts a term that provides that:

8-61 (1) the state auditor may conduct an audit or  
8-62 investigation of any entity receiving funds from the state directly  
8-63 under the contract or indirectly through a subcontract under the  
8-64 contract;

8-65 (2) acceptance of funds directly under the contract or  
8-66 indirectly through a subcontract under the contract acts as  
8-67 acceptance of the authority of the state auditor, under the  
8-68 direction of the legislative audit committee, to conduct an audit  
8-69 or investigation in connection with those funds; and



(3) under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

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

SECTION 14. Section 51.923, Education Code, is amended to read as follows:

Sec. 51.923. QUALIFICATIONS OF CERTAIN BUSINESS ENTITIES TO ENTER INTO CONTRACTS WITH AN INSTITUTION OF HIGHER EDUCATION.

(a) In this section:

(1) "Business entity [Corporation]" means any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, limited liability company, holding company, joint stock company, receivership, or trust [a corporation for profit organized under the laws of this state or under laws other than the laws of this state].

(2) "Governing board" has the meaning assigned by Section 61.003 of this code.

(3) "Institution of higher education" has the meaning assigned by Section 61.003 of this code.

(4) "Nonprofit corporation" means any organization exempt from federal income tax under Section 501 of the Internal Revenue Code of 1986 that does not distribute any part of its income to any member, director, or officer.

(b) A nonprofit corporation is not disqualified from entering into a contract or other transaction with an institution of higher education even though one or more members of the governing board of the institution of higher education also serves as a member, ~~or~~ director, or officer of the nonprofit corporation.

(c) A business entity [corporation] is not disqualified from entering into a contract or other transaction with an institution of higher education even though one or more members of the governing board of the institution of higher education has a substantial interest in the business entity [also serves as a stockholder or director of the corporation provided that no member of the governing board owns or has a beneficial interest in more than five percent of the corporation's outstanding capital stock and further provided that the contract or transaction is:

~~[(1) an affiliation, licensing, or sponsored research agreement, or~~

~~[(2) awarded by competitive bidding or competitive sealed proposals].~~

(d) An institution of higher education is not prohibited from entering into a contract or other transaction with a business entity in which a member of the governing board of the institution of higher education has a substantial interest [described in this section] if the [any] board member [having an interest described in this section in the contract or transaction] discloses that interest in a meeting held in compliance with Chapter 551, Government Code, and refrains from voting on the contract or transaction. Any such contract or transaction requiring board approval must be approved by an affirmative majority of the board members voting on the contract or transaction.

(e) For purposes of this section, a member of a governing board has a substantial interest in a business entity if:

(1) the member owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity;

(2) funds received by the member from the business entity exceed 10 percent of the member's gross income for the previous year; or

(3) an individual related to the member in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has an interest in the business entity as described by Subdivision (1) or (2).

