

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 19, 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.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB769, Committee Report 2nd House, Substituted: a negative impact of (\$3,186,697) 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	(\$1,334,853)
2009	(\$1,851,844)
2010	(\$1,811,288)
2011	(\$1,813,887)
2012	(\$1,816,555)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2007
2008	(\$1,334,853)	(15.0)
2009	(\$1,851,844)	(23.0)
2010	(\$1,811,288)	(23.0)
2011	(\$1,813,887)	(23.0)
2012	(\$1,816,555)	(23.0)

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.

The bill would require the Texas Building and Procurement Commission (TBPC) or a private vendor selected by TBPC, in coordination with the Office of the Attorney General (OAG), State Auditor, Comptroller, Department of Information Resources (DIR), and the Health and Human Services Commission, to develop a training program, which would include an abbreviated version for members of governing bodies of state agencies.

The bill would require each state agency to maintain contracts in a central location or post the major contracts on the agency's website and be searchable by contract value, vendor, and other subjects as appropriate. The bill

would also require that 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 be required to 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 Contract Advisory Team (CAT), Governor, Lieutenant Governor, and Speaker of the House of Representatives not later than March 1 of each year. 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.

The bill would require, 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 million or more, or that would lead to the loss of 100 or more existing state employee positions the agency shall analyze the identified functions or services to determine how and at what costs the agency could most efficiently provide the functions or services.

The bill would add one member from 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 would require CAT to develop forms that state agencies may use in reporting a contractor's performance.

The bill would require 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 proposed bill defines "high-risk" contracts as those agency contracts with a value of \$25 million or more or that meet other non-financial high risk factors identified by the office. TBPC 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, in writing, 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 also require the OAG to establish a contract management oversight and approval process to provide assistance on "high-risk" contracts undertaken by state agencies. The OAG would assist agencies in the preparation of solicitation documents, planning for contract negotiations, writing of contracts, and other preparations for executing high risk contracts. The OAG would also be required to approve identified "high-risk" contracts, in writing, prior to execution.

The bill would require state agencies to pay the costs and fees of counsel or consultants hired by the OAG or office, with expertise in a technical matter that is the subject of a high-risk contract or proposed high-risk contract.

The bill would also allow the CAT, with the approval of the governor, to override the decision of either TBPC or the OAG to disapprove the solicitation or execution of a high-risk contract if the team determines the contract does not place the state at an unacceptable risk and is in the best interest of the state.

Methodology

TBPC and the OAG 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 58 contracts valued at \$25 million or more. In fiscal year 2006 that total increased to 68. It is assumed that all 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 approximately 68 contracts per year.

Based on this work load, it is assumed that TBPC would require a total of 11 full-time equivalents by the second year of program operations. The 11 employees would include the following classifications: Director II (1); Contract Administration Manager I (2); Contract Specialist IV (4); 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. Six of the employees listed would be available to be assigned specific individual contract reviews, handling an average of 11 contracts each per year, with the remaining personnel serving in support roles for all office operations.

To provide contracting assistance to state agencies pursuant to the requirements of the proposed bill, the OAG would require additional resources. Based on work load previously described, it is assumed that the OAG would require a total of 11 full-time equivalents by the second year of program operations. The 11 employees would include the following classifications: Assistant Attorney General VI (1); Assistant Attorney General V (2); Assistant Attorney General III (2); Assistant Attorney General II (2); Legal Assistant II (2); and (Administrative Assistant I (2). Annual salaries for these positions range from \$24,479 to \$103,414. Six of the employees listed would be available to be assigned to specific individual contract reviews, handling an average of 11 contracts each per year, with the remaining personnel serving in support roles for all office operations.

The OAG's response indicated a need of 33 full-time equivalents and a total biennial cost of \$6.0 million. However, because of the ability of the Office to define high-risk contracts and waive contracts not deemed high-risk from full-review, the staffing and funding levels identified in the table above would be appropriate to establish the office. Depending on the number of contracts identified as high-rise, future staffing levels may need to be adjusted.

The Council on Competitive Government, as a new member of CAT and with the new responsibilities in the proposed bill, would require an additional full-time equivalent (Contract Specialist IV) with an annual salary of \$47,382. The cost associated with this new FTE is \$68,109 in fiscal year 2008 and \$65,010 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.

DIR, as a contracting agency, also indicated an increase in workload due to the provisions of the bill. It is assumed that most of the cooperative contracts that DIR enters into would not be considered high-risk as defined under the provisions of the bill and the additional responsibilities can be absorbed with current resources.

According to TBPC, the lead agency for CAT, in fiscal year 2006 TBPC reviewed approximately 268 solicitations and distributed approximately 18 solicitations to other members of CAT in the same fiscal year. Assuming that TBPC would continue the trend of reviewing the bulk of the workload, it is assumed that the additional duties of CAT could be absorbed with current resources.

It is also assumed that with the concurrent reviews of state contracts by the OAG and the office that the state will have sufficient resources available to implement the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 303 Building and Procurement Commission, 313 Department of Information Resources, 529 Health and Human Services Commission, 601 Department of Transportation

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