LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 11, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **SB769** by Zaffirini (Relating to contracting issues of state agencies, including ethics issues related to state contracting.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB769, As Engrossed: a negative impact of ($1,682,194) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	($677,125)
2009	($1,005,069)
2010	($979,626)
2011	($980,982)
2012	($982,374)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2007
2008	($677,125)	8.0
2009	($1,005,069)	13.0
2010	($979,626)	13.0
2011	($980,982)	13.0
2012	($982,374)	13.0

Fiscal Analysis

The bill would amend the Government Code and establish guidelines for training contract managers and governing bodies of state agencies and require the development of a uniform set of definitions to be used in state contracts and a uniform set of forms for use in the contracting process.

In coordination with the State Auditor, Comptroller, Department of Information Resources, and the Health and Human Services Commission, the Texas Building and Procurement Commission (TBPC) would develop a training program, which would include an abbreviated version for members of governing bodies of state agencies.

Each state agency would be obliged to maintain contracts in a central location. Upon completion or termination of a contract, a state agency would be required to submit a written review of the contractor's performance to TBPC. TBPC would store all contracts and contractor performance reviews in a database.

The bill would require state agencies to develop a plan to incorporate performance measures into all contracts entered into by the agency, and report such measures to the Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. In addition, TBPC may solicit a contract to track and compare prices that state agencies pay for similar products or services. State agencies would be required to give the contractor information needed for the purpose of tracking and comparing prices.

The bill would require that each contract includes a provision that holds the contractor responsible for the conduct of all subcontractors and requires each subcontractor to disclose all potential conflicts of interest. A contractor or subcontractor would be required to disclose if any services performed under the contract are outsourced from the United States. A contract entered into by a state agency would have to contain a provision to allow the state agency to terminate the contract and solicit a new contractor if a service is performed outside of the United States that was not initially disclosed in the contract.

In addition, if a state agency determines that a proposed contract or proposed contract amendment would outsource existing services or functions performed by the agency that have a value of $10,000,000 or more, or that would lead to the loss of 100 or more existing state employee positions the agency shall: (1) create an optimized model for the identified functions or services to determine how and at what cost the agency could most efficiently provide the functions or services; (2) conduct a full and fair cost comparison to determine whether a private entity could perform the service or function with a comparable or better level of quality at a cost savings to the state; and, (3) prepare a business case with justification for the proposed contract or amendment, the anticipated return on investment in terms of cost savings and efficiency for the proposed contract or proposed contract extension or amendment. The bill would allow state agencies to contract with the Council on Competitive Government to perform this comparison.

The bill would require the Contract Advisory Team (CAT) to consult with state agencies in developing forms, contract terms, guidelines, and criteria for statewide contract management.

The bill would add on member of the Council of Competitive Government to the CAT.

The bill would require the CAT to develop and publish a uniform set of definitions and forms that state agencies may use in the different stages of the contracting process. The bill requires CAT to develop forms that state agencies may use in reporting a contractor's performance.

The bill would require the Texas Building and Procurement Commission (TBPC) to establish a state office of contract management (office) to identify, review, and provide assistance on “high-risk” contracts undertaken by state agencies. The bill defines “high-risk” contracts as those agency contracts with a value of $10 million or more or that meet other non-financial high risk factors identified by the office. The Commission would also have the ability to waive contracts from required review and approval if the contract in question is determined to carry a low-risk to the state.

The office would be required to approve identified “high-risk” contracts at three points in the contract management process: (1) prior to the public release of solicitation documents; (2) prior to the execution of a final contract; and (3) prior to making a payment, or series of payments, that equal half of the contract value.

A contract not approved at any of the three points noted would be referred to the Legislative Budget Board (LBB) and the governor for further review and comment. With the approval of those entities, the office may recommend the cancellation of a solicitation or a contract under review if the contract is not in the best interests of the state or places a state entity at unacceptable risk if executed.

The bill would apply to contracts considered by state agencies, excluding contracts by the Texas Department of Transportation (TXDOT), Health and Human Services' enrollment contracts and institutions of higher education contracts.

Methodology

TBPC would need to revise agency rules, contract management guidelines, and procurement and contracting forms developed by the agency. It is assumed that these additional duties and responsibilities could be absorbed within existing state resources.

To implement the additional responsibilities required by the creation of the office of contract management, TBPC would require additional resources.

In fiscal year 2005, state agencies, excluding TXDOT, executed 123 contracts valued at $10 million or more. In fiscal year 2006 that total increased only slightly to 130. It is assumed that no more than half of applicable agency contracts would be identified as high risk and be subject to the office's review and approval. This would result in the office reviewing 65 contracts per year.

Based on this work load, it is assumed that TBPC would require a total of 12 full-time equivalents by the second year of program operations. The 12 employees would include the following classifications: Director II (1); Contract Administration Manager I (2); Contract Specialist IV (5); Attorney II (1); Attorney I (1); Administrative Assistant III (1); and (Administrative Assistant I (1). Annual salaries for these positions range from $29,779 to $80,886. Seven of the employees listed would be available to be assigned specific individual contract reviews, handling an average of 9 contracts each per year, with the remaining personnel serving in support roles for all office operations.

It is also assumed that the Council on Competitive Government, as a new member of CAT and other new responsibilities in the proposed bill, would require an additional FTE (Contract Specialist IV) with an annual salary of $47,382. The costs associated with this new FTE are $68,111 in fiscal year 2008 and $64,944 in fiscal year 2009.

Total costs are higher in fiscal year 2009 than fiscal year 2008 due to the development time required to establish, staff, and initiate office operations. It is expected that the office would be fully staffed and operational by the beginning of fiscal year 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 303 Building and Procurement Commission, 601 Department of Transportation

LBB Staff: JOB, CT, MS, KJG, JI, EP, KY