

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 15, 2007**

**TO:** Honorable Steve Ogden, Chair, Senate Committee on Finance

**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 Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB769, As Introduced: a negative impact of (\$399,161) 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:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2008	(\$204,328)
2009	(\$194,833)
2010	(\$195,031)
2011	(\$195,031)
2012	(\$195,031)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable (Cost) from GENERAL REVENUE FUND 1</b>
2008	(\$204,328)
2009	(\$194,833)
2010	(\$195,031)
2011	(\$195,031)
2012	(\$195,031)

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2007</b>
2008	3.0
2009	3.0
2010	3.0
2011	3.0
2012	3.0

**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 add on member of the Council of Competitive Government to the Contract Advisory Team (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 CAT to review a proposed contract, contract amendment, or contract extension with an aggregate value of \$250,000,000 or more, with an annual value of \$100,000,000 or more, or for which a state agency requests assistance from the team. The review would determine whether the contract terms contain certain provisions, including provisions providing for adequate performance measures, formal deliverables, penalties for noncompliance, continued monitoring, and other provisions CAT considers to be in the best interest of the state.

The bill would require that CAT to recommend revisions to the proposed contract, contract

amendment, or contract extension if CAT determines that it does not contain the required provisions of the bill if passed and assist contract managers during negotiations with a contractor on a proposed contract, contract amendment, or contract extension.

The bill would allow TBPC by rule to establish the threshold requirements that exclude small or routine contracts, including purchase orders, from the application of the provisions of the bill.

### **Methodology**

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

To implement the additional responsibilities and duties outlined in the proposed bill for the Contract Advisory Team, the Council of Competitive Government and TBPC would require additional 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. It is assumed that the anticipated increase for TBPC's participation on CAT would require two full-time equivalents (Contract Specialist IV) with an annual salary of \$47,382. The costs associated with these new FTEs and the associated operating costs are \$136,217 in fiscal year 2008 and \$129,889 in fiscal year 2009.

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.

Costs are higher in fiscal year 2008 due to one-time operating costs like furniture and equipment.

Several members of CAT have indicated there would be costs associated with implementing the provisions of the bill. Assuming that TBPC would continue the trend of reviewing the bulk of the workload, it is assumed that these costs could be absorbed within current resources.

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 could be considered routine under the provisions of the bill and the additional responsibilities can be absorbed with current resources.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 301 Office of the Governor, 302 Office of the Attorney General, 303 Building and Procurement Commission, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 313 Department of Information Resources, 529 Health and Human Services Commission

**LBB Staff:** JOB, CT, EP