

By: Parker

H.B. No. 4682

Substitute the following for H.B. No. 4682:

By: Solomons

C.S.H.B. No. 4682

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the use of private procurement specialists for certain
3 state agency contracts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2262.002(b), Government Code, is amended
6 to read as follows:

7 (b) Except as provided by Section 2262.152, this ~~[This]~~
8 chapter does not apply to contracts of the Texas Department of
9 Transportation that:

10 (1) relate to highway construction or highway
11 engineering; or

12 (2) are subject to Section 201.112, Transportation
13 Code.

14 SECTION 2. Section 2262.101, Government Code, is amended to
15 read as follows:

16 Sec. 2262.101. CREATION; DUTIES. The Contract Advisory
17 Team is created to assist state agencies in improving contract
18 management practices by:

19 (1) ~~[reviewing the solicitation of major contracts by~~
20 ~~state agencies,~~

21 ~~[-2-]~~ reviewing any findings or recommendations made
22 by the state auditor, including those made under Section
23 2262.052(b), regarding a state agency's compliance with the
24 contract management guide; and

1 (2) [~~(3)~~] providing recommendations to the commission
2 regarding:

3 (A) the development of the contract management
4 guide; and

5 (B) the training under Section 2262.053.

6 SECTION 3. Chapter 2262, Government Code, is amended by
7 adding Subchapter D to read as follows:

8 SUBCHAPTER D. PRIVATE PROCUREMENT SPECIALISTS

9 Sec. 2262.151. DEFINITIONS. In this subchapter:

10 (1) "High-cost contract" means a state agency contract
11 that has a value of at least \$10 million.

12 (2) "Major information resources project" has the
13 meaning assigned by Section 2054.003.

14 (3) "Solicitation" means a solicitation for bids,
15 offers, qualifications, proposals, or similar expressions of
16 interest for a high-cost contract.

17 Sec. 2262.152. APPLICABILITY TO CERTAIN CONTRACTS. (a) This
18 subchapter applies to a Texas Department of Transportation contract
19 only if the contract:

20 (1) is a high-cost contract; and

21 (2) is for a major information resources project.

22 (b) This subchapter does not apply to a contract for
23 professional or consulting services under Chapter 2254.

24 Sec. 2262.153. PRIVATE PROCUREMENT SPECIALISTS. (a) The
25 comptroller shall select and assign private procurement
26 specialists as provided by this subchapter.

27 (b) A private procurement specialist must be a private

1 person who is:

2 (1) an expert in the subject matter of the assigned
3 contract; and

4 (2) proficient in the procurement laws applicable to
5 the assigned contract.

6 (c) A private procurement specialist shall:

7 (1) review and approve actions under Section
8 2262.154(d); and

9 (2) throughout the contract formation and contract
10 management process, provide recommendations and assistance to the
11 state agency regarding the contract to which the private
12 procurement specialist is assigned.

13 (d) Before the comptroller assigns a private procurement
14 specialist, the comptroller and the state agency seeking to enter
15 into the contract shall consider:

16 (1) each potential private procurement specialist's
17 relative experience and knowledge on the subject matter of the
18 contract; and

19 (2) any fees or costs associated with securing the
20 services of the private procurement specialist.

21 (e) A private procurement specialist may not bid on or
22 otherwise make a proposal to receive a contract to which the
23 specialist was assigned.

24 Sec. 2262.154. USE OF PRIVATE PROCUREMENT SPECIALIST. (a)
25 The comptroller shall assign a private procurement specialist for a
26 high-cost contract if the comptroller determines that given the
27 cost and nature of the proposed contract there will probably be a

1 net savings to the state over the life of the contract if a
2 specialist is assigned.

3 (b) A state agency may request that the comptroller assign a
4 private procurement specialist for a proposed contract if the
5 agency determines that given the cost and nature of the contract
6 there will probably be a net savings to the state over the life of
7 the contract if a specialist is assigned.

8 (c) A state agency seeking to enter into a high-cost
9 contract must send to the comptroller the information necessary to
10 make a determination under Subsection (a).

11 (d) During the contract formation and contract management
12 process with respect to a high-cost contract to which a private
13 procurement specialist is assigned, a state agency shall
14 collaborate with and, except as provided by Subsection (f), obtain
15 the approval of the private procurement specialist before taking
16 any of the following actions in relation to the contract:

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

21 (e) In determining whether to approve an action described by
22 Subsection (d), the assigned private procurement specialist and the
23 comptroller shall review related documentation to ensure that
24 potential risks related to the high-cost contract have been
25 identified and mitigated.

26 (f) If a state agency disagrees with a determination of a
27 private procurement specialist regarding an action described by

1 Subsection (d), the agency may take the action without the approval
2 of the specialist if the administrative head of the agency and the
3 comptroller approve the action.

4 Sec. 2262.155. SOLICITATION AND CONTRACT CANCELLATION. (a)
5 After review of and comment on the matter by the Legislative Budget
6 Board and the governor, the assigned private procurement specialist
7 may recommend the cancellation of a solicitation or a contract
8 under Section 2262.154(d) if:

9 (1) a proposed solicitation is not in the best
10 interest of the state;

11 (2) a proposed contract would place the state at an
12 unacceptable risk if executed; or

13 (3) an executed contract is experiencing performance
14 failure or payment irregularities.

15 (b) Each high-cost contract is subject to cancellation in
16 accordance with this section and Section 2262.154(d).

17 Sec. 2262.156. PAYMENT OF PRIVATE PROCUREMENT SPECIALIST
18 SERVICES. (a) The state agency seeking to enter into a contract for
19 which a private procurement specialist is assigned shall enter into
20 an agreement with the specialist to compensate the specialist using
21 either:

22 (1) a flat fee agreement; or

23 (2) a pay-for-performance agreement described by
24 Subsection (b).

25 (b) If a pay-for-performance agreement is used, the state
26 agency shall develop a pro forma budget for the contract based on
27 the agency's expected cost of entering into and managing the

1 contract if the agency were to enter into and manage the contract
2 using ordinary procurement procedures but without using the
3 services of a private procurement specialist. The
4 pay-for-performance agreement must provide that the private
5 procurement specialist will be paid a percentage of the savings
6 realized by the agency as a result of employing the private
7 procurement specialist, compared with the agency's pro forma budget
8 for the contract.

9 Sec. 2262.157. REPORT. Not later than January 1 of each
10 year, each state agency that has used the services of a private
11 procurement specialist during the preceding year shall report to
12 the comptroller the savings realized by the agency as a result of
13 using the private procurement specialist's services.

14 Sec. 2262.158. RULES; WAIVER. The comptroller shall adopt
15 rules to implement and administer this subchapter, including rules
16 for waiving the approval of a private procurement specialist under
17 Section 2262.154(d).

18 SECTION 4. Section 2262.051(f), Government Code, is
19 repealed.

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

22 (1) for which the solicitation of bids, offers,
23 qualifications, proposals, or similar expressions of interest is
24 published on or after September 1, 2009;

25 (2) that is extended or modified on or after September
26 1, 2009; or

27 (3) for which a change order is submitted on or after

1 September 1, 2009.

2 SECTION 6. This Act takes effect September 1, 2009.